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Co-operative Antitrust in Remedy Design – Note by Romania

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1. Clarifying the terminology in Romanian competition law: commitments and remedies

1. From the outset, it is important to note that Romanian competition legislation primarily uses the term *commitments* when referring to voluntary measures proposed by undertakings in order to address the concerns identified by the Romanian Competition Council (RCC) during an investigation. Both the Competition Law (Law no. 21/1996) and the Guidelines *regarding the conditions, time-limits and procedure for acceptance and evaluation of commitments in the case of anticompetitive practices* explicitly regulate the procedure for the acceptance of commitments by the RCC.

2. A more recent amendment to the Competition Law introduced the terminology of “*măsuri sau remedii*” (measures or remedies); however, this provision refers to investigations concerning anticompetitive conduct by public authorities or public entities. Specifically, under Art. 46 (1) lit. c¹, the RCC may *accept measures or remedies necessary for restoring normal competitive conditions*, where such measures are proposed by public authorities or by entities to which they have delegated competencies.

3. In parallel, the legislation also provides the RCC with the power to impose corrective measures (“*măsuri corective*”) directly on undertakings. According to the law, the RCC:

4. “*may impose any behavioural or structural corrective measures that are proportionate to the infringement and necessary to ensure its effective cessation, following the undertaking’s right to be heard. Where the Council may choose between two equally effective measures, it shall opt for the less burdensome one, in accordance with the principle of proportionality.*”

5. Although Romanian competition law does not employ an explicit dual terminology differentiating between *commitments* and *remedies* in the same way as EU and OECD policy discussions often do, the functional scope of the instruments regulated under national law is substantively aligned with the European framework. In particular, the provision under which the Romanian Competition Council may impose “behavioural or structural corrective measures” that are proportionate to the infringement and necessary to ensure its effective cessation equals Article 7 of Regulation (EC) No 1/2003. The latter authorises the European Commission, following a finding of infringement, to impose behavioural or structural remedies, with structural remedies being permissible only where no equally effective behavioural remedy exists, or where the behavioural alternative would be more burdensome for the undertaking.

6. Therefore, in practical terms, commitments remain the voluntary mechanism proposed by undertakings, while corrective measures (remedies) constitute enforceable instruments ensuring the restoration of normal competitive conditions, irrespective of whether the case concerns private undertakings or public authorities.

2. Legislative framework

7. The main legislative framework governing remedies in Romania derives from the Competition Law no. 21/1996, complemented by the Merger Regulation (Regulation on the authorization of economic concentrations), the Guidelines on remedies applicable to

mergers and Guidelines regarding the conditions, time-limits and procedure for acceptance and evaluation of commitments in the case of anticompetitive practices.

8. This last instrument establishes a structured framework for handling commitments proposed by undertakings involved in investigations concerning potential infringements of Articles 5 and 6 of the Competition Law no. 21/1996 — that is restrictive agreements and abuses of dominance. These Guidelines transpose and adapt EU principles derived from Article 9 of Regulation (EC) No 1/2003, ensuring consistency with European best practice.

9. The key objective is to restore competitive market conditions swiftly and effectively, avoiding the need for a formal infringement decision where the commitments offered adequately remove the identified competition concerns.

10. Commitments may be proposed in both horizontal and vertical cooperation cases and abuse of dominance investigations, provided that the practices do not amount to hard-core cartels or per se restrictions. The mechanism is discretionary — the RCC may decide whether a commitment procedure is appropriate, depending on the nature and gravity of the conduct.

11. Commitments are voluntary and do not constitute an admission of guilt. Instead, they are a cooperative instrument allowing the authority and undertakings to reach a solution that ensures effective competition restoration.

12. The Guidelines embed a cooperative enforcement philosophy, promoting early engagement and dialogue between:

- the investigated undertakings,
- the RCC’s case team and decision-making body, and
- relevant third parties and regulators where appropriate.

13. Undertakings can request discussions on commitments once they have been informed about the competition concerns. The RCC may accept or decline to open commitment discussions within three months. Typically, commitment proposals must be submitted within six months after the opening of the investigation.

14. A market test is systematically conducted before the acceptance of commitments. The non-confidential version of the proposal is made public to collect observations from third parties, customers, competitors, and sectoral regulators (e.g. ANRE, ANCOM). This process ensures transparency, facilitates identification of practical obstacles, and supports a co-creation process of remedies through multi-stakeholder feedback.

