MERGER NOTIFICATION AND PROCEDURES TEMPLATE

ROMANIA

July 2006

IMPORTANT NOTE: This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

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1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

A. Notification provisions	Chapter III (the economic concentration) of Law No.21 of 10 April 1996 (the "Competition Law") republished in the Official Gazette no. 742/2005; Part II (notification of the economic concentrations) and Part IV (explanatory notes to fill in the form) of the Regulation on the Authorization of Economic Concentrations of 29 March 2004 (the "Merger Regulation"). http://www.consiliulconcurentei.ro/en/index1.asp?lang=en under "official documents".
B. Notification forms or information requirements	"Notification form of the economic concentrations" (the "Form") is available in English in the Annex of the Merger Regulation at the following link: http://www.consiliulconcurentei.ro/en/regulament/Reg%20on%20authorisation%20of%20economic%20concentration.pdf
C. Substantive merger review provisions	The test for clearance is whether the concentration which, having the effect of creating or strengthening a dominant position results or might result in effective competition becoming significantly restrained, prevented or distorted on the Romanian market or on a part of it. The Competition Council focuses on the market position, the market structure, the nature of the products, the barriers to entry, the size of competitors and other competition-related criteria. Article 13 of the Competition Law; Introduction of the Merger Regulation. The Competition Council makes an efficiency analysis of the concentration and may allow economic concentrations if they cumulatively meet the following criteria: (I) they contribute to increasing economic efficiency, enhancing production, distribution or technological progress

	or increase export competitiveness;(ii)the positive effects outweigh the negative effects on competition; and (iii)consumers benefit, especially through lower prices.
D. Implementing regulations	Merger Regulation, approved by Order of President of the Competition Council no. 63 of March 29, 2004, published in OJ. no. 280/31.03.2004 and Order no.150/03.06.2004 on the application of the Regulation for the amendment of the Annex to the Competition Council's Regulation on the authorisation of economic concentrations, published in OJ. no. 601 /5.07.2004
E. Interpretive guidelines and notices	Part II, Chapter I of the Merger Regulation; Part IV of the Merger Regulation: "Explanatory Notes regarding the method to fill in the notification form of the economic concentrations upon the Competition law no.21/1996, republished", and the Annex of the Merger Regulation: http://www.consiliulconcurentei.ro/en/regulament/Reg%20on%20authorisation%20of%20economic%20concentration.pdf; European Commission interpretative Notices have also been implemented in the following guidelines: • Guidelines on defining relevant market in order to establish significant market share of 26 March 2004 • Guidelines regarding calculation of turnover in the case of anti-competitive behaviour and Economic Concentrations of 29 April 2004 • Guidelines on remedies acceptable in cases of authorization of Economic Concentrations of 29 March 2004 • Guidelines regarding the calculation of the authorization tax for Economic Concentrations of 26 March 2004.

2. Authority or authorities responsible for merger enforcement.	
A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	The merger control provisions are enforced by **Consiliul Concurentei** (the "Competition Council"), a politically non-subordinated and independent institution. On a decision-making level, the Competition Council consists of seven members appointed by the president of Romania on the proposal of the government. As concerns merger enforcement, Competition Council has investigative, decision making, sanctioning and monitoring powers.
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	Consiliul Concurentei Piata Presei Libere, nr. 1, corp D1, District 1, 013701, Bucharest, OP 33 Phone: +40- 21- 405.44.24, 405.44.33 Fax: +40- 21- 318.49.08

	E-mail: competition@consiliulconcurentei.ro. Official Website:http://www.consiliulconcurentei.ro (Romanian and English).
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	Yes, the aim of "the simplified procedure for treatment of certain economic concentrations" (provided for in chapter III of the Merger Regulation), enforced by the Competition Council in accordance with the Commission Note 2000/C 217/11 is to ensure the efficiency of the control of these operations and to encourage the contacts between the notifying parties and the authority of the competition, before the advance of the notification form concerning an operation of the economic concentration. So, informal meetings with the case handlers in order to discuss the content and the amount of details they deem necessary for the notification to become effective, as well as to speed up the procedure, are possible.

