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Organisation de Coopération et de Développement Economiques
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**CENTRE FOR CO-OPERATION WITH NON-MEMBERS
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

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OECD Global Forum on Competition

CONTRIBUTION FROM ROMANIA

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I. - COMPETITION POLICY AND ECONOMIC DEVELOPMENT

The period since 1989 has witnessed an unprecedented process of political, economic and social transformation in the countries of Central and Eastern Europe.

The Plan of Actions of the Governing Program for 2001-2004 includes the measures required in order to respond to the objectives stated in line with the conclusions of the EU Commission Report from 2000. In the same time the implementation of those measures has to assure the attainment step by step of the objectives from the Strategy on Medium Term Development of Romania.

Given the importance and centrality of markets in the overall transition process, the specific rules and institutions under which markets operate have a fundamental and formative role to play.

The activity of the Romanian Competition Council followed, as concerns the establishment of a legislative coherent framework and also its effective enforcement, the economic national strategy and, particularly, the efforts to comply with the economic performance criteria and with the European social standards. The guide for examining the economic developments in Romania is represented by the conclusions of the European Council from Copenhagen in June 1993 which stated the conditions that should be made by a candidate country for the accession to the European Union, respectively:

- the existence of a functioning market economy;

- the capacity to cope with the competitive pressures and market forces within the Union.

The setting up of the Competition Council, as an autonomous administrative body, was the first step of this process. Competition is necessary precisely because it is not enough simply to provide a basic framework of law to enable private agreements to be enforced. In the absence of explicit competition policy, there is a real risk that the competition process might be obstructed or distorted by the actions of private parties or the organs of the state itself.

From the beginning of its activity, in 1996, the Romanian Competition Council was directly interested in participating to the building of a stable and functioning market economy as key condition of the Romanian economic development.

Competition policy is sometimes perceived to carry a very tough message in particular in countries undergoing an immense process of structural change like Romania. Without a strict competition discipline the market economy is unlikely to deliver the advantages it promises. The discipline is not born by itself, but it has to be created and enforced by means of public policy.

Competition policy when properly conducted is an essential component – through antitrust, state aid policy and concentration control – of a more healthy economy. Indeed liberalization, a key element of growth of an economy, needs competition policy as support and guidance. It is very important that the competition and state aid policy has to be designed and implemented taking into account the Romanian specific characteristics and capabilities.

Until 1990, the Romanian economy was characterized, in the key sectors, by monopolistic and oligopolistic type structures, with great, integrated enterprises, connected among them by strong interdependence relations.

The process of the transition to the market economy, of demonopolization and decentralization of the economic activities required as a sine qua non condition, the creation of a competitive environment as a key of efficiency.

1. The competition policy

In the competition area, the Romanian law and secondary legislation are modeled after the similar European legislation and, consequently, there is a high degree of compatibility in the way of assessing and regulating the agreements, the concerted practices, the abuse of dominant position and the control of economic concentrations.

This legislation is essential for developing the market economy, for strengthening the private sector as an engine of growth and development and for prohibiting any restrictive practices by undertakings, which may be shaped as agreements or abuse of dominant position. The objectives pursued by the competition legislation can be observed only if the national legislation covers all anti-competitive practices, which affect the national market.

The Competition Council considers the adoption of the *acquis communautaire* as an ongoing process, states the necessity of transposing new Community regulations and guidelines into the national legislation. The Competition Council is completing and adapting the secondary legislation in the antitrust area by following the process of harmonization with the Community provisions.

The Competition Council is working now on adopting the following regulations:

- Regulation on vertical restraints in line with the Commission Regulation (EC) no. 2790/1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices and with Commission Notice – Guidelines on vertical restraints;
- Regulation concerning horizontal co-operation agreements in line with Commission Notice “Guidelines on the application of Article 81 to horizontal co-operation agreements and new block exemption regulations for R&D”;

By adopting and implementing these regulations and guidelines the Competition Council aims to streamline the competition review process and reduce the number of notifications to the Council to ensure that antitrust enforcement focuses on the most harmful competition violations.