15. The Guidelines distinguish between two main categories of commitments:

- **Behavioural commitments:** obligations to change conduct, such as granting access to infrastructure or data, ceasing exclusivity or discrimination clauses, amending contractual terms, or ensuring non-discriminatory treatment.
- **Structural commitments:** measures that alter the structure of the market, e.g. divestitures, transfer of assets, or functional separation of business units, applied only when behavioural commitments would be insufficient.

16. Once accepted, the commitments are formally made binding by an RCC decision. This decision may include monitoring provisions and the designation of a trustee to oversee implementation.

17. Commitments are binding for the period specified in the RCC’s decision. The RCC may reopen proceedings if:

- the undertaking fails to comply;
- the facts on which the decision was based change significantly; or
- the decision was based on incomplete or misleading information.

18. This ensures that commitments remain proportionate, effective, and adaptive to evolving market realities.

19. Recent legislative developments have expanded the RCC's remedial toolkit by explicitly allowing the imposition of measures following sector inquiries where market dysfunctions are identified. Under this provision, the RCC may take a range of actions, from issuing recommendations to the business community, public authorities, or consumers, to proposing regulatory changes, or imposing, by decision, appropriate, proportionate, and targeted measures to restore effective competition. Although this tool has not yet been applied in practice, it represents a significant complement to the authority's toolkit to address systemic market issues. It provides a framework for future interventions that go beyond case-specific enforcement and allow for a more structural and proactive approach to promoting competitive markets.

3. Cooperation with the parties and third parties

3.1. Institutional cooperation mechanisms

20. Cooperation between RCC and some sectoral regulators (telecommunications, energy, public procurement,) is formalised through memoranda of understanding (MoUs) and bilateral protocols. These instruments establish the framework for coordinated action in contexts where sector-specific regulation intersects with competition enforcement. The purpose of such cooperation is not only to avoid conflicting decisions or regulatory overlap, but also to ensure that remedies or commitments reflect sectoral realities, market dynamics and operational constraints.

21. In this context, MoUs typically provide for:

- **The establishment of coordinated mechanisms for monitoring the behaviour of market participants**, with the aim of protecting market functioning and safeguarding the broader public interest;
- **The reciprocal exchange of information** during investigations and monitoring activities, in accordance with the legal competences and confidentiality obligations of each institution; and
- The organisation of joint working groups, consultations, or market assessments where competition and regulatory perspectives must be integrated.

22. In practice, these memoranda primarily serve as working-level tools that facilitate communication between institutions. They have helped establish closer institutional contacts and stable channels for exchange, which makes it easier to request and obtain information when coordination is needed. While they do not automatically lead to joint intervention or a unified position, they provide a basic procedural framework that allows for timely discussions and the sharing of relevant data. In this sense, their role is pragmatic: they create a functional basis for cooperation in cases where the design of commitments or corrective measures requires input from sectoral authorities.

3.2. Forms and Stages of Cooperation in Remedy Design

23. Cooperation in remedy design may occur at different stages of a case – from initial market assessment to implementation and monitoring.

3.2.1. Pre-remedy stage: Market understanding and stakeholder engagement

24. Before formulating a remedy, the RCC routinely engages with relevant stakeholders to better understand the competitive dynamics of the market. This includes:

- Consulting sectoral regulators (e.g., ANRE, ANCOM) to ensure that competition remedies are compatible with sector-specific legislation.
- Seeking input from market participants (competitors, customers, suppliers) during market testing of proposed commitments.
- Sharing non-confidential summaries with other public bodies when overlap in jurisdiction exists.

25. Such early cooperation allows the RCC to identify technically feasible and enforceable solutions.

3.2.2. Remedy design stage: Negotiation and market testing

26. In complex cases, the RCC interacts intensively with notifying parties and sector regulators to refine remedy proposals. Cooperation helps verify that proposed commitments are:

- Technically viable and compliant with sectoral rules;
- Sufficiently clear and monitorable;
- Capable of addressing competition concerns without undermining regulatory obligations.

3.2.3. Implementation and monitoring stage

27. Once remedies are accepted, cooperation continues during implementation and monitoring:

- The RCC may consult sectoral regulators when appointing monitoring trustees or reviewing compliance reports.
- Reports and compliance data may be shared (subject to confidentiality limits) to ensure consistency across institutions.

3.3. Illustrative case examples

3.3.1. Case Example 1: Cooperation with the Sector Regulator in the EDM Commitments Case (Decision 1/2019)

28. A relevant example of cooperation in remedy design is the EDM (E-Distribuție Muntenia) case concerning a potential abuse of dominance in the electricity distribution sector. The RCC investigated whether the distribution system operator had used its dominant position to restrict competition in related services, such as the design and execution of electrical connection works, and whether certain practices could have affected users' ability to freely choose service providers and may have resulted in delays or increased costs in the connection process.

