

Legal Bulletin

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Competition Law

1 Guidelines on commitments related to the economic concentrations

Name of the enactment	Competition Council Order No. 688/2010 for the implementation of the Guidelines on commitments related to the economic concentrations (the "Guidelines")
Publication	Official Gazette of Romania, Part I, No. 1 of 3 January 2011
Entry into force	3 January 2011
Connections with other enactments	<ul style="list-style-type: none">• Competition Law No. 21/1996• The Competition Council's Regulations on economic concentrations
Purpose	<p>Detailing certain trends concerning the amendments brought to economic concentration operations, particularly by commitments of the undertakings participating in the concentration, in order to remove the competition concerns identified by the Competition Council and to facilitate the authorization of the respective concentration operation.</p>
Main provisions	<p>According to the Guidelines, if an economic concentration operation raises suspicions as regards its compatibility with the normal competition environment (<i>by creating or consolidating a dominant position</i>), which could not allow the competition authority to authorize the notified transaction, the parties may propose commitments to amend the concentration, for the purpose of removing concerns regarding compatibility with the competition environment. The commitments are supplied to the competition authority by filling-in the form from the appendix to Guidelines.</p> <p>Commitments may be proposed at any of the phases of the authorization procedure:</p> <ul style="list-style-type: none">• Post-notification (<i>i.e.</i> phase I): the parties may present to the competition authority proposals of commitments prior to the effective date (<i>i.e.</i> the date when the Competition Council considers that the notification is complete) or within 2 weeks at the latest as of such date; or• After the opening of an investigation within the procedure (<i>i.e.</i> phase

II): within a term of 30 days as of the opening of the investigation; this term may be extended by 15 days at the most, subject to grounding the request for extension.

The commitments may be implemented either prior, or subsequent to the authorization.

Commitments may particularly consist of:

- Transferring a viable activity (including assets, trademarks, licenses) to a purchaser that could compete effectively and durably with the entity created by the economic concentration;
- Removing connections with competitors (such as waiver to the rights related to minority participations within a competitor, terminating certain agreements);
- Access commitments (transparently and without discrimination) to important infrastructures, networks or technologies, including patents, know-how or other intellectual property rights, as well as production inputs;
- Amending long-term exclusive agreements.

The competition authority may accept only such commitments that may lead to the compatibility of the concentration operation with the competition environment, preventing the occurrence of significant obstacles against effective competition.

Commitments must be complete and efficient and might be applied effectively within a short period of time.

If the parties fail to fulfill the undertaken commitments, the Competition Council may impose sanctions.

Repealed enactments

Appendix No. 3 "Guidelines concerning the corrective measures acceptable in case of conditional authorization of certain economic concentrations" to the Order No. 63/2004 of the Competition Council President regarding the implementation of the regulations and instructions of the Competition Council elaborated on the basis of the Competition Law no. 21/1996

2 Guidelines on accepting and evaluating commitments, in case of anticompetitive practices

Name of the enactment

Order of the Competition Council No. 724/2010 for the implementation of the

	Guidelines on the conditions, terms and procedure of accepting and evaluating commitments, in case of anticompetitive practices (the “ Guidelines ”)
Publication	Official Gazette of Romania, Part I, No. 11 of 5 January 2011
Entry into force	5 January 2011
Connections with other enactments	Competition Law No. 21/1996 (the “ Competition Law ”)
Purpose	Detailing certain trends regarding the mechanism of accepting commitments proposed by undertakings in case of anticompetitive practices, in order to remove the cause which led to the opening of the investigation of such acts and to reestablish the normal competitive environment on a fast and durable basis.
Main provisions	<p>The commitments procedure shall be held during an ongoing investigation regarding a potential anticompetitive act falling under the scope of Arts. 5 and 6 of the Competition Law, and of Arts. 101 and 102 of the Treaty on the Functioning of the European Union (“TFEU”).</p> <p>The main provisions of the Guidelines may be summarized as follows:</p> <ul style="list-style-type: none">• The initiative of proposing commitments (which may be structural or behavioral) shall exclusively belong to the undertakings faced with the investigation. These may be proposed at any time during the investigation, however, no later than the submission of the investigation report. Within 3 months from the initiation of the investigation, the Competition Council shall notify the parties on whether discussions on the commitments may be initiated or not in the respective case. As to ongoing investigations, the parties shall be given a two month-term from publication to contact the competition authority in order to check the availability to participate in the discussions on commitments in such cases.• The Guidelines expressly provide that the submission of commitments proposals may not be deemed as an undertaking’s acknowledgment of the existence of a breach, and the authority shall not use the commitment proposal to justify a later decision.• The Competition Council shall be given full discretion to accept or refuse the commitments proposal. Accepting commitments is an exceptional case, being limited to such cases which secure, in the opinion of the authority, a restoration of the competition environment. The authority shall not accept commitments when it

deems that the enforcement of a sanction better suits the goals of the competition policy.

