

**Decizia no. 11  
of 02.03.2009**

**related to the economic concentration realized by Raiffeisen Landesbank Oberösterreich AG through achieving the sole control over Impuls Leasing International AG, Impuls-Leasing Romania IFN SA and Impuls-Leasing Services SRL**

**THE COMPETITION COUNCIL**

**On the basis of:**

1. The Decree no. 830/4.09.2007 regarding the appointment of the Competition Council's President, published in the Official Journal of Romania, no. 619/7.09.2007;
2. The Decree no. 57/17.02.2004 regarding the appointment of the members of the Competition Council's Plenum, published in the Official Journal of Romania, Part I, no.143/17.02.2004;
3. The Decree no. 1087/6.09.2006 regarding the appointment of a member of the Competition Council's Plenum, published in the Official Journal of Romania, Part I, no. 767/8.09.2006;
4. The Decree no. 1089/6.09.2006 regarding the appointment of a Vice-President of the Competition Council's Plenum, published in the Official Journal of Romania, Part I, no. 767/8.09.2006;
5. The Competition Law no. 21/1996, republished in the Official Journal of Romania, Part I, no. 742/16.08.2005 (hereinafter referred to as *Law*);
6. The Regulation from 29.03.2004 concerning the authorization of economic concentrations, published in the Official Journal of Romania, Part I, no. 280/31.03.2004, with subsequent amendment and completions;
7. The Regulation from 26.03.2004 on organization, functioning and procedure of the Competition Council, published in the Official Journal of Romania, Part I, no. 288 of 01.04.2004, with subsequent amendments and completions;
8. Guidelines from 29.04.2004 on calculation of turnover in the cases of anti-competitive practice provided for under the art. 5(1) of the Competition Law no. 21/1996 and in the economic concentrations cases, published in the Official Journal of Romania, Part I, no. 440/17.05.2004;
9. Guidelines from 26.03.2004 on the application of the provisions of art. 33<sup>1</sup> of the Competition Law no. 21/1996 regarding calculation of the authorization fee for economic concentrations, published in the Official Journal of Romania, Part I, no. 288/01.04.2004;

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<sup>1</sup> Art. 33 became art. 32 by republishing the Competition Law no. 21/1996;

10. The notification of the economic concentration submitted by Raiffeisen Landesbank Oberösterreich AG., registered at the Competition Council under no RS 86/02.12.2008 that became effective on 6.02.2009;

11. The Note of the Commission responsible with mergers and antitrust no. AG 46/25.02.2009.

**Taking into account that:**

1. The notified operation of the economic concentration it's based on the acquisition by Raiffeisen Landesbank Oberösterreich AG of sole control directly over Impuls Leasing International AG (hereinafter referred to as „ILI AG”), and indirectly over IMPULS-LEASING ROMANIA IFN SA and IMPULS-LEASING Services SRL, on the ground of a convention (hereinafter referred to as “The Convention”) concluded on 31.10.2008;

2. Raiffeisen Landesbank Oberösterreich AG (hereinafter referred to as ROÖ) is an Austrian legal person, which is active in banking sector. In Romania ROÖ develops, especially lending operations, refinancing lease and interbanking deposits, on short term. ROÖ does not provide services for Romanian customers, but only for Austrian and German people who develop economic activities in Romania;

3. Impuls Leasing International AG, the acquired company is a Swiss legal person, which does not develop commercial activities, being a holding company;

4. Impuls-Leasing Romania IFN SA (hereinafter referred to as "IL RO") , a Romanian legal person, is controlled in proportion of 90% by ILI AG in Romania. IL RO is a financial institution and its main activity refers to financial leasing;

5. Impuls-Leasing Services SRL (hereinafter referred to as „IL RO Services”), a Romanian legal person, is a company owned 100% by IL RO, founded in 2008 and intended to become operational in December 2008, having as the main business, activities of rental cars and road vehicles and also operational leasing, so this company has not obtained turnover until now;

6. On 31.10.2008 was concluded a shares sale-purchase contract (hereinafter referred to as “The Contract”) between Raiffeisen Impuls Holding GmbH (hereinafter referred to as „RIH”), an Austrian company, as buyer and BGLM AG, a Swiss company, as seller, through The Contract a number of [...] shares, representing 85% of ILI AG's share capital;

7. RIH is held up to [...] % by Raiffeisen Impuls Leasing Gesellschaft mbH, member of ROÖ's group, and [...] % by RBG Holding GmbH, control being exercised under the majority voting rights. Consequently, RIH belong to RBG Holding GmbH's group. RIH is 100% a holding company with no commercial activity;

8. The Convention concluded on 31.10.2009 between ROÖ, BGLM AG, holding 85% of ILI AG's share capital and Raiffeisen-Impuls-Holding GmbH. Pursuant the provisions of The Convention, ROÖ *acquires the right to appoint more than half of the members of the board of ILI AG, including the right to appoint the chairman of the board of directors.*

