Organisation for Economic Co-operation and Development

DAF/COMP/GF/WD(2026)57

Unclassified English - Or. English

5 November 2026

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Global Forum on Competition

New Developments in Merger Remedies – Contribution from Romania

- Session II -

10 December 2026

This contribution is submitted by Romania under Session II of the Global Forum on Competition to be held to be held on 10-11 December 2026.

More documentation related to this discussion can be found at: oe.cd/gfc26.

Mr Antonio Capobianco [Antonio.Capobianco@oecd.org]

JT03597436

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Romania

1. The role of remedies in merger control

1. Merger control is an ex ante regulatory instrument through which the Romanian Competition Council (RCC) assesses whether proposed concentrations are likely to significantly impede effective competition in the Romanian market or a substantial part of it, in particular as a result of the creation or strengthening of a dominant position. Where competition concerns are identified, the parties may propose commitments designed to address those concerns. The RCC assesses whether the proposed remedies are sufficiently comprehensive, effective and viable to address the identified concerns and whether compliance can be adequately monitored and enforced.

2. Structural commitments, particularly the divestiture of a viable standalone business, are often well suited to addressing competition concerns arising from horizontal mergers and may also be appropriate in certain non-horizontal cases. The RCC must be able to conclude, with a sufficient degree of certainty, that the divestiture can be implemented and that the resulting business will be viable, competitive and sustainable in the long term, so that the identified impediment to effective competition is unlikely to materialise. Behavioural commitments, which regulate the future conduct of the merged entity, generally require ongoing monitoring and enforcement and may be appropriate in specific circumstances. The suitability of any remedy must be assessed on a case-by-case basis, taking into account the nature of the competition concerns identified and the ability of the proposed measures to address them effectively.

3. The RCC may engage in discussions on commitments at different stages of the procedure, subject to the applicable procedural requirements. However, commitments proposed during Phase I must be sufficiently clear and comprehensive to remove the concerns identified by the authority.

4. A market test is conducted before the acceptance of commitments in order to collect observations from third parties, customers, competitors and sectoral regulators. This process ensures transparency, facilitates the identification of practical obstacles and helps assess the effectiveness and practical feasibility of the proposed commitments.

2. Challenges in assessing early-stage remedy proposals

5. An early-stage remedy proposal allows the authority to engage with the parties at an early stage, identify potential solutions and address competition concerns more efficiently. In this respect, the RCC generally encourages pre-notification discussions.

6. However, an early proposal may be based on an incomplete understanding of the competition concerns and may lack sufficient detail to allow a proper assessment of its effectiveness and feasibility. By contrast, a more developed proposal submitted at a later stage may be better tailored to the authority's concerns and provide greater certainty regarding implementation. Nevertheless, it leaves less time for market testing, consultation with third parties and further adjustments, potentially putting pressure on the review timetable.

7. The key question is not simply when the remedy is proposed, but whether sufficient evidence and time are available to establish that it is effective, proportionate, implementable and capable of addressing all the identified competition concerns.

3. The RCC's recent experience with quasi-structural remedies

3.1. Case study 1: Mega Image – Profi

8. The acquisition of approximately 1,700 Profi stores by Mega Image (Delhaize) provides an example of a major food retail merger reviewed by the RCC, involving more than 200 affected local markets. The transaction was examined in detail in light of its potential impact on competition in the retail market for daily consumer goods through supermarkets and convenience stores.

9. Food supply chains are a priority for competition policy and enforcement in Romania, given their importance for consumer welfare, economic stability and the wider societal significance of agriculture. Daily consumer goods account for a substantial share of household expenditure in Romania. According to the figures cited for 2025, they represented at least 30% of the average household budget.

3.1.1. Downstream market

10. The RCC assessed the competitive constraints that would remain in each local market following the transaction. The local markets were defined by reference to the actual catchment areas from which the supermarkets and convenience stores attracted their regular customers, with the relevant area assessed individually for each store. This approach allowed the authority to identify potential anticompetitive effects at the local level. The market power resulting from the transaction could potentially lead to higher prices, lower quality, a reduced product range or a deterioration in the level of service in the affected areas.

11. The analysis indicated that Mega Image would achieve significantly higher market shares in certain local markets following the acquisition. At national level, the transaction also expanded Mega Image's retail presence.

12. The assessment covered numerous local catchment areas defined by isochrones around the parties' supermarkets and convenience stores. Unlike hypermarkets, supermarkets and convenience stores generally serve consumers located within relatively short travelling distances. Store density was therefore considered an important indicator of competitive conditions, particularly given the limited availability of suitable commercial premises and the potential implications for entry and expansion by competing retailers.

13. The analysis of store density also indicated high combined market shares for Mega Image and Profi in several affected local markets.

3.1.2. Upstream market

14. In addition to the standard assessment of the procurement market, the RCC examined data concerning the suppliers of the two parties. Together, Mega Image and Profi had more than 2,000 suppliers, of whom approximately 500 were considered relevant to the assessment.

15. The analysis found that many suppliers were small-scale producers, some of which also manufactured private-label products for the parties. For certain suppliers, sales to Mega Image and Profi represented a significant proportion of their turnover.

16. Given the parties' strong position in the downstream market, concerns arose regarding the potential impact on suppliers, particularly those whose commercial dependence on the two retail networks was substantial. Such suppliers could face increased

commercial pressure following the transaction, especially where sales to the parties accounted for more than 20% of their turnover.