3. Covered transactions

A. Definitions of potentially covered transactions (*i.e.*, concentration or merger)	The Merger Regulation covers concentrations, which include the following types of transactions: (i) merger; (ii) acquisition of direct or indirect control of the whole or part of a business through the purchase of securities or assets, or by contract or other means; and (iii) formation of a joint venture that performs all functions of an autonomous economic entity and does not result in coordination of the competitive behavior of the joint venture partners or between the partners and the joint venture (i.e. a "concentrative" joint venture). See as well, Article 10 of the Competition Law. The following types of transaction do not qualify as concentration (Article 11 of the Competition Law): (i) the obtaining or exercise of control by a liquidator(Art. 11 (a); (ii) the temporary acquisition and possession of shares by a credit or financial institution if the acquisition is made for the sole purpose of reselling and the acquisition does not give rights to vote (Art.11 (b); (iii) the acquisition of control by person or undertakings pursuant to Art.10.2. (b) is not implemented. (iv) the intra-group restructurings or reorganizations.
B. If change of control is a determining factor, how is control defined?	According to Art. 10 of the Competition Law, control exists if "decisive influence" may be separately or in combination impressed on an undertaking, in particular by ownership or the right to use all or part of its assets and/or rights or agreements regarding composition, voting or decisions of the board of directors or other bodies of the undertaking. Since the Competition Law does not provide for a precise shareholding test for decisive influence, this will have to be assessed on a case-by-case basis. The Merger Regulation in article 46 further provides rules for assessing the cases where sole control is acquired (through majority of voting rights or through minority voting rights

	leading to control; The de facto control is also analyzed). Art 54 further provides rules for assessing the cases of joint control: Art. 58 concern veto rights, Art. 63 the ordinary exercise of the voting rights and Art. 67 concerns the case where one undertaking has specific knowledge and experience in the business of the controlled association whereas the other does not (only if the latter has got a "real" possibility to challenge the decisions made by the first, will there be joint control).
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	Acquisition of minority shareholding is assessed by reviewing the strengths of minority shareholders' voting rights and other factors. For example, if the remaining shares are widely distributed among the other shareholders, a minority shareholding may confer decisive influence over an undertaking. Accordingly, if the minority shareholders have special voting veto rights as contained in Art. 61 of the Merger Regulation (i.e. the appointment of management and the adoption of the annual budgets, business plans, substantial investments and other decisions that influence the market behavior), the Competition Council may assert that the minority shareholders enjoy joint control. If only one of the shareholders is able to veto the strategic decisions of the undertaking, he will be covered alone (Art. 71). Another situation is when two or more undertakings who are minority shareholders (associates) in another undertaking can obtain the joint control even if they have no special voting veto rights, when they establish and apply together, through a legal or de facto agreement, the legal means to ensure the controlling the undertaking going to be purchased. In such a situation, the minority shareholders (associates) will have the major part of the voting rights and will act together to exercise them (Art.63).
D. Do the notification requirements cover joint ventures? If so, what types (*e.g.*, production joint ventures)?	The Competition Law distinguishes between concentrative joint ventures and cooperative joint ventures. Only fully-functional concentrative joint ventures (i.e. the joint venture which is an autonomous economic entity which does not lead to the coordination of the competitive behaviour of the parent companies or among the parent companies) fall within the scope of merger control and must be authorized by the Competition Council. Cooperative joint ventures are subject to the rules on anti-competitive practices of Article 5 of the Competition Law (similar with Art. 81 of the EC Treaty). The full-function joint-venture might not fall under the scope of the Merger Regulation if its creation leads to coordination.

