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Co-operative Antitrust in Remedy Design – Note by Hungary

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1. Accepting commitments and imposing remedies have become effective and essential tools and integral parts in the practice of the Hungarian Competition Authority (hereinafter referred to as GVH). These tools are being applied in a wide array of competition supervision proceedings, including merger, consumer protection and antitrust cases. Remedies and commitments can pave the way in a direction of cooperation between the authority and the undertaking or undertakings concerned and can result in structural or behavioural changes, compensations that may very well be unachievable or hardly achievable without working together.

1. Commitments and other remedies in antitrust cases

2. Commitment decisions are made possible by and are based on Article 75 of the Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter referred to as Hungarian Competition Act). As Article 75 of the Hungarian Competition Act states:

3. *“Where, regarding a conduct investigated in a competition supervision proceeding initiated pursuant to Article 67(2), the party offers commitments to bring its conduct in a specified way in line with the applicable legal provisions and if the efficient protection of the public interest can be ensured in this manner, the competition council proceeding in the case may, in its decision, oblige the party to abide by such commitments without establishing the existence or the absence of an infringement in such decision. If the party has in the meantime ceased the conduct investigated, a commitment may be undertaken to comply with transparent and verifiable rules of conduct which assure that such conduct is not repeated.”*

4. It is of paramount importance that in cases concluded by a commitment decision neither the existence nor the absence of an infringement is established in the decision. Consequentially, commitment decisions are only adopted in the case of conducts that are not inherently harmful to competition or consumers, or where such nature could not be clearly established based on the facts known and the evidence gathered. For the undertaking subject to the procedure commitments may be beneficial, because by offering voluntary solutions, it can take part actively in resolving the competition concern, while avoiding the possible finding of an infringement along with the legal consequence and damage to reputation. The competition council deciding on the case has a wide range of discretion in determining whether to adopt a commitment decision or not. However, the GVH provides guidance on what essential elements should be included in the statement of commitments proposed by the parties and what other criteria should be met.¹

5. The commitments offered must adhere to the criteria of being relevant, credible, timely, consistent, verifiable and may contain restricted access data only in exceptional cases. The commitment may be considered to be relevant if it actually offers a solution to the competition concerns identified by the GVH. The credibility of the commitment

¹ See: Notice No 1/2018 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority on the commitments pursuant to Article 75 of the Hungarian Competition Act (consolidated version with amendments made by Notice No 1/2021).

statement supposes, on the one hand, the reliability of the undertaking offering it, and on the other hand, the feasibility of the commitment shall be investigated. The undertaking subject to the proceeding must demonstrate the timeframe within which it can implement its commitments, as an immediate measure can lead to the prompt dismissal of the competition concerns. The commitment must be worded with such precision and clarity that no dispute over interpretation may arise during the monitoring of its fulfilment. The GVH does not consider commitments acceptable in such cases where compliance with the commitment is difficult to verify. The GVH carries out follow-up investigations in competition supervision proceedings closed with commitments.

6. Obligations are somewhat similar to commitments, as some are offered as remedies by the undertaking subject to the proceeding, mainly to mitigate the amount of the fine, but they can also be imposed by the Competition Council in order to bring the infringement to an end. Obligations can also be imposed in prohibition decisions and do not necessarily call for a follow-up investigation, unless the undertakings fail to submit the documents necessary for proof of compliance with the obligations, or the documents submitted lack the clarity needed to establish whether the undertaking complied with the obligations imposed or not.

2. Cooperation in merger control

7. Remedies play a crucial role in merger control as well. They allow competition authorities to reconcile two sometimes conflicting objectives: safeguarding effective competition on the one hand, while permitting efficiency-enhancing transactions to proceed on the other. In Hungary, the framework for imposing remedies is established by the Hungarian Competition Act. Under Article 30 (3) of the Hungarian Competition Act, the GVH may authorise a concentration subject to conditions or obligations, provided these adequately address the competition concerns raised by the transaction. This mechanism offers an alternative to outright prohibition and reflects the legislator's intent to preserve the pro-competitive benefits of mergers where possible.

8. The GVH's practice is further elaborated in its non-binding communications issued jointly by the President of the Hungarian Competition Authority and the President of the Competition Council of the Hungarian Competition Authority. Most relevant is the 8/2017 Notice on the imposition of conditions and obligations in non-prohibitive decisions in merger control proceedings (hereinafter referred to as the Notice), which reflects the Authority's approach, laying down key principles such as proportionality, effectiveness, enforceability and transparency. These instruments clarify how remedies are negotiated, tested, and monitored, and they reveal the extent of cooperation between the GVH, parties, third parties, regulators and potentially other agencies.

