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Romanian Competition Policy

Taking over the European Model?

Romania plans to complete its accession negotiations with the EU by the end of 2004 and hopes to join the EU in January 2007. The implementation of an effective competition policy is an essential part of this process. The following article examines Romanian competition policy and compares it to the EU's competition acquis.

The implementation of an effective competition policy is of crucial importance in the transition process from a centrally planned to a market economy. The question for Romania, with its changing legal framework and economic structure, is whether it stands alone in setting new competition standards or whether its wish to join the European Union has induced the country to follow a similar approach to that of the EU. The Romanian Competition Act of April 1996 provides a basis for surveying market power and limiting its abuse. It covers the three traditional pillars of competition policy: concerted practices, abuse of a dominant position and economic concentration.

Since the degree of industrial concentration is initially extremely high in transition economies, there is a great danger of the former state monopolies abusing their market power. As stipulated by the Association Agreement between Romania and the EU, an adequate competition policy must therefore be installed and the development of competitive market structures must be promoted. The Romanian Competition Act 21/1996, designed with support from the OECD, the USA and the EU,[1] was finally passed on 10 April 1996, and came into force on 1 February 1997. It prohibits anti-competitive practices, sets rules for economic concentrations and provides for authorities to enforce the legal rules.

Why a Competition Act had to be Introduced

The fewer the firms on the market, the more likely that collusion among them will be found. But, as Vrânceanu reports,[2] transition countries have inherited a high degree of industrial concentration. Initially, many firms held monopolies on national markets. While the liberalisation of trade has removed these monopolies on many markets, markets for goods and services which are not subject to international exchanges, are still likely to be dominated by a few firms. This is especially the case in Romania, where the privatisation process went more slowly than in, for example, Central Europe or Bulgaria, particularly with regard to the restructuring of large-scale enterprises. Again following Vrânceanu's reasoning, fighting the abuse of a dominant position will send a signal to existing monopolies also to adopt behaviour for competitive markets. Not only will consumers benefit from this learning process, but the firms themselves will be better prepared for competitive pressure.

Another factor behind the introduction of Act 21/1996 is the Europe Agreement between Romania and the European Union, signed in 1993 and ratified in 1995. It belongs to a whole series of association agreements that the EU has concluded with those CEECs that are candidates for membership and it creates a free trade zone for industrial goods between Romania and the EU.[3] Its ambition, however, goes far beyond this: Article 1 of the Europe Agreement counts among the objectives of the association

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[1] USAID financed the long-term deployment of experts from the Federal Trade Commission and the Department of Justice. Romania continues to receive technical assistance from the EU under the PHARE programme, with an emphasis on staff training.

[2] R. Vrânceanu: Despre bazele economicele ale dreptului concurenţei, in: Profil:Concurenţa, August 1999, p. 29.

[3] Cf. M. Lavigne: The Economics of Transition: from socialist economy to market economy, Basingstoke 1999, MacMillan Press, pp. 218-228, for a discussion of the economic advantages for the CEECs arising from the Europe Agreements.

the provision of "a framework for Romania's gradual integration into the Community".

In the field of competition policy, Article 64(1) provides that agreements and concerted practices in the sense of Article 81 EC Treaty, abuse of dominant position in the sense of Article 82 of the EC Treaty, and State aid[4] in the sense of Article 87 of the EC Treaty "are incompatible with the proper functioning of this Agreement, in so far as they may affect the trade between the Community and Romania". While Article 64 is limited to situations where trade between the Community and Romania is affected, Article 69 generally requires Romania to approximate its existing and future legislation to that of the Community,[5] and Article 70 specifies this for particular fields, including competition. Although the wording used ("shall endeavour"), does not express an obligation, Romania must obey this provision if it wants to become eligible for accession to the EU.