4. Thresholds for notification	
A. What are the general thresholds for notification?	According to Art. 14 of the Competition Law, a concentration is subject to the Competition Council's control if the aggregated worldwide turnover of the parties to the concentration exceeds EUR 10 million and the turnover in Romania of at least two of the participating undertakings exceeds EUR 4 million (cf. also Sec. 4.1 Guidelines on turnover).
B. To which entities do the merger notification thresholds apply, *i.e.*, which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?	Thresholds refer to the involved parties or relevant undertakings to the concentration (both acquiring and acquired parties). For relevant undertakings, it is meant the whole group to which they belong. If the involved company belongs to a group, the turnover of the whole group is taken into account (Art. 66 of the Competition Law republished). The group is defined on the basis of whether the undertaking concerned has autonomous powers as regards management and business decisions. Only companies which do not have such autonomy are part of a group. (Sec. 3.4. of the Guidelines on turnover provides for a detailed list when an undertaking is deemed to be part of a group). Where the control over an undertaking, or over a part of it, is acquired through two or more transactions, the turnover shall comprise the turnover of all those parts which were subject to the respective transactions during the previous two years (Art. 64(3) of the Competition Law).
C. Are the thresholds subject to adjustment: (*e.g.* annually for inflation)? If adjusted, state on what basis and how frequently.	According to Art. 67 of the Competition Law, the thresholds are periodically updated by order of the president of the Competition Council "taking into account the evolution of the markets.
D. To what period(s) of time do the thresholds relate (*e.g.*, most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?	Thresholds relate to the parties' turnover in the previous financial year (3.1 Guidelines on calculation of turnover).
E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required,	The methodology is set out in Art. 64 of the Competition Law republished (see also Guidelines on calculation of turnover). The relevant turnover is the sum deriving from the sales of products and services performed by the party during the last financial year minus fiscal debts (i.e. excises registered as payment obligations, stipulated in the last annual audited balance sheet) and the accounted value of exports (carried out through own means or

including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?	authorized agents according to the customs declaration of the last financial year).
F. Describe methodology for calculating exchange rates.	The equivalent in Lei is calculated by taking into account the exchange rate communicated by the National Bank of Romania on the last day of the financial year previous to the operation (Sec. 4.1 Guidelines on calculation of turnover).
G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?	The aggregated turnover of the concerned undertakings, i.e. EUR 10 million, refers to worldwide turnover, whereas the EUR 4 million threshold must be achieved within Romania by at least two undertakings party to the concentration. According to Sec. 4.1 of the Guidelines on calculation of turnover, the threshold of EUR 4 million turnover in Romania has to be analyzed by taking into account the products and/or services sold/provided to entities from the Romanian market, i.e. including by a foreign entity not having a presence in Romania.
H. Can a single party trigger the notification threshold (*e.g.*, one party's sales, assets, or market share)?	No.
I. How is the nexus to the jurisdiction determined (*e.g.*, sales or assets in the jurisdiction)? If based on an "effects doctrine," please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an "effects" test?	The nexus is set out in Art. 12 of the Competition Law republished (dominance test corroborated with the "effects doctrine"). Local presence is not required according to the Competition Law, import sales are sufficient to meet the "effects test". The test verifies whether the concentration creates or strengthens a dominant position which would result in effective competition becoming significantly restrained, prevented or distorted on the Romanian market or on a part of it. According to Art. 13 of the Competition Law, the Competition Council focuses on the market position, the market structure, the nature of the products, the barriers to entry, the size of competitors, the trends of demand and supply, the interests of consumers and the contribution to technological or economic progress.
J. If national sales are relevant, how are they allocated geographically (*e.g.*, location of customer, location of seller)?	According to Sec. 4.2 Guidelines on turnover: the turnover, both for products and services, should be attributed to the geographic area where the customers are located, because this is the place where in the majority of cases, the business is concluded and the competition between suppliers occurs.
K. If market share tests are used, are there guidelines for calculating market	The Competition Council has adopted "guidelines on defining relevant market in order to establish significant market share" (available in English on the website of the Council: http://www.competition.ro/en/regulament/guidelines%20on%20rel