9. Against this background, the Hungarian experience offers insights into cooperative antitrust in remedy design in merger control. The following sections address three clusters of questions: cooperation with parties and third parties; cooperation with sector regulators and other public bodies; and cooperation with other competition authorities.

2.1. Cooperation with the parties and third parties

10. The GVH's engagement with the notifying parties is particularly intensive, as only participants to the concentration may submit commitments under Article 30 (3) of the Hungarian Competition Act. This legal requirement shapes the institutional practice: commitments cannot be imposed unilaterally by the GVH but must originate from the undertakings themselves. The process typically begins with a so-called state of play

meeting, where the GVH communicates its preliminary concerns if the parties have not already proposed commitments. Subsequent discussions are usually held either in person or via video conference, ensuring direct dialogue about the feasibility, timing and scope of potential remedies. The Competition Council, when issuing its preliminary position, may also request clarifications, modifications, or additional commitments from the parties, thereby fine-tuning the proposal before clearance. The depth of engagement varies depending on the complexity of the case, but the underlying principle is that dialogue should go as far as necessary to ensure that the commitments can genuinely restore competitive conditions.

11. Third parties, such as competitors or customers, play a more limited role in the initial design of commitments. However, their involvement is often crucial in the earlier analytical stages of the case, particularly for understanding how the market functions and for formulating the suitable theory of harm the eventual remedy is intended to address. Data and insights received from third parties are essential for identifying the main competitive dynamics, substitutability patterns, and potential bottlenecks that might arise post-merger. This information allows the GVH to design a remedy that precisely targets the competition concern rather than applying an overly broad or ineffective measure.

12. Beyond individual undertakings, the GVH also maintains dialogue with industry associations and sectoral organisations, especially when it seeks to gain a broader understanding of how a given market operates. Such cooperation helps verify or contextualise market data, map typical contractual structures, and assess whether specific commitments would align with sectoral realities. These collective sources of information complement the bilateral engagement with parties and other stakeholders, providing a more complete picture of the market landscape.

13. The extent of third-party input depends on how directly they are affected: in some cases, their feedback merely confirms that a proposed solution is acceptable, while in others their concerns may trigger adjustments to the design. For example, market actors may highlight implementation risks or raise doubts about whether a remedy will ensure continued access to an essential facility. In such cases, the GVH may require modifications to address these risks. By contrast, third-party input is not expected to result in added value if the remedy solely concerns the parties' internal processes, for example, and in such cases market testing may be omitted completely.

14. The DDC/Readymix case serves as a notable example of effective market testing. This case, which was closed in 2017, was the first instance where the GVH appointed a monitoring trustee during the divestiture period. It also marked the first time the GVH conducted a market test. In addition to input from the parties and third parties – who raised concerns about the financial stability and professional background of the potential buyers – the GVH sent RFIs to the potential buyers of three out of the six ready-mixed concrete plants to be divested. These buyers were significantly affected by the proposed remedies and had a strong interest in the accuracy and suitability of the commitments. They provided valuable feedback on the viability and competitiveness of the divested assets, such as the physical state and quality of the plants and the workforce. This input was crucial because these market players would later be responsible for operating the plants and creating long-term competitive pressure on the merged entity. The feedback was shared with the parties and discussed with the monitoring trustee, leading to necessary modifications to the commitments to ensure they were suitable and approved by all relevant parties. For the remaining three plants, no market test was conducted because in these cases, the previous joint controller became the sole controller. As a result, the GVH assumed that the buyer would possess the necessary competence and expertise.

15. Nevertheless, the GVH does not usually expect third-party feedback to result in a complete redesign of remedies. As the Notice underlines, commitments must be proportionate and linked directly to the competition concerns identified, not to unrelated issues raised by outsiders. If third-party input revealed that the proposed remedy was fundamentally unsuitable, this would suggest a failure in the GVH's own analysis rather than a normal course of adjustment. More commonly, such input leads to refinements – such as tightening the scope of the assets to be divested or the scope of a behavioural obligation, clarifying a monitoring mechanism, or adjusting the duration of a commitment.