3.1.3. Commitments

17. The RCC accepted a combination of structural and behavioural commitments proposed by the parties.

18. The structural commitments in the downstream market provided for the divestiture of 87 stores located in areas where the transaction would result in high market shares, measured both by sales value and by the number of stores. These commitments were complemented by a commitment intended to prevent the foreclosure of commercially relevant premises in the affected markets.

19. Under this commitment, where Mega Image ceased operating in specified areas, for any reason, interested third parties would be granted unrestricted access to the relevant commercial premises for lease or purchase. The process would be facilitated by a third party responsible for making the premises available to interested parties, irrespective of the nature of their commercial activity, and ensuring that the opportunity was advertised in advance. This measure was intended to preserve opportunities for entry or expansion by other operators and to complement the divestiture commitments.

20. The behavioural commitments in the upstream market sought to protect suppliers that were highly dependent on Mega Image and Profi following the transaction, for a limited period. They also established general rules governing listing and delisting that applied to all suppliers, whether dependent or non-dependent.

21. The commitments included the following measures:

- Suppliers meeting the applicable dependency criteria were to benefit from protection against delisting, subject to reasonable exceptions set out in an internal procedure.
- Mega Image was required to allow dependent suppliers to retain the more favourable commercial terms applicable to them.
- Mega Image was required to provide dependent suppliers with estimates of the quantities or volumes purchased during the course of their commercial relationship.

22. These commitments were intended to give dependent suppliers time and greater commercial certainty to explore alternative sales channels and, where feasible, reduce their reliance on the merged entity. Whether these objectives are achieved depends, among other factors, on the availability of alternative buyers and the suppliers' ability to diversify their customer base.

23. The design and identification of commitments capable of effectively addressing the competition concerns in this case required extensive discussions with the parties, detailed analysis of a substantial volume of data and careful consideration of observations received from market participants. This process was essential to ensure that the remedies were tailored to the specific characteristics of the affected markets and could be implemented, monitored and enforced in practice.

3.2. Case study 2: Schwarz Group – La Cocoș

24. Another relevant example is the acquisition of La Cocoș Supermarket by the Schwarz Group, which operates Kaufland and Lidl. La Cocoș was a low-price retail chain comprising seven hypermarkets at the time described in the case, characterised by rapid

expansion and a distinctive commercial strategy based on low margins, competitive prices, volume-based pricing and an efficient operating model.

25. The transaction was reviewed following an in-depth Phase II investigation by the RCC. The investigation identified significantly higher market shares following the transaction, limited prospects for new entry to constrain the post-merger outcome and an increase in market concentration across the geographical markets examined.

26. The acquisition also raised concerns regarding the loss of an important independent competitor and the potential for adverse effects on competition in local markets and on prices.

27. A central concern was that, following the acquisition, La Cocoș's business model could be altered or aligned with the commercial strategy of the Schwarz Group, potentially resulting in higher prices and reduced competitive pressure on other retailers.

28. The Schwarz Group committed to maintaining the existing pricing strategy of La Cocoș stores, subject to a cap on gross margins, for a period of four years following completion of the transaction. The gross margin cap was intended to constrain the extent to which the pricing strategy could be altered following the acquisition and to support the continuation of La Cocoș's low-price business model, in both existing and future stores.

29. The parties also committed not to close La Cocoș stores or restrict the chain's operations for a period of five years. These commitments were intended to ensure the continuity of the business under the same brand and in its existing format, while also providing for the expansion of the chain nationwide.

30. These behavioural commitments were complemented by measures designed to preserve La Cocoș's commercial and operational independence from Kaufland România and Lidl România for a period of five years. The measures included:

- No involvement of Kaufland or Lidl management in La Cocoș's commercial operations.
- Separate management and governance structures, without overlapping management roles.
- Restrictions on access to La Cocoș's financial reporting and accounting systems.
- Safeguards intended to preserve La Cocoș's commercial independence and limit the risk of adverse effects on competition arising from the acquisition.

31. Although these measures do not constitute structural remedies in the strict sense, they were designed to preserve key features of La Cocoș's business model and limit the risk that its competitive strategy would be altered following the acquisition.

32. In this case, the authority considered that a divestiture of assets would not, in itself, necessarily have ensured the preservation of the existing business model or the commercial strategy that made La Cocoș a distinctive competitive constraint.

4. Monitoring of behavioural commitments

33. Both cases involved complex monitoring arrangements for behavioural commitments, with monitoring trustees proposed by the parties to facilitate oversight of compliance.

34. Although monitoring trustees have been appointed, the competition authority remained involved throughout the process. From the outset, the development of appropriate

commitments requires repeated discussions with the parties concerned to clarify the obligations to be undertaken and establish the practical arrangements for their implementation. The appointment of a monitoring trustee therefore does not remove the need for the authority to be involved in defining and assessing the proposed commitments.

35. Once the commitments have been accepted, the authority must continue to monitor their implementation and ensure that the obligations undertaken are complied with. This involves overseeing the monitoring trustee's activities, reviewing the reports submitted, verifying the information provided and, where necessary, requesting further clarification. These tasks require the authority's continued involvement and the allocation of human and administrative resources, both during the development of the commitments and throughout their monitoring.

36. Reviewing documents, attending meetings, assessing reports and verifying compliance with the obligations undertaken all entail costs for the authority, in addition to any costs associated with the monitoring trustee. These costs should be taken into account when assessing the proportionality and effectiveness of behavioural commitments, having regard to the resources required to ensure compliance and the competition objectives pursued. The appointment of a monitoring trustee can facilitate the monitoring process, but it does not eliminate the authority's own responsibilities or the associated administrative burden.