- The commitments shall have to fulfill certain: (i) substantive conditions (such as, eliminating the circumstance which led to the initiation of the investigation, and even additionally contributing to the protection of competition; commitments shall have to be relevant, efficient and enforceable in a relatively short period); and (ii) formal conditions: (such as, to be presented in writing, signed by the representative/proxy; to constitute a reasonably detailed, serious, unconditional and irrevocable offer, for the analysis period ; to include explanations on how the commitments allow for a removal of the circumstance which led to the initiation of the investigation; to be accompanied by a non-confidential version of the commitments proposal).
- Should the competition authority deem the proposed commitments acceptable, subsequent to a *prima facie* evaluation, then it shall publish a non-confidential version of the proposal on its website, and the third parties may express comments within a predetermined term.
- Should the Competition Council deem the commitments proposal sufficient to protect competition, then it shall issue a decision granting enforceable power to the proposed commitments, and setting out the period in which such undertaking is bound by the commitments. Subsequent to the issuance of the decision, the competition authority shall monitor the fulfillment of commitments.
- Failure to fulfill the commitments undertaken by the decision of the Competition Council shall entail the application of sanctions.
- The investigation procedure may be reopened if: (i) a material change occurs with respect to any of the acts underlying the decision; (ii) undertakings breach their commitments; (iii) the decision was based on incomplete, inaccurate or misleading information supplied by the parties.

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Education

Name of the enactment	Law No. 1/2011 on national education (the “ Law No. 1/2011 ”)
Publication	Official Gazette of Romania, Part I, No. 18 of 10 January 2011
Entry into force	9 February 2011
Main provisions	<p>Law No. 1/2011 promotes an education oriented on values, creativity, cognitive capacities, volitional capacities and action-related capacities, fundamental knowledge and direct utility knowledge, skills and abilities in the profession and society.</p> <p>The new law of national education provides a new education financing method divided into basic, complementary and additional financing. Starting from 2012, a standard cost per preschool child or per student shall be established on a yearly basis, cost that shall underline the basic financing. This amount shall be awarded to all preschool children and students in accredited education institutions, and, based on the “the financial resource follows the student” principle, if the student gets a transfer, the related allowance shall also be transferred to the education institution where he is studying. Complementary financing shall cover the capital expenses and social expenses, such as: investments, students’ scholarships, etc. Additional financing is a fixed lump sum granted by the Ministry of Education, Research, Youth and Sports (“Ministry of Education”) for the rewarding of remarkable school results and performances.</p> <p>Starting from 2013, the State shall transfer EUR 500 in an account open with the State Treasury to each newborn, Romanian citizen; this amount may be withdrawn for educational purposes by the holder when he turns 16 years of age.</p> <p>Law No. 1/2011 provides the possibility for the students belonging to State-acknowledged cults, irrespective of the number thereof, to participate in religion courses, as per their own cult, as per their constitutional right. Furthermore, Law No. 1/2011 keeps the possibility for the student not to attend religion classes, at the written request of the adult student, or of the parents or of the duly appointed guardian, respectively.</p> <p>The law establishes a new structure of the pre-university education system. Starting from 2012-2013, the primary education system shall be provided with a preparatory classroom, where children that turned 6 years of age until the commencement of the school year or that shall turn 6 by the end of the calendar year may be registered. At the end of the 2nd and 6th grade, each school shall</p>

evaluate the students, based on the methodologies established by the Ministry of Education.

In the case of the generation of students which shall commence the 5th grade in school year 2011-2012, the 9th grade shall be transferred from high school to secondary education, and the duration of the high school studies shall be reduced to three years for theoretical studies, 3 or 4 years for vocational studies and 4 years for technological studies. At the end of the 9th grade, this generation, shall undergo a national mandatory evaluation of all students, which shall include five examinations, including computer skills evaluation test and a oral trans-disciplinary test evaluating civil and social skills. Based on the grades obtained at the national evaluation, an educational portfolio shall be prepared, which shall be taken into account upon admission to high school. Should the number of candidates at a high school be higher than the number of places offered by such high school, an admission test shall be taken, which shall be accounted for 30% of the final average, and the educational portfolio 70% of the final admission average.