Also, a major aspect is the effective enforcement of the legislation adopted in accordance to the *acquis* by “strengthening the legal discipline in the competition field so that the latter functions under the specific conditions of a market economy” as 2001-2004 Government Program states.

The legislation is applicable to all economic agents in both the public and private sectors. Where exemptions or special regulations are applicable, the rationale is clearly established, with minimal adverse impact on the competitive process.

One of the major objectives of the national economic recovery is the substantial improvement of the business environment, mainly by ensuring a proper legal, economic and financial background, by means of market competition development, by diminution of the monopolies action range, continuation of the price liberalisation process for public utilities and inflation fighting.

The enforcement by Romania of the rules within art. 86 of the Treaty of Amsterdam aims the public undertakings as defined within EEC Directive no.80/723, namely “any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation there in, or the rules which govern it” and the undertakings with special or exclusive rights which operate on the market and may be subject to competition to the extent that the rendering of certain services of general interest was granted to them or have a monopoly position yielding benefits as well.

Public undertakings and the undertakings with special or exclusive rights entrusted with the rendering of services of general interest are governed by rules aiming, in particular, their adjustment through restructuring and privatization, and the enforcement of the competition rules in order to ensure non-discriminatory access to the basic services and infrastructure.

The adopted liberalisation measures, some of them being currently implemented, envisaged all aspects that may influence the existence and development of a normal competitive environment. Public utilities, including activities of natural monopoly features as well as activities subject to a special regime established by law, are in an adjusting process by restructuring and privatizing the enterprises of such kind.

In the main sectors the auxiliary activities were externalized and exposed to the free competition, the enterprise charged with administration of essential utilities were separated and the obligation to be allowed non-discriminatory access to same was established.

Liberalisation measures were adopted and are under implementing process in certain regulated sectors such as telecommunication, electric energy and postal services.

The state aid policy

The Competition Council was vested by the Competition Law no. 21/1996 and by Law on State Aid no. 143/1999 with powers for endorsing the state aid policy and aid schemes as for the effects on competition and for controlling the observance of state aid rules.

The Competition Council is completing the secondary legislation on state aid by adopting:

- the Regulation regarding the state aid granting to the SMEs;
- the Regulation regarding the state aid granting for rescuing and restructuring firms in difficulty;
- the Regulation regarding the state aid granting and the regional state aid;
- the regional maps for granting regional state aids with various intensities.

Aid granted by public authorities most commonly supports a firm, an economic activity or a region in order to promote its developments or alleviate its difficulties. At first sight, particularly from the recipient’s angle, the state aid might well seem to be beneficial. But very often all it achieves is to delay inevitable restructuring operations, without helping the recipient to return to competitiveness. By favouring certain firms or products to the detriment of others it seriously disrupts normal competitive forces. This effect on competition is the primordial concern under state aid rules when looking at the grant of State resources.

In transition economies, same kinds of State aid are granted in many cases. The fact that State aid is being granted to attract investments is not necessarily against the rules.

Any state aid, irrespective of the form or recipient, has to be authorized, from the competition point of view, through decisions by the Competition Council. Through its decisions, the Competition Council ensures that the State Aid does not significantly distort the normal competitive environment and does not affect the proper application of the international agreements to which Romania is a party.

The Competition Council intimated the responsible authorities on different cases of overlapping of the provisions of the law on State Aid no. 143/1999 (the Ministry of Development and Prognosis in the case of Law no. 134/2000 on the industrial parks and also, in the case of the facilities granted within D areas through the Emergency Ordinance no. 75/2000 modifying the Emergency Ordinance no. 24/1998; the Ministry of Finance as concern the fiscal facilities regarding the collection of taxes and other budgetary duties.

The enforcement of the competition and state aid rules: effects

Lack of the competition reform imposes heavy costs on the society. A noncompetitive environment leads in most cases to high prices, poorer quality of products or services, backwardness in terms of innovation and investment.

