
16 November 2017**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Roundtable on Safe Harbours and Legal Presumptions in Competition Law - Note
by Romania****5 December 2017**

This document reproduces a written contribution by Romania submitted for Item 5 of the 128th OECD Competition committee meeting on 5-6 December 2017.

More documents related to this discussion can be found at www.oecd.org/daf/competition/safe-harbours-and-legal-presumptions-in-competition-law.htm

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JT03423105

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1. Romanian Competition Council (RCC) concentrates its efforts and resources on those cases that pose the greatest threat to consumer welfare, the purpose of its intervention being the protection of markets and maintaining them at the most competitive level.
2. In order to make the most efficient use of its resources, a necessary balance can be achieved between the material and human resources available to the authority and the achievement of the objective.
3. On the other hand, the authority seeks to finalize its cases within a reasonable timeframe. Given that, the RCC focuses on those cases with a major impact on competition and on the other hand the authority seeks to find rules and procedures that are less burdensome for business and advisers.
4. The same principles are applied in merger cases, certain concentrations being examined under a simplified procedure. The simplified rules are applied to mergers that are generally unlikely to raise competition concerns. Companies may use a shorter notification form and RCC may clear such cases without a detailed market investigation.
5. The request for a simplified procedure must be motivated, but the companies need to provide less detailed information in the notification form. Moreover, RCC constantly seeks to reduce the average time for analyzing an economic concentration particularly for cases being assessed under the simplified procedure but also for other cases. In this regard, a simplified decision form is issued, with a standardized format that contains less information than the non-simplified one, which reduces also the time for completing the case.
6. For the normal non-simplified merger cases, the threshold of what constitutes an 'affected market' for which more information must be provided, has been increased to 20% (from 15%) in the case of horizontally affected markets and to 30% (from 25%) in the case of vertically affected markets. As a result, fewer markets need to be analyzed in detail by the authority.
7. RCC intends also to change the way of analyzing mergers and acquisitions on the food retail market due to changes emerged from both companies and consumers' behavior. To identify the changes in the consumers' behavior when purchasing consumer goods (groceries), the competition authority commissioned, in 2016, a survey in the food retail sector.
8. Before the survey, the method in which the relevant retail food market was defined in merger cases was based on conclusions which resulted from the sector inquiry completed in 2009 and from the EC case law.
9. The definition of the relevant market took into account the differentiation between traditional and modern trade and also proximity stores (less than 400 square meters), supermarkets (between 400 and 2500 square meters) and hypermarkets (more than 2500 square meters). The analysis was made on a case-by-case basis, in a geographical area of 10 to 30 minutes around the involved shops.
10. The consumer behavior survey, recently commissioned by RCC in 2016, was conducted by a market research company and sought to observe changes in consumer

behavior when purchasing consumer goods. It was conducted both in Bucharest and at national level, with segmentation by regions and localities/municipalities. The questionnaire included a series of questions regarding the consumer's behavior towards supermarkets and small shop as well as socio-demographic data.

11. In general, it was observed that consumers use their car to get to the most frequented groceries store. It has also been found that most people who travel by car, from their home to the most frequented store, take a route of maximum 10 minutes. The study also reveals that there must be a distinction between small shops (under 400 sqm) and modern stores with large area of selling, i.e. supermarket shops.

12. Thus, very few consumers rely on small shops for grocery shopping, and most of the respondents are walking several times a week to reach them. With regard to modern / supermarket stores, over 90% of consumers rely on these types of stores.

13. By correlating the information regarding the clients of supermarket and small grocery shops with their indications about the main transport used to get there, it was found that both at national and at Bucharest level, respondents choose to walk to small proximity shops. As far as the supermarket is concerned, the analysis found that, in order to reach a supermarket, the majority of the consumers use the personal car.

14. The small-sized shops are those shops situated in the home's proximity, usually smaller than 400 sqm, that sell a small range of products that can cover an urgent and occasional need (grocery stores, boutiques and mixed stores - traditional retail formats, but also other proximity stores with an area of less than 400 sqm).

15. Although, when the willingness to travel to stores below 400 sqm comes into question, the analysis revealed that the consumers would be willing to spend up to 10 minutes on foot for such a shop.