General Overview of Act 21/1996

Article 1 states that the Romanian Competition Act "is aimed at protecting, maintaining and stimulating competition and a normal competitive environment" in order to promote consumers' interests. Act 21/1996 is applied to acts and deeds having an effect on the territory of Romania (Article 3), perpetrated in Romania or abroad, by Romanian or foreign natural or legal persons or by a public administration authority (Article 2). Article 2 refers to both private and public undertakings, as do Articles 81 and 82 of the EC Treaty.[6]

Article 2(1)(b) provides for possible exemption for public administration authorities if they take measures "to enforce other laws or protect a major public interest". The notion of "major public interest" is not further defined here, but Article 9 again excludes from the exemption those actions "having as object or potential effect the restriction, distortion or prevention of competition". In particular, "decisions that restrict the freedom of trade or an undertaking's autonomy" and the setting of "discriminating terms for the operation of undertakings" are not capable of exemption. This means that those measures taken by public authorities contrary to Articles 5 and 6, corresponding with Articles 81 and 82 of the EC Treaty, are not allowed.

Article 2(4) excludes the labour market and the monetary and securities market from the Act's field of application in so far as free competition in those markets is subject to special regulations. In the EU, only agriculture is exempted from the application of Articles 81 and 82 of the EC Treaty,[7] though competition in the transport and insurance sectors is subject to special regulations. In most EU member states, considerably more sectors enjoy exemptions from the competition law than in Romania.[8]

According to Article 4, prices are to be "determined freely, through competition". Prices set by the *régies autonomes* and those charged with natural-monopoly activities[9] are the exception and "shall be set with the advice from the Competition Office". Moreover, paragraphs 2 and 3 of Article 4 provide for the possibility of the government instituting temporary limited price controls in sectors where competition is substantially restricted or in crisis situations respectively. These measures, however, require advice from the Competition Council. Interestingly, we find similar provisions on price regulation in Article L410-2 of the French "Code de Commerce".

Authorities Responsible for Enforcing Act 21/1996

According to the OECD,[10] "the most unusual feature" of the Romanian Competition Act is its division of responsibility between the independent Competition Council and the Competition Office, a government specialised body.

Article 17 of the Competition Act creates the Competition Council as an "autonomous administrative authority in the field of competition". The Council intervenes when the market is distorted or risks being distorted by the deeds, practices and behaviours of undertakings (anticompetitive agreements as in Article 5, abuse of a dominant position as in Article

[4] Law 143/1999 deals with state aid. While a discussion of Law 143/1999 would go beyond the scope of this paper, the authors would like to stress that in its November 2003 Regular Report on Romania's Progress towards Accession the European Commission saw the Romanian law on state aid as roughly in line with EU provisions, but showed much concern about its implementation. In particular, no decision has yet been taken on non-notified or existing aid.

[5] Article 69: Romania shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community.

[6] Cf. C. Grynfogel: Droit communautaire de la concurrence, Paris 1997, L.G.D.J., p. 86.

[7] This is done so through Regulation 26/1962.

[8] Cf. I. Schmidt: Wettbewerbspolitik und Kartellrecht: eine Einführung, Stuttgart 1999, Lucius & Lucius, pp. 174 f. for Germany, p. 209 for Austria and p. 187 for the UK.

[9] *Régies autonomes* are former state monopolies, mostly for utilities. All *régies autonomes* are being restructured, often involving a split into different entities for production, transport and distribution, and ultimately transformed into national or commercial companies. This form of state-owned companies is deemed to disappear once the Romanian privatisation and restructuring process has been completed.

[10] OECD: Economic Survey Romania, Paris 1998, p. 184.

6, economic concentration as in Articles 13 and 16) or by public administration bodies (Article 9). Article 27 sets out the Council's powers. It may carry out investigations on its own initiative and decide on these investigations or on investigations made by the Competition Office where it is found that conduct violates the Competition Act. Furthermore, it may investigate agreements and economic concentrations and decide that these qualify for individual exemption according to Article 5(2) or Article 14(2) respectively. The Council may equally establish guidelines granting block exemptions on categories of agreements (Article 5(3)). When the Council finds that the Competition Act has been violated, it has full power to decide on sanctions as well as to require undertakings to suspend or undo the anti-competitive actions.