16. The weighting of parties' and third parties' views reflects this dynamic. Parties generally know best what is operationally and legally feasible for them, but they also have strong incentives to minimise burdens. Their self-interest requires the GVH to remain cautious. Third parties, by contrast, can provide independent perspectives on whether the commitments are likely to work in practice, although their insights are naturally limited when remedies concern certain behavioural aspects or internal processes (e.g. pricing, campaigning) inaccessible to outsiders. In practice, the GVH tends to rely more on the parties' expertise in designing the commitments, while using third-party feedback as a corrective tool, balancing out both sides.

17. The GVH also has other instruments to test remedies. In addition to consulting directly with stakeholders, the GVH may, under Article 75/A of the Hungarian Competition Act, publish proposed commitments – with restricted access data removed, if applicable – on its website for public comments. Furthermore, the Notice stresses that commitments must be specific, enforceable, and verifiable; vague promises to “comply with competition law” are not acceptable. This insistence on precision is itself a form of safeguard, ensuring that commitments can be tested and monitored effectively over time.

2.2. Cooperation with sector regulators and other public bodies

18. The GVH has also engaged with sector regulators, though in practice the cooperation tends to take a consultative rather than co-design form. For instance, in media and telecommunications cases the GVH has consulted the National Media and Infocommunications Authority (hereinafter referred to as NMHH). Typically, regulators are asked to review commitments already drafted rather than to propose their own designs. Their comments may help refine or confirm the viability of remedies, particularly in terms of technical feasibility or compliance risks. By contrast, in energy or financial markets the GVH has not yet engaged in structured cooperation with the Hungarian Energy and Public Utility Regulatory Authority or the Central Bank of Hungary in the context of remedies, although the option remains open should such cases arise.

19. The added value of sector regulators lies in their superior technical knowledge and access to different datasets. While the GVH conducts primarily competition-oriented economic analysis, regulators may offer insights into broader market dynamics, technical constraints, or consumer protection considerations. For example, regulators can provide assessments of whether a divested business is truly viable in the sector, or whether a behavioural obligation – such as ensuring non-discriminatory access to a network – is realistically enforceable given the market's technical parameters.

20. Feedback from regulators has, on occasion, altered the GVH's assessment of a remedy's feasibility. For instance, input regarding the practical functioning of a proposed technical interface or the risks of regulatory non-compliance may lead to modifications in design or duration. In this sense, sector regulators function as reality-checkers, ensuring that commitments are not only legally sound but also workable on the ground.

21. The DIGI/Invitel case was also cleared with remedies that included both structural measures (the divestiture of networks in 16 Hungarian settlements) and behavioural commitments. However, the GVH did not conduct an explicit market test during its investigation. Instead, the GVH communicated with the parties involved and with other third parties, including the NMHH, which is the regulatory and supervisory body for the media sector. The GVH discussed various aspects of the case with the NMHH, including its views on the remedy package, particularly regarding the viability of the assets to be divested and whether the potential buyer could operate them competitively (no questions were raised about the behavioural aspects, as the competition concerns were fully addressed by the commitments). The NMHH's expertise in the technical and economic feasibility of the divestiture was invaluable and played a key role in shaping a final package of commitments that was acceptable to all parties involved. As noted above, the NMHH's involvement was mainly for verification purposes. While it provided data to the GVH during the investigation, it did not influence the actual, competition-focussed design of the remedy.

22. As regards monitoring, however, there has been no shared oversight to date. The GVH remains solely responsible for supervising compliance, primarily through follow-up investigations under Article 77 of the Hungarian Competition Act, or through the appointment of trustees as provided in the Notice. Sector regulators' monitoring frameworks are respected but not integrated into GVH procedures. The difference in institutional mandates and evaluation criteria makes joint monitoring unlikely, although complementary information flows may support enforcement indirectly.

2.3. Cooperation with other competition agencies

23. So far, the GVH has not adopted remedy-based decisions in cross-border cases requiring coordination with other competition authorities. In other words, there has not yet been a merger where the Hungarian clearance with commitments needed to be aligned with parallel remedies imposed by other jurisdictions. As a result, there is no direct practical experience of joint design or joint monitoring of remedies with foreign agencies.