shares?	evant%20market%20definition.pdf)
L. Are there special threshold calculations for particular sectors (*e.g.*, banking, airlines, media) or particular types of transactions (*e.g.* joint ventures, partnerships, financial investments)?	Art. 65 of the Competition Law provides that: • For banks, credit institutions and financial service providers, the turnover is substituted by the tenth of the value of their assets as contained on the balance sheet. • For insurance companies, the value of premiums is used after deducting parafiscal taxes levied on bonuses or the total volume.
M. Are any sectors excluded from notification requirements? If so, which sectors?	No. If the thresholds are exceeded and the transaction is qualified as an economic concentration, the filing is mandatory. Whenever the thresholds of the Competition Law are met, the transaction must be filed with the Competition Council. The amendments to the Competition Law issued in 2004 increased the sanctions for failure to notify. Currently, the Competition Council may impose penalties *up to 1 per cent* of the parties' aggregate turnover on the Romanian market achieved on the previous year for failure to notify a transaction which met the conditions for filing.
N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?	No. See 4G
O. Does the agency have the authority to review transactions that fall below the thresholds?	According to article 15(1) of the Competition Law republished, only "the economic concentrations exceeding the threshold stated under Art.14 are subject to control and must be notified to the Competition Council. Although, Competition Council has the authority of opening an investigation pursuing art. 34 of the Competition Law republished, even if the economic concentration is falling below the thresholds stipulated in art.14 in the case when the economic concentration has the effect the creation or the consolidation of a dominant position, according to art.12.

5. Notification requirements and timing of notification	
A. Is notification mandatory pre-merger?	NO. The notification is mandatory after the execution of the merger documents. Furthermore, according to art. 154 of the Merger Regulation, "until the Competition Council will issue its decision, according to art.46 of the Competition Law republished, the application of an economic concentration is forbidden. The undertakinks can only apply those measures related to the

	economic concentration, which are not irreversible and does not modify the market structure.
B. Is notification mandatory post-merger?	Yes, the filling is mandatory within 30 days from the execution of the transaction, according to art. 126 of the Merger Regulation.
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	The Merger Regulation does not provide for voluntary merger filing cases. However, Article 138 of Merger Regulation specifies that when a transaction, although it does not fall within the scope of the law, is notified, the Competition Council shall issue the decision for non-intervention.
D. What is the earliest that a transaction can be notified (*e.g.*, is a definitive agreement required; if so, when is an agreement considered definitive?)?	According to Article 127 of the Merger Regulation, the parties shall inform in writing the Competition Council about the operation to be notified within 7 days after the triggering event. The term of 7 days is included in the term provided at point 126, i.e. 30 days after the triggering event.. According to Article 126 of the Merger Regulation, the filing must be made within 30 days after the triggering event, i.e.: • a merger agreement is signed, • in case of acquisition of control, the signing of the document leading to the change in the structure of control, • in other cases, the moment when the involved parties are aware of the conclusion of the transaction
E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (*e.g.,* definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	As to the triggering event and deadlines see above, 5.D. There are no specific antitrust rules concerning public takeover bids. The Merger Regulation covers all types of economic concentrations including those cases where the control is acquired through public takeover. Without prejudice to the fact that the public bid is not impaired from taking place prior to the Competition Council's clearance, the Merger Regulation prohibits the exercising of voting rights, especially for appointing board members or other corporate officers, before a clearance is obtained. Therefore, the acquirer may exercise its voting rights only in order to safeguard its investment and not to determine directly or indirectly the competitive behaviour of the acquired undertaking. So the economic concentration, in this case, may be implemented, only after the notifying parties would receive the clearance decision issued by the Competition Council (art. 153 of the Merger Regulation).
F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether	The deadline can be extended for further 15 days, if the request is reasoned and if serious reasons for the extension are proved.

there is a maximum length of time for the extension.	

6. Simplified procedures

Describe any special procedures for notifying transactions that do not raise competition concerns (*e.g.*, short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, *etc.*).	The simplified procedure provides for the following *categories of concentrations suitable for treatment under the simplified procedure in* art. 157 of the Merger Regulation): (1) Two or more undertakings acquiring joint control of another undertaking which pursues no, or to a negligible extent only, actual or foreseeable activities within the Romanian territory. This is the case where the turnover of the joint venture and the total value of assets transferred to the joint venture is less than the equivalent in lei of EUR 4 million each in the Romanian territory. (2) Two or more undertakings merge or one or more undertakings acquire sole or joint control of another undertaking, provided that none of them is engaged in business activities in the same product and geographical market or in a product market which is upstream or downstream of a product market in which any other party to the economic concentration is engaged. (3) Two or more undertakings merge or one or more undertakings acquire sole or joint control of another undertaking and either two or more of them are engaged in business activities in the same product and geographical market (horizontal relationships) or one or more of them are engaged in business activities in a product market which is upstream or downstream of a product market in which any other party to the economic concentration is engaged (vertical relationships), provided that their combined market share does not exceed 15% for horizontal and 25% for vertical relationships. In exceptional cases (Art. 161, 162 of the Merger Regulation) the simplified procedure may not be applied. The simplified procedure consists in a rapid analysis of the concentration within a time limit of 30 days from the effective date of notification onwards (Art. 163). It must be requested in writing and the parties must submit reasoned data and information to show that the requirements for the simplified procedure are fulfilled. The Competition Authority will then, within 7 days, decide on whether to adopt the simplified procedure (Art. 164). The simplified procedure encompasses also ancillary restrictions directly related and necessary for the implementation of the economic concentration (Art. 166). There is no difference in terms of level of information to be provided in the Notification form between the ordinary and the simplified procedure.