A functioning competition policy has a direct impact on the daily life of the consumers. For example, merger control ensures a diversity of mass-market consumer goods and low prices for the final consumer. Likewise, by contributing to economic and social cohesion, the monitoring of state aid helps to promote viable and durable jobs.

Requiring firms to compete with each other fosters innovation, reduces production costs, increases economic efficiency and, consequently, enhances the competitiveness of the country's economy. Competition also means that less efficient undertakings will go bankrupt and close down activities. At the same time, an illicit anti-competitive behavior of competitors it is countered through competition rules enforcement. Competition rules are the "rules of the game" under which the country's prosperity will thrive.

The full implementation of principles like non-discrimination, transparency and rule of law, as enshrined in competition rules, will lead to improvement of the investment climate. The reduction of the state interference in the economic process must call for the effective and strict enforcement of competition and state aid law: the state aid control, the regulatory framework for natural monopolies. Hence, the full use and application of competition and state aid rules is one of the main factors increasing the competitiveness of the Romanian economy.

The process of relancing and development of Romania must be conducted in the complex context of globalisation. Thus, it is necessary to give a particular attention to the strengthening of the national and regional economic structures and to the impact of the globalization concerning the legitimation of the economic actors on the competition market.

The Plan of action for 2001-2004 includes measures that have to assure a lasting economic growth with an annual rate of 5,6%. A particular attention will be given to the consolidation of a competitive environment and to the elimination of the blocking of the economic structures by loneliness of non-viable sectors.

In order to improve the business environment, it must be underlined the role of the Competition Council on establishment of a coherent competition policy and on its effective implementation. The key objectives of this process are:

- to check the existing legislation for its harmonization with the EU acquis;
- to clarify the objective and the limits of State regulations of the activities on different economic sectors;
- to apply the rules on granting the state subventions in the manner provided by the Law no. 143/1999 on State aid;
- to develop the competition on the Romanian market by effective enforcement of competition and state aid policy;
- to promote the competition and State aid rules;
- to strengthening of the administrative capacity to enforce the competition and State aid rules;
- to assure a coherent economic environment by identification and elimination of the actions or acts as unfair competition.

The Romanian Competition Council stated following plan of actions in order to fulfil on medium term these objectives:

- an shaded approach of the vertical restraints in order to assure a great space for companies actions, accordingly with the EU present tendency;
- a clear delimitation of the domains that are regulated by the State (natural monopolies, as prefferency);
- the sensibilisation of the State aid grantors to apply the legislation in force;
- the improvement of the mechanism concerning the regulated prices in order to assure a correlation between the economic reform and the restructuration process in all sectors;
- the improvement of the harmonization on State aid area;
- the focusing of the enforcement resources on the kinds of conduct that most seriously obstruct the proper working of markets;
- the competition advocacy;
- the training of the experts involved in enforcement of the competition and State aid policy;
- the adoption of the measures for analysing the cases concerning the unfair competition.

2. The competition culture

The efficiency and the quality of the enforcement efforts go hand in hand with the competition advocacy. The competition policy can gain an ever more important role among economic operators. The Competition Council acts in order to achieve an environment, which genuinely discourages collusive behavior among businesses or lessens the inclination of national governments to resort to the bail-outs of bad business with the help of public money.

The enforcement of competition law is the core business of any competition authority. But it cannot succeed in its task if not supported by others. It is important that the competition authority is being perceived as having the role of being a privileged interlocutor to those who feel that market parties are conducting anti-competitive practice.

A very useful tool is to give media coverage and raise awareness about the provisions of the Competition Law and State Aid Law as well as of the regulations for their enforcement and the sanctions and measures imposed. A business community responsive to antitrust and state aid rules represents an important priority so that Romanian undertakings get acquainted with an environment similar to the European Union's. In this respect, the Competition Council issues an Annual Report and publishes a quarterly newsletter PROFIL: CONCURENTA, distributed to the interested communities.