29. To address the competition concerns identified, EDM proposed a package of commitments aimed at improving transparency, efficiency and non-discrimination in the connection process. These included, among others:

- Improving customer transparency and access to information, through redesigned communication channels, simplified informational materials, a dedicated customer support line, and the development of an online platform enabling users to submit requests and track the status of their connection file;
- Ensuring objective and non-discriminatory treatment of connection requests, including the introduction of a digital workflow management system (“traffic light functionality”) to prioritise requests based on objective timelines rather than discretionary criteria;
- Periodic training programmes for staff involved in the connection process, with emphasis on compliance, non-discrimination and user rights.

30. Throughout the consultation and market-testing process, the sectoral regulator (ANRE) played a critical role in refining the commitments. ANRE’s feedback addressed practical aspects of implementation, including ensuring multiple channels for submission of documentation, clarifying the scope and content of informational materials, and confirming that commitments would not conflict with or modify existing regulatory frameworks. Importantly, EDM’s commitments were adjusted to incorporate ANRE’s observations without introducing additional obligations on the regulator itself. The consultation process also allowed EDM to provide clarifications on training programs, internal procedures, and the responsibilities of staff involved in customer interactions, ensuring that all commitments were actionable and enforceable while remaining fully compliant with existing law.

31. According to the compliance monitoring carried out by an independent trustee and published in 2023, the average duration of obtaining the technical connection approvals issued by the company decreased by 20% in 2022 than in the pre-commitment period and the number of connection requests increased by 61% in 2022 compared to 2019 and by about 63% compared to the previous period of commitments implementation. The number of connection contracts signed in 2022 was much higher than in 2018, the pre-commitment period (+57%) and also the number of connection certificates issued increased significantly (+158%) compared to the start period of implementation or pre-commitments period. This statistic illustrates success achieved in the design of commitments.

3.3.2. Case Example 2: Hidroelectrica II Investigation (Decision 23/2021)

32. The investigation concerned a potential abuse of dominant position by Hidroelectrica, the largest electricity producer in Romania, on the markets for the production and sale of electricity. RCC examined whether the company had adopted a commercial strategy that could restrict competition and distort price formation on several wholesale electricity markets.

33. The key competition concerns identified were:

- Strategic offer behavior on the Day-Ahead Market (DAM): Hidroelectrica appeared to structure its price-quantity offer pairs on the DAM in such a way as to leave part of demand unserved, potentially shifting additional demand onto the Balancing Market (BM).
- Pricing strategy to influence conversions into transactions: The company’s bidding strategy appeared to result in a low conversion rate of offers

into concluded trades on the DAM, which could also induce additional demand being redirected to the BM.

- Organizational structure facilitating strategic coordination: A single internal unit was responsible for offering both on the DAM and the BM, which could facilitate coordinated bidding strategies aimed at influencing outcomes on the BM.

34. To address the concerns identified by the RCC, Hidroelectrica requested to enter into commitments discussions and proposed a package of measures aimed at modifying its behaviour on the market and improving internal decision-making structures. The commitments focused on:

- Minimum quantities offered on the DAM - ensuring the placement of sufficient volumes of electricity for sale on the Day-Ahead Market (DAM), in order to reduce the risk of artificial scarcity;
- Price limitation formula on the DAM introducing limitations intended to prevent excessive price increases on the DAM and the balancing market;
- Limitation of price on the Balancing Market, and
- Separation of trading functions - reorganizing internal trading responsibilities, so that the activities relating to DAM trading and balancing market operations were clearly separated and no longer concentrated under a single decision-making unit.

35. During the assessment of the commitments, the RCC consulted with the ANRE to ensure that the proposed measures would be both effective in addressing the competition concerns and consistent with sector-specific regulations. Following this consultation, the initial commitments were refined along three main lines:

- the obligation regarding minimum offering levels on the day-ahead market was reformulated to ensure a sufficient annual volume of energy offered, taking into account the company's increasing activity on the retail supply segment;
- the mechanism for setting upper limits on offer prices was clarified and substantiated, in order to prevent potential unjustified price variations; and
- the commitment concerning the pricing approach on the balancing market was removed, as the regulatory framework had already shifted to a single imbalance price mechanism.

36. With these adjustments, the final package of commitments was considered suitable to eliminate the RCC's competition concerns, while providing a clear and predictable framework for the company's future commercial conduct.