7. Documents to be submitted	
A. Describe the types of documents that parties must submit with the notification (*e.g.*, agreement, annual reports, market studies, transaction documents).	According to Art. 132 of the Merger Regulation the notification must contain: • Notification letter, signed by the legal representative or the empowered person, • Notification form, filled in according to the model annexed to the Merger Regulation, • Documents as set out in Art. 199 of the Merger Regulation (i.e.: audit copies of the final most recent documents on the concentration; audit copies of preceding year's balance sheet, for all the involved parties as well as for the groups of which they are part of; audit copies of the analyses, reports, studies and investigations presented or prepared in order to be presented to the shareholders' meeting, for the evaluation of the concentration), • Receipt of the payment of the filing fee. • The power of attorney of the signing party, if other than the Involved Parties; The information, as required in the Annex to the Merger Regulation, must be complete and correct. If incorrect or incomplete, within 20 days, the Competition Council can request the completion and the notification will become effective only upon completion, which cannot exceed 15 days from the date request (Art. 137).
B. Are there any document legalization requirements (*e.g.,* notarization or apostille)?	Documents attached to the form must be presented in original or certified copies. The power of attorney of the signing party, if other than the Involved Parties, has to be executed in a notarized (and apostilled, if given by a foreign entity) form. Parties shall also prove the filing fee's payment. Every notification must be submitted in 3 (five) copies: 2 in written and 1 on electronic support. (See Art. 132-134 of the Merger Regulation)
C. Are there special rules for exemptions from information requirements (*e.g.* information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?	No.

8. Translation

A. In what language(s) can the notification forms be submitted?	Only in Romanian. Documents which are in foreign languages must be translated and legalized.
B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.	The notification form is available only in Romanian. No other information regarding language requirement for documents is currently available in the Competition Law or in the implementing regulation.

9. Review periods	
A. Describe any applicable review periods following notification.	The review periods are set out by Art. 137 of the Merger Regulation: • Upon receiving the notification form and the supporting documents, the Competition Council has 20 days to review it and, if necessary, to request parties to provide additional information. Such information must be submitted within 15 days from the date of the request. • To the extent, and on the date, that the Competition Council is satisfied with the information provided, it issues a statement of effectiveness and completeness to the notifying party – the effective date of the notification (Art. 137). • The clearance must be released within 30 days calculated from the date the notification was deemed to be effective as per the above (Art.138). In practice, in some cases, if the information supplied through the notifications is inaccurate or partial, Competition Council has to require additional information to the concerned parties. As we mentioned above, such information must be submitted within 15 days from the date of the request Alternatively, if the Competition Council deems that a concentration may raise serious concerns about its compatibility with a competitive environment, an in-depth second-stage investigation will be initiated which may last up to five

	months from the effective notification (art. 139)
B. Are there different rules for public tenders (*e.g.* open market stock purchases or hostile bids)?	See above, 5.E.
C. What are the procedures for an extension of the review periods, if any (*e.g.*, suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?	As for extension requested for additional information, see above, 9.A.
D. What are the procedures for accelerated review of non-problematic transactions, if any?	See above, 6.