In collaboration with the Ministry of Justice, the Competition Council is preoccupied on specialization in the competition and state aid law of judges from the administrative sections of Bucharest Court of Appeals and the Supreme Court of Justice and magistrates by their participation in the training programs on competition and state aid issues organized with Community assistance.

Also, symposiums and conferences on competition and state aid issues are organized and judges from the Supreme Court of Appeals and Court of Appeals, representatives of administrative bodies, public institutions and undertakings are invited to take part in.

Ensuring greater transparency and public awareness of the competition law enforcement will represent one of the greatest challenges and opportunities for the competition authorities. Transparency and public awareness will constitute important weapons in the hands of competition authorities in order to persuade firms as well as public entities to fully comply with market rules.

The private enforcement plays a useful complementary role in the conduct of competition policy. Along with the public enforcement by the competition authorities, companies and private individuals can do a lot to help to enforce the rules by bringing forward competition cases before Courts and complaints before the competition authorities.

By combining the public and private enforcement it could create something that could be called functioning competition culture. The active involvement of all interested parties (the business community, the lawyers, the universities, and the authorities) would in many respects be essential to obtain this result.

3. Conclusions

Over the longer term, the economic environment has to change in the direction of better functioning and more fluid markets.

Effective competition law and policy has the potential to influence business behavior by focusing management attention on increasing efficiency, and preventing monopolistic practices.

Competition policy encompasses economic regulation, privatization, antitrust laws and international trade. The application of these policies, and the interface between these and other related policies have a significant bearing on industrial structure, business behavior and, consequently, on economic performance. It may also foster more flexible and dynamic environments that enable countries to respond more effectively to changing market conditions.

The ability to operate within the rules on competition and State aid policy and survive the competition pressures of the regional and international markets are the core preoccupation of the Romanian government. This would positively contribute to the development of the competitiveness and economic growth of Romania.

II. - EXPERIENCES IN INTERNATIONAL CO-OPERATION IN MERGER CASES

The globalisation of commercial exchanges and the necessity to stimulate the domestic economic growth require an open market and loyal relations between undertakings as pre-requisites of the economic dynamism.

Having in view the globalisation process and the fact that undertakings are more and more involved in international operations, the competition agencies are to have the power to ask these undertakings operating on various markets to observe their national competition laws.

The Competition Council considers that the promotion of convergence between the competition laws and policies of the European countries, on the one hand, and of the member states of UNCTAD, on the other hand, can bring a lot of value-added to the strategy the competition agencies in transition economies will adopt.

To this end, the Competition Council has close relations with the international organisations having attributions in the competition area, with the competition agencies from the Central and Eastern European Countries and the Member States of the European Union, with the EU institutions and with competition agencies in the USA, as well.

1. Competition Council's experience in the field of international co-operation

Technical assistance programs

The Competition Council was the recipient of the assistance granted by the European Commission and will benefit, besides the Competition Office, from the project entitled "Strengthening the Administrative Capacity to Manage the Acquis in the Field of Competition and State Aid " financed through 1999 PHARE budget.

Direct contacts with experts from the European Commission by participating in a series of annual conferences on competition policy for associated countries, organised by DG Competition, allowed the exchange of experience and addressed various competition issues of mutual concern.

The Council also benefited from technical assistance granted by the United States Government through the United States Agency for International Development that consists of long-term and short-term missions from the U.S. Federal Trade Commission and U.S. Department of Justice. At present, a special advisor from the U.S. Federal Trade Commission assists the Council staff in dealing with competition cases.

Within the multilateral assistance program granted by OECD to Central and Eastern Europe countries the Competition Council experts benefited from a series of seminars focused on various topics such as abuse of dominant position, vertical agreements, mergers, horizontal agreements, the interface between competition and economic regulation, de-monopolisation.

Bilateral co-operation

International co-operation materialised in the participation in conferences and seminars on competition issues within the framework of the bilateral co-operation agreements to which Romanian

Competition Council is a party, in other workshops organised in the neighbouring countries with whom co-operation agreements have not been concluded, and in the exchange of information with competition agencies although a legal framework for such co-operation did not exist yet.