Like the European Commission,[11] the Romanian Competition Council is responsible for drawing up secondary legislation in the field of competition. Article 28 provides a legal framework for the Competition Council to adopt regulations and instructions, to take decisions, issue orders and advice, and make recommendations. Moreover, Article 27 gives the Council a consultative role. The Competition Council advises government on draft decisions that may have anti-competitive effects and it gives advice on State aid policy. When restructuring *régies autonomes* or companies with prevailing state capital, the government and the State Ownership Fund (SOF, the Romanian privatisation agency) are obliged to seek the advice of the Competition Council (Article 10). Article 4(4) imposes the same obligation on the government in the case of price controls.[12]

Article 3 entrusts the administration and enforcement of the Competition Act not only to the Competition Council, but also to the Competition Office, a specialised authority subordinated to the government. The Competition Office has three main responsibilities. The first consists of carrying out investigations and surveying the effective enforcement of legal provisions and the Competition Council's decisions. The second is regulatory, in that the Competition Office supervises the setting of prices and tariffs by *régies autonomes* and certain other companies. Finally the Competition Office is responsible for making public the state aid that is granted and thus ensuring transparency. The Competition Office itself believes that in future it will increasingly focus on this last item.[13]

The fact that there are two investigating authorities for anti-competitive practices runs the risk of double investigation and of different standards in each. This is why Article 39(3) requires that "the Competition Council and the Competition Office shall inform each other about the investigations they initiate" and states that they may "cooperate in carrying out any investigation". This consultation and co-ordination is guaranteed by Article 35(3) which ensures that the Head of the Competition Office, or a person appointed by him, represents the government in the Competition Council's deliberations.

While both the Council and the Office can carry out investigations and are responsible for enforcing decisions, the Council is clearly the only agency to take decisions based on investigations by either agency. Moreover, if the two authorities disagree, there is a simple hierarchy put in place through Article 66(2): "The rules adopted by the Competition Council and its decisions are binding for the Competition Office". For example, in Decision 135 of 21 December 1998, the Council rejected an investigation made by the Office on the ground of an incorrect definition of the relevant product and geographic markets, and ordered the Office staff to continue the investigation. The independent Competition Council thus has more power than the government-dependent Competition Office. Nevertheless, the Competition Council, due to its much smaller staff – a maximum of 190 positions compared to a maximum of 900 positions for the Competition Office[14] – must rely on the Office to conduct the investigations it considers necessary and to control the enforcement of its decisions.

Article 52(3) of the Competition Act gives the parties involved the possibility of appealing to the Bucharest Court of Appeal against decisions taken by the Competition Council concerning anti-competitive practices or economic concentrations, within 30 days of notification. Following the provisions of Article 21(6), the verdict may be challenged at the Supreme Court of Justice. However, a provision which does not find an equivalent in EU competition law is provided by Article 63. Natural persons can be brought before court for breaches of the Competition Act, and this behaviour may be treated as a criminal offence.

[11] Regulation 17/1962 made the European Commission the exclusive enforcement agency of EC competition policy. The Commission can adopt regulations, directives and decisions and give advice in the field of competition policy.

[12] The provisions on price controls have already been dealt with above.

[13] Competition Office: Brief History, http://www.oficiulconcurentei.ro/home_english.htm.

[14] OECD, op. cit., pp. 184-185.

Three Pillars

The Romanian Act 21/1996 is based on three pillars. The first pillar consists of a prohibition of practices and agreements distorting competition. The second pillar prohibits the abuse of a dominant position. The third pillar deals with merger control. Important economic concentrations have to be notified and must comply with certain conditions in order not to restrict competition.

Article 5 of the Romanian Competition Act has been taken almost literally from Article 81 of the EC Treaty. It prohibits "any express or tacit agreements between undertakings or groups of undertakings, any decision of partnership or concerted practices having as an object or effect the restriction, prevention or distortion of competition on the Romanian market or on part of it". It is important to notice that the agreement or concerted practice does not necessarily have to restrict competition; it suffices if it is aimed at distorting competition.