10. Waiting periods / suspension obligations	
A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (*e.g.,* measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.	Until the Competition Council makes a decision as provided by Art. 46, the economic concentration shall not be put into effect (art. 15.4). As for the prevention from taking irreversible measures, see below, 10.G. The conditional authorization may be revoked and the concentration is automatically suspended, when involved parties do not meet the assumed obligations (Art. 142 of the Merger Regulation). According to Article 47 of the Competition Law republished, prior to the issuing a decision under art. 46, the Competition Council may impose – through a decision of interlocutory measures – the undertakings involved to take any measure that it deems necessary for re-establishing the normal competitive environment and for bringing the parties back to the previous circumstances. The measures shall be strictly limited, in duration and scope, to what is necessary for correcting an obvious and intolerable alteration of free competition.

B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	Parties, obliged to notify an economic concentration, may submit a written and reasoned request to prolong the 30 days time limit to notify the transaction. Such prolongation can be up to 15 days long (Art. 126 of the Merger Regulation). According to art.15(5) of the Competition law republished, the Competition Council may grant, upon request, a waiver from the rule under par. (4) of art. 15 which states that until the Competition Council makes a decision as provided by Art. 46, the economic concentration shall not be put into effect; the application to grant a waiver must be reasoned. In its decision, the Competition Council shall take into account the effects of staying the economic concentration over one or several of the undertakings involved in the operation, or over a third party, and the effects on competition. This waiver may be subject to terms and conditions imposed to the parties and may be granted at any time, both before and after the notification.
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (*e.g.*, acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (*e.g.* request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)	Yes, the applicable waiting periods/suspension obligations must be observed by all the concerned parties, no matter the jurisdiction to which they belong provided that the respective economic concentration produces effects on the Romanian territory.They may benefit from the waiver provided for in art. 15(5), under the same terms mentioned before.
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	Yes. See Art. 46 (3) of the Competition Law and Art.144 of the Merger Regulation.
E. Describe any provisions or procedures available	see 10B

to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.	
F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.	According to Art. 155 of the Merger Regulation, the Competition Council may grant, upon request, a waiver from the rule set up by Art. 15 (4) that irreversible measures cannot be taken before clearance. The waiver maybe subject to terms and conditions and may be granted at any time, both before and after the notification. However, the validity of a transaction depends upon the clearance of the Competition Council (Art. 156 of the Merger Regulation).
G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (*e.g.*, allowing the transaction to close if no "irreversible measures" are taken).	Art. 15 (4) of the Competition Law and Art. 154 of the Merger Regulation provide that: the undertakings can only apply those measures related to the economic concentration which are not irreversible and do not modify the market structure. A list of measures considered irreversible is provided in the latter article. However, a fine of up to 10% of the aggregated turnover can be imposed on the parties implementing the merger before obtaining a clearance.

11. Responsibility for notification / representation	
A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?	The parties obliged to submit a notification are (Art. 125 of the Merger Regulation): • In case of a merger, the merging parties • In case of acquisition of sole control, the acquiring company, • In case of acquisition of joint control, the parties acquiring joint control, • In case of concentrative joint venture, the parties establishing the JV, • For all other cases, see Part I, Chapter III of the Merger Regulation.
B. Do different rules apply to public tenders (*e.g.* open market stock purchases or hostile bids)?	No. In case of public takeover bid, the bidder has to notify.
C. Are there any rules as to who can represent the	Notifications must be signed by the legal representatives of the parties that are obliged to submit the notification.

notifying parties (*e.g.*, must a lawyer representing the parties be a member of a local bar)?	When the parties authorize a third person to represent them, this person has to present along with the notification a written proof that he is authorized to act. This power of attorney has to be executed in notarized (and if the notifying party/parties are foreign entities, in apostilled form).
D. How does the validity of the representation need to be attested (*e.g.*, power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?	Apart from the provision indicated above in 11. C, the Competition Law and the Merger Regulation do not have specific rules on power of attorney or any special rules for foreign representatives.