The Competition Council has continued the co-operation with the competition agencies from the Russian Federation, Czech Republic, Belarus, Bulgaria and Georgia on the basis of the existing agreements.

Although a co-operation agreement is not concluded yet, co-operation relations with the Monopoly Authority (within the Ministry of Economy) of Macedonia have been developed and materialised in the participation in a conference organised by the Macedonian Monopoly Authority under the auspices of the Stability Pact for South-East Europe.

The Competition Council has also collaborated with the Hungarian Office for the Protection of Competition in resolving several competition cases on the tobacco market, the cement market and the market of health care services (pharmacy services). During the investigations on the mentioned markets, information were exchanged also with the competition agencies of Czech Republic, Bulgaria, Poland, Germany and Belgium.

2. Why is co-operation for merger control necessary?

The benefits of trade liberalisation and market-oriented economic reforms in transition countries depend to a large extent on competition due to the fact that, in the absence of clear rules, companies might take part in operations, such as mergers to consolidate their market position and act in the way of distorting the international trade and adversely affect the development of developing and transition countries.

On the other hand, mergers are a necessary pre-requisite for the companies in order to achieve a suitable size for competing on global market, being at the same time subject to the essential requirement of maintaining a competitive environment.

Therefore, cross-border co-operation in reviewing mergers should be encouraged and further deepened and work-sharing arrangements be developed. Establishment of a single form for notification of mergers falling within the jurisdiction of at least two competition agencies, as recently agreed by France, Germany and the United Kingdom, could be taken as an example proving that co-operation may go further and has practical effects and not only general implications. For Romania, such a practical arrangement could be a useful instrument, considering that Romania is an associated country to the European Union and will be a Member State after its accession is formally agreed.

3. A factual case where co-operation with foreign competition agencies was needed

A major task of the Competition Council is securing the competitive environment by exercising the greatest vigilance on large mergers. In the light of the Romanian Competition Law no. 21/1996, mergers are illegal when having the effect of creating or consolidating a dominant position, lead to or are likely to lead to a significant restriction, prevention or distortion of competition on the Romanian market or on a part of it.

One of the major cases resolved by the Competition Council was a merger on the cement market.

Privatisation in the cement industry

The privatisation of the cement industry took place between 1997-1998, when foreign private companies, leaders on the world cement market, took over the control of the Romanian undertakings.

After the privatisation process terminated, this sector was not fully stabilised and a lot of changes of the stock ownership of the undertakings acting on this market have been made during 2000. Currently, the cement industry is passing through a relaxation period.

Trends on the cement market

The foreign companies owning the control of the Romanian undertakings acting on the cement market have massively penetrated the adjacent markets such as:

- The market of river mineral aggregates;
- The market of quarry mineral aggregates;
- The market of concrete, mortar and hoes;
- The market of concrete prefabs.

Consequently, an intense vertical integration of these companies took place.

Generally, the investments do not seem to re-launch in the future. The only industry which is of interest as for the investments and attracts the building-companies acting on the Romanian market is the industry of road, highway building, etc.

The industry of road building is of particular interest that explains the massive penetration of the cement producers on the markets of river and quarry mineral aggregates.

When privatising the quarries and the ballast-pits, process that is still on going, a particular interest was paid to those located on the Pan-European routes where the workings will start in the nearest future.

Parties involved and definition of relevant market

Lafarge Romcim SA Bucuresti and Breitenburger Auslandbeteiligungs GmbH concluded a selling-buying contract through which a merger was realised. The acquiring company, Breitenburger Auslandbeteiligungs GmbH is 100% controlled by Holderbank Group (a Swiss group) which operated at that time on the Romanian market through SC Cimentul SA Turda.

The acquired company, SC Alcim SA Alesd, was former Alesd subsidiary of SC Lafarge Romcim SA Bucuresti that was controlled by Lafarge Group (a French group). The acquired company produces and markets cement.