Article 5(1) contains a non-exhaustive list of prohibited conduct. In particular, fixing prices, limiting production, sharing markets, imposing unequal terms for equivalent services, and tied contracts are prohibited. In addition to these provisions, which are also mentioned by Article 81 of the EC Treaty, Article 5(1) prohibits collusive tendering and eliminating or preventing market access.

Article 5(2) provides for the possibility of exemption from the general prohibition under paragraph 1, thus corresponding with Article 81(3) of the EC Treaty. In order to qualify for such an exemption, a) the agreement's positive effects must at least compensate its negative effects, b) consumers must benefit from the agreement, c) the restrictions to competition must be essential in achieving the relevant advantages, and d) competition must not be eliminated from a significant part of the market under consideration. In addition, condition e) stipulates that the agreement must either 1) improve production conditions or 2) promote technical or economic progress or 3) consolidate the competitive situation of the SMEs on the domestic market or 4) increase the competitiveness of Romanian products on the international market or 5) contribute to lower prices to the consumers' benefit.

Condition b) adopts the "fair share" analysis found in Article 81(3), conditions c) and d) correspond with conditions a) and b) of Article 81(3) of the EC Treaty. According to Oprescu, "provision a) exceeds the Community framework, suggesting less room for allowing an exemption"[15] for it requires the weighing up of advantages versus disadvantages resulting from the agreement or concerted practice. In practice this may prove difficult, however. In order to qualify for exemption, an agreement or a concerted practice must finally fulfil one of the points under condition e). The first two of these points are also conditions for exemption in Article 81(3) of the EC Treaty. The third point, regarding the competitive situation of SMEs, may still be in the spirit of the EC Treaty,[16] but the fourth point is the cause of serious concern in the accession process. This clause reflects an industrial policy that risks tolerating dumping practices in order to promote domestic industry abroad. However, both the Commission and the European Court of Justice take very strict positions when trade between member states is at stake. Point 5 is very vague: it might refer to either real or nominal prices, taking into account quality improvements or not. As Oprescu puts it, this is "reminiscent of the periods when prices were strictly controlled by the state".[17]

Upon request by the parties concerned, the Competition Council may grant temporary individual exemptions for agreements or concerted practices, as provided in Article 5(2). The Council may also temporarily exempt certain categories of agreements through its guidelines. But there is a major difference to EU provisions: Article 5(7) requires compulsory notification of all agreements, even those falling under a block exemption. The Competition Council seems to be rather strict when it comes to enforcing this provision. For example, in October 1997 in a self-initiated investigation the Council fined S.C. Kraft Jacobs Suchard Romania S.A. Brașov ROL 312.5 million[18] for not having notified territorially exclusive distribution contracts with 39 distributors.[19] Each of the distributors was fined ROL 5 million.[20] Although the Regulation on block exemptions provides for the possibility of exclusive distribution contracts, this is possible only after notification. Kraft appealed the Council decision but lost its case before the Bucharest Court of

[15] G. Oprescu: Modernisation of EC Competition Law: The Case of an Associated Country, 2000 EU Competition Workshop by the Robert Schuman Centre for Advanced Studies, Florence, p. 5. Prof. Gheorghe Oprescu is vice-president of the Competition Council.

[16] Nevertheless, Article 8 already takes the SMEs into consideration by setting turnover and market share thresholds for Article 5(1) to apply.

[17] G. Oprescu, op. cit., p. 5.

[18] € 35,451 at the exchange rate of November 1, 1997.

[19] Decision No. 17 of October 24, 1997. Cf. Consiliul Concurenței: Annual Report 1997, pp. 17 and 27.

[20] € 567 at the exchange rate of November 1, 1997.

Appeal.[21] According to Oprescu, the rationale for this double control of compulsory notification, despite the existence of block exemption regulations "is that the undertakings and the administrative institutions are not yet very familiar with the concepts of the market and free enterprise that are the main components of a so-called competition culture".[22] Taking into account that under the former centrally planned economy prices were set by the state, and agreements with suppliers rather than market demand used to determine the level of output, the Romanian legislator seems to believe that this system of double control will make firms more conscious of the potentially harmful impact of their market power. Institutions would regularly be confronted with, and hence learn about, the relation between free competition and consumer welfare.