12. Filing fees	
A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (*e.g.*, flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?	The filing fee is set out in the Competition Council's Regulation from 26 March 2004 regarding the amount of the fees for the services provided by the Competition Council. The filing fee is in an amount of lei 2,800 (approx. EUR 800) Art. 32 (1)(a) of the Competition Law establishes a tax for the authorization of an economic concentration, which is set at a rate of 0.1% of the aggregated turnover of the parties for the yearly financial exercise prior to the authorization decision. The sums go to the State budget within the respective term and in conformity with the fiscal regulations. The authorization tax shall be paid if the Council shall issue an authorization decision according to art. 46 (1b) and art. 46 (2 b and c)..
B. Who is responsible for payment?	As for the authorization tax, responsible for the payment are the beneficiaries of the authorization or non-objection decision. As for the filing fees, the parties are obliged to notify (see above, 11.A).
C. When is payment required?	As for the authorization tax, payment is required within 30 days of the issuing date for the authorization or non-objection decision. As for the filing fee, payment is required before the notification (receipt must be enclosed with the supporting documentation).
D. What are the procedures for making payments	The proof of payment for the filing fee must be enclosed with the Notification Form. If failure to do so, the Notification Form will not

(*e.g.*, accepted forms of payment, proof of payment required, wire transfer instructions)?	be registered. The payment of the filling fees is made by bank transfer, according to provisions of art. 3 of the Regulation on the tariffs' establishment and payment for the procedures and services provided for in the Competition Law no.21/1996 republished and the Regulations issued for its application.

13. Confidentiality	
A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?	If a notified concentration presents a major public interest, the Competition Council may publish the notification with the parties' name, concentration's nature, the involved economic sectors and the reception date. Possible additions and modifications may also be published. The Council shall "take into account the legitimate interest of the involved undertakings to keep business secret". (Art.131 of the Merger Regulation). According to art. 143 of the Merger Regulation, all decisions shall be conveyed to the concerned parties and published in the Official Gazette of Romania (Part I) or on the official website of the Competition Council (see http://www.consiliulconcurentei.ro/en/index1.asp?lang=en, under "Official documents"). When publishing the decisions, the Parties may indicate which parts of the decision should be excluded from publication.
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	In the course of the investigation procedure, within 30 days before the hearing, a copy of the report over the investigations is sent to the parties to the concentration, whose hearing has been ordered and to the third parties whose hearings have been admitted upon their request (Art.172 of the Merger Regulation). The Competition Council may allow the parties' associates and executive managers to consult the file at the Secretary of the Competition Council and obtain copies and excerpt from the investigation procedure acts, if they justify a legitimate interest. Documents and information from the file, which constitute business secret may also be accessed, only upon decision of the Competition Council's Chairman in legal conditions (Art. 175 of the Merger Regulation, Guidelines on the rules of access to Competition Council's file of 28.04.2006 in cases pursuant to art.5 and 6 of the Competition Law no.21/1996 and in the economic concentration cases)).
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	See above, 13. B.

D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	If the notifying parties consider that their interests would be damaged, if certain information in the notification were disclosed, they can separately forward it, each page numbered and clearly marked "business secret", accompanied by a separate note with the reasons why this information constitute business secret. The officials are obliged to preserve confidentiality of all information submitted to their attention. They can be held criminally responsible for breach of such duties.
E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	Under the provisions of art 26(p) of the Competition Law no.21/1996, republished, the Competition Council cooperates with other national authorities, on both a formal and informal basis. It is also a member of the ICN. Note should be made that after joining EU and acquiring the membership to ECN, it will have the chance of exchanging information with other competition authorities under Art. 12 EC Regulation 1/2003. At present, the Competition Council officially signed Memoranda of Co-operation with the Korean Fair Trade Commission in 2002 and more recently with: France, Portugal, Croatia, Hungary, Bulgaria, Slovak Republic, ,Turkey, Italy. Even without concluding formal agreements, the Competition Council developed very close cooperation relations with the competition authorities from United Kingdom, Germany, Netherlands, Finland and Austria.
F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?	In case of multi-jurisdictional merger, cooperation is ensured with other National Competition Authorities involved (see above, 13.E).

14. Transparency	
A. Does the agency publish an annual report? Please provide the web address if available.	Yes, the Competition Council publishes an annual report on its website: http://www.consiliulconcurentei.ro/en/index1.asp?lang=en under "publications".
B. Does the agency publish press releases related to merger policy or investigations?	Yes, the Competition Council publishes regularly press releases regarding investigation undertaken and merger policy on its website: http://www.consiliulconcurentei.ro/en/index1.asp?lang=en under "press".