Both groups involved in the merger are the most important producers of building materials on the world market. Holderbank Group is the first producer and Lafarge the second one on the cement market. SC Cimentul SA Turda and SC Lafarge Romcim SA Bucuresti were companies controlled by the two groups on the Romanian market (the former by Holderbank Group and the latter by Lafarge Group), having the main activity cement production and marketing.

The specificity of this building material was taken into account when the cement geographic market was defined.

For cement, the transport costs have an important weight in the product price. The low ratio price/mass limits the selling market of this product. This is the reason why the analysis of that market imposed a regional approach. Taking into account that cement delivery was made “ex works” and organised distribution networks for this product were not available yet, the optimum distance up to which the cement may be profitably marketed depended on the location and distance between the cement factories and the beneficiaries representing the most important share of the consumers. In the case of cement, this distance was of maximum 200 Km, considering both road transport and railway transport, and the geographic markets were considered circles with a radius of 200 Km approximately, around the factories.

Competition on the cement market

All the mentioned data led to the conclusion that generally, the Romanian cement market was a competitive market, except of few regions.

Thus, within few counties in North-West, the consumers did not have any choice because there was only one cement factory in the region which was controlled by the German Group Heidelberger Zement. The lack of competition in the region did not constitute a serious problem taking into account that the demand was extremely reduced.

A similar situation existed in Dobrogea, in South-East, where only one cement supplier controlled by the French Group Lafarge operated in the region. The demand was extremely reduced also in this region which included villages from Danube Delta. In North-West, near the border with Hungary and Ukraine, there was a region within which there were two close cement factories which were controlled by the Holderbank Group.

For assessing the merger, the Competition Council requested information on the Hungarian cement market and especially on the operations and companies owned by Holderbank Group in Hungary from the Hungarian Office for the Protection of Competition. After resolving the case, the Council informed the Hungarian Office for the Protection of Competition on its decision.

As all mergers, the operation has positive effects and, therefore, its conditioned authorisation was considered to bring more advantages than in the case of denying the operation. Anyway, certain conditions were imposed to the acquiring company for protecting the consumers in the counties where no competition existed from the potential negative effects of the operation. It was taken into account the fact that Holderbank Group could abuse of its dominant position in that region by imposing discriminatory prices as compared to the prices for the beneficiaries within other counties. For those reasons, certain measures were to be imposed in order to prevent the price discrimination of the consumers within the affected region by Holderbank Group.

Having in view the Competition Council experience in co-operating with foreign competition agencies on various cases including merger cases, we consider that an effective co-operation in the competition area would be an effective tool for promoting a competition culture, for generating benefits in terms of exchange of experience for developing countries having in view that trade and investment policies are complementary to the competition policy, and for addressing complex competition cases having international impact.

ANNEX A

**QUESTIONNAIRE TO INVITEES ON INTERNATIONAL CO-OPERATION
IN CARTEL AND MERGER INVESTIGATIONS**

This questionnaire covers the period from 1 January 2000 to the present.

If you are unable to provide all of the information requested, either because it would impose too great a burden or because of confidentiality constraints, please provide as much as reasonably possible.

1. Provide a copy of each formal co-operation agreement between your country or your competition agency and a foreign country or competition agency relating to competition investigations or cases.
2. Describe your country's laws or regulations that relate to or affect your agency's ability to exchange information or co-operate with a foreign competition agency.

Cartels

3. If your agency issued one or more formal requests to a foreign competition agency for information or assistance in an investigation or case involving a hard core cartel, please provide the following information about such requests (you need not identify specific cases):

1. the number of such requests;

1

2. the requested country or countries;

Belgium, Bulgaria, Poland, Czech Republic, Italia, Germany.

3. descriptions of the requests, such as the type of information or assistance required;

Request concerning the entrance on the drug market, geographical and demographical criteria, the existence and the importance of the pharmacists trade association.