On 3 April 1997, the Regulation[23] came into force providing for the granting of exemptions for categories of agreements, association decisions or concerted practices from the prohibition provided for in Article 5(1) of the Competition Act 21/1996. For each category of exemption, the Regulation contains a white, a grey and a black list of obligations which an agreement may generally, may possibly or must not include in order to be exempted. In particular, it provides for the exempting of categories of agreements for exclusive distribution, exclusive purchase, research and development, specialisation, transfer of technology (patent licensing, know-how licensing, other intellectual property rights), franchising, distribution, service and spare parts during the warranty and post-warranty period for vehicles, and insurance agreements. These eight categories are also exempted under EU competition law.

Following the change in EU competition law as illustrated by the passing of Regulation 2790/99 on vertical restraints, however, in 2002 the Competition Council published the Regulation on vertical agreements.[24] This Regulation takes the new EU approach, generally exempting from Article 5(1) those vertical agreements between non-competitors that relate to purchasing or selling conditions if the concerned undertakings' joint market share is below 30%. In analogy with EU provisions, franchising, exclusive distribution and exclusive purchase agreements are now covered by the wider Regulation on vertical agreements.

Article 8(1) sets a *de minimis* rule for agreements between undertakings or groups of undertakings whose combined market share does not exceed 5%. Such agreements are generally exempted from the scope of Article 5(1). The market share threshold is completed by a turnover threshold of ROL 15 billion, about € 750,000 at the 2000 average exchange rate. The *de minimis* rule is, however, not valid for hard-core cartels involving price fixing, market sharing or collusive tendering.

Abuse of a Dominant Position

As Article 82 of the EC Treaty does in the European Union, Article 6 of the Romanian Competition Act prohibits the "misuse of the dominant position held by one or more undertakings on the Romanian market or on part of it … having as an object or effect the distortion of trade or prejudice for the consumers". It is important to note here that holding a dominant position is prohibited neither by Romanian nor by EU law. Rather it is the abuse of such a position which is prohibited.

As is the case with the EC Treaty, the Romanian Competition Act does not give a definition of abuse of a dominant position, but contents itself with enumerating examples: unfair purchasing or selling prices, limiting production, applying unequal terms for equivalent services and thereby creating a disadvantage for trade partners, and imposing tied contracts are prohibited by Article 6 paragraphs a to d, which correspond to paragraphs a to d of Article 82 of the EC Treaty. Paragraph e of Article 6 is an innovation of the Romanian Competition Act, conditioned by the country's past as a centrally planned economy with import monopolies. It prohibits imports without competitive bidding (public procurement) for products, which determine the general price level. However, with foreign trade being largely liberalised, it is difficult to find such products and this provision so far has never been applied.[25]

Whereas in the EU predatory pricing falls under the general prohibition of "unfair prices" under Article 82(a), the Romanian Act reserves the entire Paragraph f of Article 6 for such practices. There are two positions on predatory pricing. While the American

[21] File No. 1592/1997 for cancelling the Decision and File No. 1593/1997 for suspending the Decision.

[22] G. Oprescu, op. cit., p. 6.

[23] The Regulation was published in the Official Gazette (Monitorul Oficial) No. 56bis of 3 April 1997.

[24] The Regulation was published in the Official Gazette (Monitorul Oficial) No. 591bis of 9 August 2002.

[25] C. Butacu and A. Miu: Legea concurenţei comentată: analiza dispoziţiilor art. 6, in:Profil: Concurenţa, August 1999, p. 46.