16. From a consumer point of view, choosing a point of sale depends on the specifics of the supply they are looking for. The competition between businesses is limited to proximity sales points in the case of small purchases and is exercised within a larger range for purchases made in larger quantities. The RCC's analysis revealed that for smaller purchases consumers are willing to travel only on short distances from their homes.

17. Given the proximity of small-area shops and their specificity, the reduced range of products, their high urban density and location on the ground floor of apartment flats in Romania and often without parking option, it can be said that the availability of travel to the grocery shops below 400 sqm is done on foot, up to 10 minutes from their homes.

18. The supermarket is the format of a store bigger than 400 square meters, which sells a great variety of products, both as number of categories listed and as number of specific brands in each category, corresponding to relatively important and diversified acquisition needs. RCC's analysis revealed that, in order to reach a frequented supermarket, most consumers use their personal car.

19. As such, RCC's analysis based on the results of the survey identified two types of stores that would require differentiation when considering the supply of current consumer products belonging to retailers:

- proximity stores (under 400 sqm) - their offer is generally constrained by the offer of other proximity stores within an area of up to 10 minutes walking and by the offer of large-area shops (over 400 mp) within an area of up to 10 minutes by car;

- medium and large stores (over 400 sqm) - supermarkets / hypermarkets / discounters - their offer is constrained by the offer of other stores with areas of under and over 400 sqm, in a geographic area of up to 10 minutes by car.
20. Therefore, as a result of changes in consumers' behavior, Romanian Competition Council intends to modify the method of analyzing a merger on the food retail market. The analysis will vary depending on the size of the target store.
21. If the target falls into the category of proximity stores, the analysis should include 2 geographical areas, a 10-minute walk area and a wider area of 10-minute drive around the target. If the target is a large store, the case analysis will include any type of store in a 10-minute driving area from the target store.
22. Apart from these areas, RCC will no longer go into detail in terms of market analysis, with the parties enjoying the presumption of legality. RCC intends to set in this way a threshold for small shops at 10 minutes walking and for large stores for 10 minutes driving. The stores located outside these geographical areas will no longer be taken into account in the analysis and as such will not influence market shares of the involved store.
23. Thus, in the case of a proximity store with a selling area of less than 400 sqm, the market analysis will include other proximity stores located within a 10-minute walk of it and any stores over 400 sqm positioned in a 10-minute driving area from the assessed store. In doing so, we can conclude that other proximity stores, that are located outside the 10 minute walk range, do not exert competition pressure on the acquired store.
24. The same conclusion can be attributed to the large purchaser's stores that are located at a distance of more than 10 minutes' drive from the target store, given that the range of analysis is reduced from 30 to 10 minutes. They will no longer be taken into consideration once the analysis revealed that their offer does not have a significant influence on the shops involved.
25. In conclusion, regarding the concentrations in grocery retail, RCC's analysis will remove certain proximity stores from the specified analysis, considering that they do not have a major influence on the purchaser's market power assessment. In this manner, the boundaries of conduct subject of detailed market analysis are being delineated. As a consequence, the purchaser will be more confident that, with respect to other proximity stores owned by him, which are not within 10 minutes of walking distance, RCC will not go into detailed analysis.
26. At the same time, RCC will focus its resources on purchases of larger stores and with a higher risk of distorting competition on the retail market.
27. However, the *10-minute range* size may differ in a specific case, depending on the relevant local elements (i.e. area-specific consumption habits), i.e. the territorial distribution of the shops, their different areas on each local market. In this way, depending on whether evidence can be brought, this *10 minutes range* presumption regarding can be changed for a specific area.
28. Even so, this range will serve as a starting point of the analysis in future cases.
29. Taking into regard all of the above, it can be concluded that this safe harbor could lead to important resource savings due to the increased number of proximity shops and the high consumption of human resources which the analysis can leads to.

30. RCC also analyzed in practice the applicability of these thresholds, reanalyzing some cases that have already been handled by RCC in the past, transactions for which the analysis included larger areas (20, 30 minutes).

31. Simulations have shown situation where the parties' activities do not overlap in the same relevant markets analyzed but where the activities overlap the market shares of the parties were found to be in most situations bigger, some reaching the level of dominance, which would require the need for additional conditions to be applied.

32. At this time, RCC's analysis is published for public consultation on the authority's website and it awaits the observations of the companies involved in this sector.