4. the number of requests that were granted, and for those that were not, the reason(s) given, if any, by the requested country for the refusal; and

4 requests were granted from: Bulgaria, Poland, Germany and Czech Republic

5. for the requests that were granted, your assessment of the usefulness and importance of the information or assistance received, and for those that were not granted, your assessment of the impact of the refusal on the investigation or case.

The answers transmitted by the requested countries have been very useful and helpful for our investigation in making a point of view regarding the situation in other countries and to understand the manner this problem is dealt with..

4. If your agency received one or more formal requests from a foreign competition agency for information or assistance in an investigation or case involving a hard core cartel, please provide the following information about such requests (you need not identify specific cases):
 - a) the number of such requests;
-
 - b) the requesting country or countries;
-
 - c) descriptions of the requests, such as the type of information or assistance required;
-
 - d) the number of requests that were granted, and for those that were not, the reason(s) for the refusal.
-
5. Please describe any other instances of co-operation with a foreign competition agency in a hard core cartel investigation or case not described above, such as meetings, telephone or email communications, including, if possible, the co-operating country or countries, the nature of the co-operation and the importance or significance of the co-operation to your agency.
-
6. State the number of instances in which a hard core cartel investigation or case could have benefited from information or co-operation from a foreign competition agency but your agency did not request such assistance because you knew that it could not or would not be granted. Describe the type of assistance that would have been useful and the impact of its unavailability on your enforcement effort.
-

Mergers

7. Identify each merger that your agency reviewed that, to your knowledge, was also reviewed by the competition agency of another country.
-
8. For each investigation or proceeding involving a merger in which there was communication between your competition agency and the competition agency of another country during the course of the investigation or proceeding, please state or describe:
A
 - a. the identity of the merging parties;
Interagro Company SA
National Company "Tutunul Romanesc" SA

- b. the foreign competition agency or agencies with whom there was communication; Competition authorities of Ucraina, Bulgaria, Poland and Hungary.
- b. The nature of the communications, including the means of communication, the parties to the communications, the subject matter of the communications and the type of information exchanged, if any;
the nature of the communications: formal letters by fax,
the parties of the communications: Romanian Competition Council and the other competition authorities;
the subject matter of the communications: privatisation of tobacco industry;
the type of information exchanged: the way in which the privatisation process was made, structure of tobacco market at the level of production, distribution and tobacco growing.
- d. whether the merging parties agreed to a waiver of confidentiality restraints, permitting the exchange of information directly between your agency and a foreign agency, and if there was such a waiver, its terms and the type of information that was exchanged;
-
- e. the effect of the communications on your investigation or proceeding.

Very useful for the Competition Council in assessing the economic concentration and in making a motivated decision.

B

- a. the identity of the merging parties;
 - Breitenburger Auslandsbeteiligungs GmbH that belong to the Holderbank Group
 - SC Alcim SA Alesd.
- b. the foreign competition agency or agencies with whom there was communication; Competition Authority of Hungary
- c. The nature of the communications, including the means of communication, the parties to the communications, the subject matter of the communications and the type of information exchanged, if any;
the nature of the communications: formal letters by fax;
the parties of the communications: Competition Council and the Competition Authority of Hungary;
the subject matter of the communications: cement market;
the type of information exchanged: the actions of Holderbank Group on the Hungarian market (the controlled cement manufacturers, their location, exports on Romanian market, the competition on the market where the controlled cement manufacturers are acting) the behaviour of Holderbank Group on the Hungarian market;
- d. -

- e. Competition authority of Hungary has not provided as many information as our institution expected to receive.
9. Describe any instances in a merger case or investigation
- a. in which your agency sought the assistance of a foreign competition agency but it was denied;
-
 - b. in which your agency sought a waiver of confidentiality restraint from one or more of the merging parties but it was denied.
-
10. Describe any investigation or proceeding involving a merger that would have benefited from co-operation with a foreign competition agency but your agency did not pursue such co-operation because you knew that it would not be possible. Describe the type of co-operation that would have been useful and the impact of its unavailability on your enforcement effort.