C. Does the agency publish decisions on why it cleared / blocked a transaction?	The Competition Council publishes decisions in the Official Gazette of Romania (Part I) as well as in its website, both in Romanian and English: http://www.consiliulconcurentei.ro/en/index1.asp?lang=en under “official documents”>”competition”>”decisions”. The legitimate interest of the parties is taken into account so that the professional secret be not divulged.

15. Sanctions/penalties	
A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?	Penalties are provided for in Art. 49-62 of the Competition Law and Art. 176-184 of the Merger Regulation. • Fines of up to 1% of aggregated turnover of the financial exercise prior to the sanctioning decisions, for (i) failure to notify an economic concentration; (ii) submission of incorrect or incomplete information in a notification; (iii) submission of incorrect of incomplete information, at the request of the Council; (iv) submission of incomplete information, documents, business records and books during the investigation phase (See Art. 50 of the Competition Law). • Fines of up to 10% of aggregated turnover of the financial exercise prior to the sanctioning decisions, for: (i) implementation of a concentration while breaching Art. 12 of the Competition Law; (ii) putting in place an economic concentration in violation of the provisions of Art.15 (4) and (5) of the Competition Law republished; (iii) starting an economic concentration, declared incompatible with the competition law; (iv) failure to comply with the conditions or obligations in the conditional authorization decision (see Art. 51 of the Competition Law). • Fines of up to 5% of the daily turnover of the financial year prior to the sanctioning decisions, for each day of delay in the violation of: (i) respect of substantive provision, pursuant to Art. 12 of the Competition Law; (ii) enforcement of the remedies stated in a decision issued in accordance with the provisions of art. 46(2c) and art. 47 (1) and (2) of the Competition Law republished.; (iii) requested submission of additional information or documents, pursuant to Art. 35 of the Competition Law; (iv) acceptance of inspection, pursuant to Art. 37-39 of the Competition Law. • On the basis of the Competition Council’s decision, the returns or the supplementary incomes achieved as a consequence of the forbidden or sanctioned transaction, shall be disgorged and deposited to the State budget. • As an exception from Art. 51 provisions, the Competition Council shall establish, by guidelines,

	the conditions and the criteria to apply to a leniency policy which may lead to exoneration of pecuniary liability.
B. Which party/ies are potentially liable?	Liable for failure to notify are the undertakings obliged to notify, as indicated above, in 11.A. Liable for failure to provide correct and full information or to refrain from proceeding with the transaction, absent the legal conditions provided for in the Competition Law, the involved parties.
C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.	The penalties, pursuant to Art. 52 are assessed, according to their seriousness, duration of the deed and consequences on competition. Such decisions may be appealed before the Bucharest Court of Appeal, the administrative contentious division, within 30 days from the date the decision was communicated to the Parties. Decisions must be transmitted to the involved parties, by the Competition Council Secretariat General and published in the Official Gazette of Romania (Part I) at the expenses of the perpetrator, or on the Competition Council website.

16. Judicial review	
Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.	Decision by the Competition Council may be appealed in contentious administrative procedure at the Bucharest Court of Appeal within 30 days from the date of its communication to the parties. Upon request the judge may decide to suspend the execution of the appealed decision (Art. 145 of the Merger Regulation). For cases in which an autonomous direction ("*régie autonome*") is involved, within 30 days from the notification of the decision, the Government, at the proposal of the ministry in charge may take a decision different from that of the Competition Council, for reasons of public interest (Art. 48 of the Competition Law repubished and Art. 146 of the Merger Regulation).

17. Additional filings	
Are any additional filings/clearances required for some types of transactions, *e.g.,* sectoral regulators, securities regulator?	No.

18. Closing deadlines	
When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?	Not applicable

19. Post merger review of transactions	
Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?	Art. 142 of the Merger Regulation provided that: decisions issued by the Competition Council may be revoked and the concentration is automatically suspended if the involved parties do not meet the assumed obligations mentioned in the decision of conditional authorization. There are no time limits.