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# Commitment decisions and deterrence of antitrust infringements



**Recent developments - Romania**



Cosmin Belacurencu  
Member of the Board  
Romanian Competition Council

# Main points of the presentation

- Policy considerations
- Advantages of commitments
- Shortcomings and possible solutions
- Statistics
- Examples from RCC recent cases
- Conclusions



# Commitments- policy considerations

- Instrument available since 2010, first case in 2011
- Main purpose – rapid removal of competition distortion
- Exception to the rule – low priority cases, limited evidence for sanctions, resource savings
- Sectors: telecom, electricity, gas, liberal professions, media, airports, financial services, food retail

# Commitments- policy considerations

## Objectives in accepting commitments:

- ensuring compliance with competition rules,
- preventing the possibility of the recurrence of anti-competitive practices,
- improving the competitive environment and
- achieving procedural savings by reducing the duration and costs of an investigation

## RCC will generally NOT accept commitments when:

- There is strong evidence of serious anticompetitive behavior
- Sanctions provide a better level of deterrence
- In cases of cartel agreements, procedural infringements, past infringements

# Advantages of commitments

## For RCC

- Fast restoration of competitive environment
- Efficient use of resources (also for courts)
- Low standard of proof
- Better design of corrective measure

## For the undertakings

- Avoid fines
- Can propose remedies
- Shorter procedure and lower legal costs
- Limit bad publicity
- Lower exposure to damage claims

# Shortcomings of commitments – policy dilemma?

- Commitments are voluntary and are unlikely to be subject to judicial review
- Therefore, such cases provide little legal guidance on difficult or novelty issues

*Potential solution – transparency on RCC concerns, guidance regarding theory of harm in novelty issues, caution in using the instrument*

- No sanction, no admission of wrongdoing, no threat of damages – low level of deterrence
- Treat the symptoms, not cure the illness?

*Potential solution – design of remedies to reduce the risk of future violations*

# Shortcomings of commitments – policy dilemma?

- Extensive use could lead to shift from ex-post to ex-ante approach, transforming NCA into sector regulator

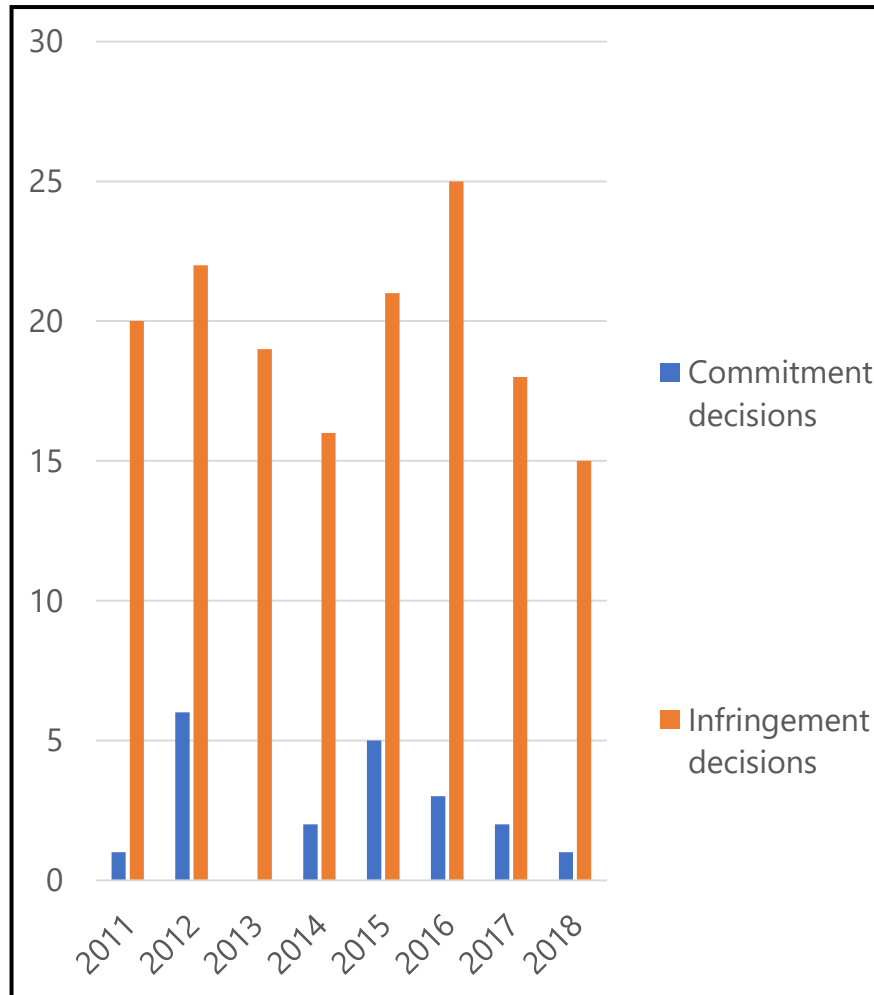
*Potential solution – limit the use, use commitments as exception, not as a rule*