Consequently, after the economic concentration is realised, although ILI AG would be owned in proportion of 85% by RIH, it will be controlled directly by ROÖ, on the basis of the right

to appoint more than half of the members of the board of ILI AG, including the right to appoint the chairman of the board of directors;

9. The notified operation through which ROÖ would acquire the sole control directly over Impuls Leasing International AG and indirectly over Impuls Leasing Romania IFN SA and IMPULS-LEASING Services SRL, on the basis of The Convention is an economic concentration in the meaning of Art. 10 (2) b) from Competition Law no. 21/1996, republished and, in the meaning of the *Regulation concerning the authorisation of economic concentration*;

10. The economic concentration meets cumulatively the threshold conditions laid down in art. 14 of the *Law*, respectively the aggregate turnover of the involved undertakings exceeds the equivalent in lei of 10.000.000 Euro and there are at least two undertakings involved in the operation who achieve, each in part, on the Romanian territory a turnover that exceeds the equivalent in lei of 4.000.000 Euro.

11. According to the art. 1 from the *Regulation (EC) no. 139/2004 from 20 January 2004 regarding the control of economic concentration between undertakings*, this economic concentration doesn't have community dimension, unfulfilling the threshold conditions in order to be notified at the European Commission.

12. The relevant market of product/service for the notified economic concentration is the market on which the acquired undertaking (Impuls Leasing International AG) and the undertaking that are controlled by (IMPULS-LEASING ROMANIA IFN SA and IMPULS-LEASING Services SRL<sup>2</sup>), respectively market of financial leasing;

13. According to the information received from the acquirer the market share of Impuls-Leasing Romania IFN SA is insignificant, approximately [...], and the acquirer group does not activate on the relevant market<sup>3</sup>. In addition, there is no overlap between the acquirer and the acquired, the economic concentration, therefore there is no issue of significant impact on competition on the relevant market;

14. Through the operation of economic concentration under discussion, does not create or consolidate a dominant position on the relevant market.

**Pursuant to art. 21 para. 2 of the Competition Law 21/1996 republished, and to art. 8 para. 10 lett. b) of the Regulation for the organization, functioning and procedure of the Competition Council, subsequently amended and supplemented,**

## DECIDES

**Art.1.** Pursuant the provisions of the Art. 46 (1) b) of the Competition Law no.21/1996 revised, and the *Regulation regarding the authorization of the economic concentrations*, Competition Council issues this authorization Decision regarding the economic concentration realized by Raiffeisen Landesbank Oberösterreich AG through acquiring the sole control over Impuls Leasing International AG, Impuls Leasing Romania IFN SA and Impuls-Leasing

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<sup>2</sup> **IMPULS-LEASING Services SRL** does not develop any activity until now.

<sup>3</sup> The market share of ROÖ on the Romanian market is below [...].%

Services SRL, being found that although the notified economic concentration operation falls within the scope of the *Law*, there are no serious doubts as regards the compatibility with normal competitive environment..

**Art.2.** Pursuant the provisions of the Art.32 par.(1) of the *Law*, Raiffeisen Landesbank Oberösterreich AG. shall pay the authorization fee of the notified economic concentration.

**Art. 3** The authorization fee, based on the turnover according to the provisions of the art. 65 of the *Law*, and the *Guidelines regarding calculation of the authorization fee for economic concentrations* and *Guidelines on calculation of turnover in the cases of anti-competitive practices stipulated in Art.5 (1) of the Law*, and in economic concentration cases is in sum of [...] lei.

**Art.4.** The amount of the authorization fee shall be paid, within a term of maximum 30 days from the communication of the present Decision, to the State budget, through a treasury payment order, with the mention: “for the authorization of the economic concentration”. A copy of the payment order shall be sent without delay to the Competition Council.

**Art.5** Within a term of 5 days starting with the date of lodging of the Simplified Annual Financial Statements – on 31.12.2008 - to the territorial units of the Ministry of Economy and Finance, Raiffeisen Landesbank Oberösterreich AG shall refer a copy of those Statements to the Competition Council, together with a statement on the turnovers related to the activities carried out by the parties<sup>4</sup> involved on the relevant markets. The Competition Council shall reserve its right to recalculate the amount of the authorization fee if the turnovers calculated on the basis of the final data are significantly different against the provisory data taken into account for setting the fee provided for under the art.3 of the present Decision.

**Art.6.** The Competition Council’s Decision can be challenged, according to the provisions of the Art. 47 (4) of the Competition Law no. 21/1996, republished, within 30 days of its acknowledgement, at the Appeal Court of Bucharest, to the administrative section.

**Art.7.** The present decision enters into force at the date of its remittance towards the involved parties.

**Art.8** The Service Directorate and the General Secretariat of the Competition Council shall supervise the enforcement of the present Decision.

**Art.9** The present Decision will be communicated by the General Secretariat of the Competition Council to Raiffeisen Landesbank Oberösterreich AG, by their legal representatives: [...]:

President,

Gheorghe Oprescu

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<sup>4</sup> For the activity of Impuls Leasing Romania IFN SA