Supreme Court of Justice decided in "Brooke Group v. Brown and Williamson Tobacco"[26] that, in order to be sanctioned for predatory pricing, the dominant firm must be able to recoup the losses incurred, the European Court of Justice decided that maintaining prices at an unreasonably low level for a prolonged period already constitutes abuse of a dominant position.[27] The US approach bears the risk of too late an intervention which might prove to be even more damaging in a small transition economy where a lesser threat from potential competition makes a correction of market structure less likely. However, in Romania such cases have not yet arisen[28] so that it is not clear whether the Competition Council will align with the US approach or with the stricter EU position.

Finally, Article 6(g) remains very general in prohibiting the exploitation of economic dependence. By means of this Article, in 1999 Regia Naţională a Pădurilor (RNP, the National Administration of Forests) was fined for repeatedly and unilaterally modifying contracts with entrepreneurs processing and marketing forest mushrooms. The Competition Council found in its Decision 149 of July 30, 1999, that RNP had imposed severe obligations, which would not have been accepted by the purchasing undertakings had they had a viable alternative.[29]

In contrast to the provisions on cartel behaviour, but in line with EU legislation there is no way of weighing up of the advantages and disadvantages relating to the abuse of a dominant position and applying for an exemption. As Butacu & Miu state, such anti-competitive practices are considered to be extremely serious. The Competition Council has already acted in this matter, and in cases where the law was broken the Council sanctioned the parties involved, its decisions being confirmed by the courts.[30]

Economic Concentration

Articles 11 to 16 of the Romanian Competition Act contain provisions on economic concentration. In line with the EU Merger Regulation,[31] Article 11 defines what falls under these provisions. Any legal act that "has as an object or a potential effect allowing an undertaking or a group of undertakings to exert, directly or indirectly, a decisive influence upon another undertaking or group of undertakings". In particular, this covers mergers and take-overs, as do paragraphs 1 to 4 Article 3 of the EU Merger Regulation. Any economic concentration where the aggregate turnover of the undertakings involved exceeds ROL 25 billion[32] is subject to control and must be notified to the Competition Council. Article 12, however, allows for some cases where notification is unnecessary, in line with Article 3(5) of the EU Merger Regulation.

In particular, Article 12(a) exempts a transfer of control arising due to a liquidation. Paragraph b exempts a temporary taking of control by credit or financial institutions if it is aimed at resale. In line with Article 3(5) of the EU Merger Regulation, this clause leaves room for financial institutions to pursue their business by temporarily holding shares of undertakings, on their own behalf or on behalf of their clients, provided that they do not "exercise their voting rights in order to influence the competitive conduct of the undertaking". Finally, paragraph c exempts a taking of control when voting rights are not exercised, "except for the case when the whole investment should be saved, but not to influence the competitive conduct of the controlled undertaking, directly or indirectly". However, whereas Article 3(5)(c) of the EU Merger Regulation limits this exemption for the passive investor to financial holding companies, Article 12(c) is open to any person or undertaking. According to the advisor to the Competition Council Eric D. Rohlck, this implies the risk of a company investing in a competitor and taking control later on. Rohlck recommends the Competition Council take a strict position on this issue and offer companies a clear policy for the application of Article 12(c).[33]

Article 13 prohibits any "mergers, which, by creating or consolidating a dominant position, cause or may cause a significant restriction, prevention or distortion of competition on the Romanian market or on part of it". As with Article 2(3) of the EU Merger Regulation, Article 13 does not generally prohibit a merger creating a dominant position, but only if this dominant position is likely to be abused. For example, through Decision No. 23 of 11 November 1997, the Competition Council authorised the concentrative joint venture between Philips and Elba Street Lighting S.R.L. The undertakings involved held a joint market share of 86%, but the Competition Council

[26] 113 Supreme Court 2578 (1993).

[27] Case C-62/86, Akzo v. Commission (1991) ECR I-3359.

[28] C. Butacu and A. Miu, op. cit., p. 47.

[29] Cf. Consiliul Concurenţei: Annual Report 1999, pp. 28 and 89.

[30] C. Butacu and A. Miu, op. cit., p. 47.

[31] Regulation 4064/89, as amended by Regulation 1310/97.

[32] Threshold value as of August 2000, about €1.2 million.