- Tendency for behavioral vs structural commitments
- Resource consuming either for NCA or for parties due to need of monitoring and reporting
- Question of credibility of these reports because of their self-reporting nature

*Potential solution – design of remedies to reduce the risk of future violations*



# Statistics of commitment decisions



Commitment decisions vs  
infringement decisions on art  
5 and 6 CL (101 and 102  
TFEU)

In 8 yrs – approx. 10%



# Telecom case – abuse of dominance

- Orange, Vodafone, Telekom and RCS & RDS - possible discrimination of the termination rates compared to the level of the self-provided termination services rates.
- Behavioral commitments
- Main objectives:
  - Removing the possible anti-competitive effects on the mobile electronic communications market;
  - Improving their services and conduct.

# Commitments in telecom

## Effects:

- Larger volume of the services;
- The increase of the number of national minutes included in offers;
- A decrease of the users of prepaid card services along with an increase of subscription based users (post-paid);
- A development of the competition on the mobile telephony services by increasing the number of users switching between operators;
- An increase of the share of the total voice traffic and of the off-net call time.

# Prepay case – vertical agreement

- Vertical agreements of Orange, Vodafone and Cosmote, and their respective distributors (approx. 150 companies)
- Contractual obligations that influenced directly or indirectly the final price, therefore restricting the possibility of distributors to set prices for Prepay products - RPM effect
- Territorial restrictions that posed the risk of market sharing

Commitments- to exclude from contracts:

- provisions regarding final prices (recommended price, maximum price, exchange rates, distributors' margins etc) - allows the distributors to freely set final prices
- Territorial restrictions – allows the distributors to freely set up activities

# Prepay case

After 2 years of monitoring:

- undertakings have implemented their commitments as shown before;
- Incriminated clauses were removed
- Distributor selection procedures were made public by the mobile operators
- Greater awareness of distributors regarding the right to freely establish business models and prices

2 distributors (Avenir Telecom and Euronet Services) failed to comply with the commitments that have been assumed and were sanctioned by RCC (2015).

# Impact of commitments

RCC impact study with Bucharest Academy of Economic Studies

Well –established methodologies (OECD, EC)

Indicator	
Total turnover for the largest 3 operators (Vodafone, Orange, Telekom)	Approx. 2.5 billion euros
Prepaid market % of total market	40%
Total affected turnover	Approx. 1 billion euros
Annual price effect	10%
Estimated duration of post-intervention effect	5 years
<b>Estimated total impact</b>	<b>Approx. 500 million euros</b>

# Conclusions

- RCC has successfully used the commitment tool
- However, it was used cautiously and on a case-by-case basis (10% of cases)
- Insofar monitoring reports have showed the commitments have generated the expected results
- Very limited cases where commitments have not been observed

**Thank you!**  
**Hvala!**  
**Хвала!**