3.3.3. Case example 3: DEER and DEO

37. The investigations examined whether regional electricity distribution operators might have used their dominant positions in the distribution market to influence the supplier switching process in ways that could favour affiliated supply companies over competitors. Such conduct, if confirmed, could restrict competition on the electricity supply market and reduce consumer choice.

38. The investigations were initiated ex officio, based on indications of potential discriminatory practices in the supplier switching process. At the time, DEO was part of the CEZ Group, and DEER was part of the Electrica Group.

39. The RCC considered the companies' proposed commitments acceptable prima facie and published them for market testing, while also consulting ANRE for regulatory input. The commitments focused on ensuring transparent, consistent, and non-discriminatory treatment of supplier switching requests and included:

- Revision of internal procedures to guarantee uniform handling of supplier switching requests.
- Development and dissemination of guides for electricity suppliers and consumers to clarify the process and relevant rights.
- Training programs for employees involved in managing supplier switching requests.

40. ANRE's feedback highlighted the need for alignment with existing regulatory frameworks, noting that certain procedural elements and guidance materials should strictly reflect the existing regulation and avoid creating parallel or alternative processes. As a result, the distribution operators revised their commitments to ensure full compliance with regulatory requirements while maintaining the objective of enhancing transparency and fairness in the supplier switching process.

3.3.4. Case example 4: The four-to-three sale of Telekom Romania's assets to Vodafone and Digi

41. More recently, in July 2025, the RCC has conditionally approved the transactions through which Vodafone Romania S.A. intends to take over Telekom Romania Mobile Communications S.A., and Digi Romania S.A. is set to acquire certain assets of the same company. The assets of Telekom Romania Mobile Communications S.A. that Digi Romania S.A. intends to acquire include radio frequency usage rights, part of the towers, infrastructure, and related equipment, as well as the entire prepaid mobile telephony service business. As a result, Vodafone Romania S.A. and Digi Romania S.A. must fulfil a series of commitments aimed at addressing the competition concerns identified, which include, among others, pricing conditions and the impact on the quality of certain services provided to customers.

42. RCC closely examined the preservation of the advantages customers currently enjoy, namely affordable services with coverage and speed superior to other European countries, given the reduction in the number of operators from four to three.

43. With the support of the National Authority for Management and Regulation in Communications (ANCOM), RCC succeeded in establishing commitments that ensure the maintenance of quality and competitive pricing in the market. Thus, Vodafone Romania S.A. and Digi Romania S.A. will continue to invest in network development, with a focus on improving signal strength along main public roads. Furthermore, the two companies will enhance the quality of mobile data services for customers and will optimize standards in areas with weaker services, where network coverage or average mobile data transfer speeds are deficient. Thus, the approximately two million Telekom subscription customers will not be affected.

44. This is actually the first major-impact merger in Romania's mobile communications sector. Following this decision, ANCOM is prepared to manage the acquisition from the perspective of radio spectrum administration, numbering resources, and monitoring compliance with the commitments made by Vodafone Romania and Digi Romania. ANCOM will ensure that the transfer of limited resources occurs transparently, in compliance with the applicable technical and legal framework, and without affecting service continuity for end-users.

45. Additionally, the two companies will provide access to their mobile communication networks for mobile virtual network operators (MVNOs) at competitive market prices and will maintain Orange's access to colocation services at mobile telecommunications sites. Moreover, Digi will maintain Telekom's prepaid customer contracts under the same conditions and prices and will continue to offer prepaid mobile telephony services to all interested consumers.

46. The commitments made will be monitored for a period of up to four years by independent trustees, who will regularly report to the RCC on their implementation. In addition, the competition authority will collaborate with ANCOM in monitoring these commitments, especially those related to network investments. To ensure that Vodafone Romania S.A. and Digi Romania S.A. fulfil their commitments, the RCC's decision includes conditions and obligations that, if met, can eliminate the competition concerns identified in the relevant market.

4. Conclusions

47. Recent energy sector cases such as EDM, Hidroelectrica, and DEER/DEO or the four-to-three sale of Telekom Romania's assets to Vodafone and Digi Romania case illustrate that the RCC has increasingly relied on practical commitments and behavioural remedies that are aligned with actual market dynamics. This shift allows the authority to address competitive concerns effectively while minimizing unnecessary burdens on companies.

48. Collaboration with sector regulators like ANRE and ANCOM has been instrumental, ensuring that proposed measures are not only effective in restoring competition but also fully aligned with applicable regulatory frameworks. By combining regulatory insight, market expertise, and a focus on transparency and operational improvements, the RCC has been able to enhance consumer protection, promote fair market conditions, and build trust among stakeholders.