[33] E. Rohlck: Exceptări de la cerintele de notificare a concentrărilor economice, in: Profil: Concurenţa, August 1999, p. 34.

found that through the Free Trade Agreement with the other CEFTA countries potential competition on the relevant market was strong enough to make an abuse of this dominant position impossible.[34]

In order to be authorised by the Competition Council, mergers must cumulatively satisfy the three conditions set by Article 14(2): a) the merger has to contribute to "increasing economic efficiency, to improving production, distribution or technological progress, or to enhancing export competitiveness"; b) "the positive effects of the merger compensate the negative effects"; c) "consumers benefit from the resulting gains, especially through lower real prices". These conditions do not appear in the EU Merger Regulation but are, in this explicit form, an innovation of the Romanian Competition Act. However, the provision regarding improving export competitiveness as mentioned under a) is bound to raise concerns in the EU accession process.

The Council also sanctions the failure to notify an economic concentration. For example, in 1999 S.C. Xerox Romania S.A. was fined for not notifying the concentration with its licensed dealer S.C. Arexim S.A. (Decision No. 71 of May 19, 1999). Eventually, S.C. Xerox Romania S.A. decided to notify the same concentration and the Competition Council authorised it by the non-intervention Decision No. 205 of September 29, 1999, because the concentration did not raise any competition problem.[35]

Finally, the Romanian Competition Act provides for the possibility, albeit restricted, of a Minister merger. Article 53 gives the government the power, for reasons of public interest, to overrule the Council's decision on a merger should a *régie autonome* be involved. While the wording used: "reasons of public interest", may be somewhat vague, the fact that *régies autonomes* are declining in number reduces the scope of this Article.

Some Conclusions

The Romanian Competition Act has to serve two masters: firstly, Romania's need to develop a competition culture and complete the transition to a market economy and secondly, its need to adopt the EU's competition acquis and so hasten the country's accession to the EU. This explains why the Romanian competition law so closely resembles the corresponding EU provisions, why Romania has been following changes in EU competition law and why any remaining differences may be supposed to be transitory.

The two major differences pointed out in this paper are the inclusion of an industrial policy component aimed at promoting export competitiveness in the Romanian law and the stipulation that all concerted practices be notified to the Competition Council, even those falling under a block exemption. The first point, which appears in provisions both on concerted practices and on merger control, albeit understandable in a country with high, persistent trade and current account deficits, will have to be adjusted in the process of accession to the EU. The second point, double control on concerted practices, aims at making market participants more familiar with the concepts of the market and free enterprise that are the main components of a competition culture. As such, this innovation to the Romanian Competition Act is by definition transitory. The authorities have already announced their intention to amend Law 21/1996 in order to remove the notification requirement for agreements that fall under a block exemption.[36] It is not clear, though, whether the legislator considers market participants ripe for this action or whether time for harmonising Romanian legislation with EU provisions is pressing as the country plans to complete the accession negotiations by 2004.

Recently, Regulation 1/2003 has brought about significant changes in EU competition law. As Romania stated in Chapter 6 (Competition Policy) of its Position Paper for the Accession to the European Union that the "harmonisation process of Romanian legislation will follow constantly the amendments of the Community legal framework", the Competition Council will soon have to react to the new EU approach. The planned removal of the notification requirement for agreements falling under block exemptions will only be a first step towards harmonisation with the new EU provisions, which have introduced a more radical removal of any notification requirement for any concerted practice and instead rely on competitors to report alleged violations of the law. Such straight removal of any notification requirement, however, will be more difficult to implement in Romania than in the EU, for case law is not yet as developed in Romania as in the EU, thus creating uncertainty among market players about what is allowed. The second major innovation of Regulation 1/2003, decentralisation and devolution to national authorities, will be of no concern to Romania before EU accession.

[34] Consiliul Concurenţei: Annual Report 1997, p. 41.

[35] Consiliul Concurenţei: Annual Report 1999, p. 51.

[36] Consiliul Concurenţei: Annual Report 2002, p. 5.