24. Nonetheless, the principle of openness to cooperation is firmly embedded in GVH policy. The Notice explicitly recognises the need for international cooperation in cases involving multiple jurisdictions, aiming at effective solutions and consistency across borders. This provision reflects Hungary's awareness that divergent remedies imposed by different authorities could create conflicts or undermine effectiveness. In practice, coordination could take the form of exchanging market information, aligning on the choice between structural and behavioural solutions, or even synchronising monitoring arrangements. While this remains hypothetical, the institutional readiness is there.

3. A case study: commitments in a case of suspected abuse of dominance

25. The GVH can accept commitments in case of a suspected violation of the law, such as abuse of dominance. The recently closed Coca-Cola case is a good example of an instance where it was not clear whether the conduct in question fell outside the scope of competition on the merits, meaningful and productive cooperation could take place between the undertaking and the authority.

26. As for the background of the case, it has come to the attention of the GVH that in the HoReCa sector, the Hungarian subsidiaries of The Coca-Cola Company (hereinafter referred to as Coca-Cola) may have been applying certain obscure terms in their contracts combined with conditional rebates, discounts and practices that may have fallen under the

definition of tying or bundling. These practices raised concerns for the GVH about their potential and capability to transfer the presumably dominant position of Coca-Cola on the carbonated soft drinks market to other beverage markets, such as the market of alcoholic beverages and other non-alcoholic soft drinks, all the while further strengthening Coca-Cola's position on the already dominated market.

27. The theory of harm in the case was that since Coca-Cola's certain products (such as Cola or Fanta) have a significant market position on the market of carbonated soft drinks sold through the HoReCa sales channel, this position, combined with the conducts in question, may result in Coca-Cola achieving the capability to transfer its presumed dominant position on the market of carbonated soft drinks to other beverage markets not dominated by Coca-Cola's flagship products. It is important to note that in the case of the other beverage markets the GVH's HoReCa sector inquiry has shown that the undertakings operating in this sector may be willing to acquire the necessary products from different suppliers in the absence of restrictive provisions, rebates, and discounts.

28. As for the obscure terms, the modular structure of the discount system used in the contract templates and the listing of the different products in blocks may have given the HoReCa units the impression that in order to benefit from the discount, they must order from each product within the block they have selected, as there was no further provision in the contract clarifying these conditions.

29. Regarding the presumably dominant position of Coca-Cola on the market of carbonated soft drinks sold through the HoReCa sales channel, which was defined as the relevant market, the information acquired by the GVH during the proceeding has shown a steady 60-70% market share. However, the decision did not establish Coca-Cola's dominant position in the relevant market, as the Competition Council opted to adopt a commitment decision instead.

30. The commitments accepted and imposed in the decision oblige Coca-Cola to amend the obscure terms and ensure the independence of contract terms for the distribution of carbonated and non-carbonated, alcoholic and non-alcoholic beverages. The amendments of Coca-Cola to its contract templates will make it clear that HoReCa units are eligible for discounts not just by purchasing all the products listed in a given block. On the other hand, it will put an end to the practice where certain discounts on alcoholic beverages were only available to the unit if it also distributed Coca-Cola's non-alcoholic products. Therefore, it will open the market to competitors.

31. The commitments also entail a compliance programme, in which Coca-Cola will conduct systematic training for its relevant staff to make sure they adhere to the commitments and to the general principles of competition law.

32. It is important to note that before the commitments were accepted, market testing had taken place with the involvement of Coca-Cola's competitors, during which they were able to voice their concerns and give recommendations regarding the commitments offered.

4. Conclusion

33. The Hungarian experience illustrates a commitment and remedy design process that is cooperative yet carefully structured. Cooperation with parties is at the heart of the system. This ensures that commitments and remedies are operationally feasible, while the GVH retains the power to request modifications. Third parties play a secondary but valuable role, especially in market testing and in highlighting practical risks. Sector regulators contribute technical expertise and sector-wide data, strengthening the viability and proportionality of

remedies, though they do not typically co-design them and are not involved in monitoring. Cooperation with other competition agencies has not yet materialised in practice, but the legal and institutional framework makes clear that Hungary is open to cross-border coordination should the need arise.

34. Overall, the GVH's approach reflects a balance between flexibility and discipline. Commitments and remedies must directly address the competition concern identified. They must safeguard long-term consumer welfare without unnecessarily depriving markets of efficiency-enhancing transactions. In this sense, Hungary's system illustrates how cooperative antitrust can be structured to combine dialogue with firmness, ensuring that commitments and remedies are both realistic and effective in maintaining competitive market structures.