Starting with the generation of students which shall commence the 9th grade in school year 2012-2013, the high school graduation examination shall also include a digital literacy test, and, as per the profile and specialty of the high school, two written examinations, a basic examination according to the profile and a trans-disciplinary examination for the main curriculum.

As to the persons belonging to national minorities, history and geography shall be taught in the languages of the national minorities throughout the entire pre-university education using handbooks which are identical to those used for teaching in Romanian. Unlike the former legislation, the secondary education with teaching in the languages of national minorities, History and traditions of such national minorities shall be inserted as an object of study, on a mandatory basis, and shall be taught in such language.

Subject to the decision of the board of directors, the education institutions may extend activities with the students after classes by way of the "School after School" program offering educational, recreational and time-off activities, or activities for the consolidation and acceleration of acquired skills and remedial learning activities.

Centers of excellence shall be established for children and young students capable of outstanding results by order of the Minister of Education, Research, Youth and

Sports under the coordination of the National Center for Differentiated Training.

The education beneficiaries shall be classified in primary (students), secondary (students' families) and tertiary (local community and society). Major decisions shall be made by consulting with the primary representatives and by the mandatory consulting with the representatives of the secondary and tertiary beneficiaries, namely the representative associations of parents, representatives of the business environment, authorities of the local public administration and civil society. Parents and the education institutions shall conclude a standard educational agreement, providing mutual rights and obligations.

As to the university education, students shall be deemed as *"partners of higher education institutions and equal members of the academic community"*.

Law No. 1/2011 inserts the concept of public liability at the level of the higher education, which entails that the higher education institutions must comply with the laws in force and own regulations, implement and observe the university equity and ethics policies, assure transparency of all their decisions and activities, etc. subject to the sanction of the rector being withdrawn from his position, access to public financing being restricted or such institution being reorganized.

The Sole Matriculation Register of Romanian Universities shall be established; such register shall be an electronic database listing all the students in Romania registered to a State University or accredited or temporarily authorized private university, in order to secure a thorough control of diplomas. Students may be represented in all decision-making and consultative structures of the university.

The same chapter provides that the students coming from families with reduced income shall benefit from State-guaranteed bank loans to pursue their studies, under the conditions of the laws in force, to be granted by the Loans and Scholarships Agency. Loans may cover university fees and cost of living throughout the duration of studies. Graduates that shall practice their profession in rural environment for a period of five years shall be exempted from the payment of 75% of the loan, which shall be taken over by the State, and shall not exceed RON 5,000.

As to the novelties concerning the rector's position, the university rector shall be appointed according to one of the following possibilities: by means of a public examination or by universal, direct and secret vote of all full teaching and research staff within the university and of the representatives of the students in the university senate and faculties' councils. Persons holding a management or

public office position may not exercise the rector position throughout their term of office. The position as rector is incompatible with holding management positions in a political party, throughout the term of office.

The education law establishes that the results and performances of the teaching activities obtained by the teaching and research staff in a university shall be evaluated at 5-year intervals, at the most. Students' evaluation of the teaching staff performance shall be mandatory and the results of the evaluation shall be made public.

Repealed enactment

- Education Law No. 84/1995, republished as amended and supplemented
- Law No. 128/1997 on the Status of the teaching staff, as amended and supplemented
- Art. 14 para. (2) of Government Emergency Ordinance No. 75/2005 on securing the quality of education, approved as amended by Law No. 87/2006, as further amended
- Government Ordinance No. 10/2009 on the right of the students registered with distance education or reduced frequency institutions to continue the studies at bachelor's degree studies authorized to operate on a temporary basis, or accredited

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Insurance Law

Name of enactment

Order of the president of the Insurance Supervisory Commission No. 15/2010 implementing the Norms on authorizing insurance and/or reinsurance brokers and maintaining such permit (the "Norms")

Publication

Official Gazette of Romania, Part I, No. 14 of 6 January 2011

Entry into force

6 January 2011

Connections with other enactments

Law No. 32/2000 on the insurance companies and the supervision of insurance activities, as subsequently amended and supplemented.

Main provisions

The above legal enactment sets forth the requirements to be fulfilled for the authorization of insurance and/or reinsurance brokers and for maintaining the operating permit, by supplementing the existing provisions.

The Norms contain regulations on the initial phase of brokers' authorization in

terms of name, share capital, increasing its minimum threshold to RON 25,000 or registered office to be used exclusively for the activity they will be authorized to carry out.

Furthermore, it provides the obligation of concluding a professional liability insurance agreement, valid on the territory of Romania, the norms establishing a minimum coverage limit of EUR 1,121,000/event, as well as an aggregate amount of EUR 1,700,000/year, exclusive of deduction.

The Norms also establish a series of interdictions, *i.e.* brokerage companies shall not be direct or indirect shareholders within an insurer, reinsurer, insurance or reinsurance agent, broker assistant and, furthermore, they shall not have as direct or indirect shareholder or as director an insurer, reinsurer, insurance/reinsurance agent, a broker assistant or the manager of a broker assistant legal entity or the head of an insurance agent legal entity.

Moreover, under the Norms, the executive managers must have at least 3 years of expertise in a management position in the insurance business or at least 5 years in an executive position in the financial-banking and/or executive business.

The Insurance Supervisory Commission (the “**Commission**”) shall assess the compliance with the authorization requirements, as well as the pieces of information related to the person appointed as executive manager or director, considering the potential misconducts committed in the past 10 years, which might hinder them from carrying out such tasks.

On the other hand, the Norms detail the documentation required for obtaining the permit for operation as insurance and/or reinsurance broker, by taking over the provisions of Law No. 32/2000 on the feasibility survey and bringing clarifications thereto.

It also establishes the term in which the Commission shall decide on approving or rejecting the application for authorization, namely 30 days as of submission of the complete documentation, as well as for the powers related to the suspension or termination of the insurance and/or reinsurance brokers’ activity.

Pursuant to the Norms, any change in the documentation or in the initial requirements whereby the permit was granted shall be made only further to the Commission’s approval or endorsement, subject to the fulfilment of the legal provisions, norms and decisions issued by the Commission and shall be submitted to the Office of the Trade Registry, only with prior endorsement from the

Commission.

As to the amendments to the articles of incorporation, it is mentioned that the share capital increase shall be made only by cash contribution.

Furthermore, it expressly establishes which activities are considered prohibited practices, namely:

- Offering, negotiating or intermediating insurance products by pyramid procedures or by applying the so-called "snowball" procedure or any other similar procedures;
- Conditioning the participation of an individual in training courses/specialized seminars on insurance business, in their own name or on behalf of other family members;
- Proposing to an individual to collect adhesions or become registered on a list, by leading him to believe he will earn financial benefits arising from the increase in the number of persons recruited/enlisted.

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Social Security

Name of the enactment

Government Decision No. 50/2011 approving the methodological norms for the enforcement of the provisions of Law No. 416/2001 on the minimum guaranteed income (the "**2011 Methodological Norms**")

Publication

Official Gazette of Romania, Part I, No. 76 of 28 January 2011

Entry into force

28 January 2011

Connections with other enactments

Law No. 416/2001 on the minimum guaranteed income ("**Law No. 416/2001**")

Main provisions

As a result of the amendments brought by Law No. 276/2010 amending and supplementing Law No. 416/2010, the methodological norms for the enforcement of the latter legal enactment had to be updated.

The 2011 Methodological Norms give a detailed presentation of: the conditions and procedure to obtain the social security benefit; the standard application and affidavit based on which the social security benefit is granted; the standard social inquiry to be held for each applicant for social security benefit; categories of goods considered to be strictly necessary for the needs of a family, and the other goods which fall outside the scope of the above goods, according to which the amount of the social security benefit shall be calculated and the payment thereof

organized.

Unlike the 2006 Methodological Norms, no procedure for an in-kind social security benefit is provided. Moreover, in order to render the payment of social security benefits efficient, city halls shall electronically fill-in information on the beneficiaries from the social security benefit in a format to be made available by territorial agencies.

At the same time, the social security benefit granted to the spouses of the persons undergoing the mandatory military service and the newborn children allowance are no longer regulated. On the other hand, it was inserted the procedure regarding the award of the health social security benefit and the mandatory house insurance from the State budget allocated by the Ministry of Labor, Family and Social Protection, *i.e.* the National Agency for Social Benefits.

Repealed enactments

The methodological norms for the enforcement of the provisions of Law No. 416/2001 on the minimum guaranteed income, as amended and supplemented (the “**2006 Methodological Norms**”).

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