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20 Years of Antitrust Remedies in Review: Lessons for the Future?

Introduction

On 20 February 2025, the European Commission (the “Commission”) published its report on the implementation and effectiveness of remedies in antitrust behavioral cases (i.e., not merger control or cartel cases) (the “Report”).¹ The Report covers 108 behavioral antitrust decisions adopted by the Commission between 2003 and 2022, and conducts in-depth evaluations of 12 significant cases involving remedies.

The Report will likely color the Commission’s thinking when considering remedies. Although the Report focuses on behavioral antitrust cases, some of its findings will be of relevance for remedies in the context of merger control cases. This note summarizes the Report’s key findings and recommendations and how these may impact remedies going forward.

Main Findings

The main findings of the Report include:

Implementation and effectiveness. Whilst most remedies are implemented, less than half are effective in achieving their intended objectives. Purely behavioral remedies (e.g., unbundling, price capping) are the least likely to be fully implemented and effective, suggesting issues with remedy design, choice and monitoring.

Interim measures. The use of interim measures can enhance the effectiveness of remedies. This is so because the relevant behavior has stopped and the company has less incentives to delay the investigation.

Progress over time. The Commission’s remedy practice has improved over time, as issues of implementation and effectiveness were mostly found in older cases.

Recommendations & Expected impact

The Report puts forward a series of recommendations, including:

Structural remedies. Structural remedies (e.g., divestiture) or behavioral remedies with a structural element should be more often considered and, depending on the circumstances, preferred. This would bring the assessment of remedies in behavioral antitrust cases more in line with the approach in merger cases, where the Commission prefers structural remedies as a means to preserve competitive market structures.

¹ European Commission, “*Ex post evaluation of the implementation and effectiveness of EU antitrust remedies: Final Report*”, 20 February 2025, available at https://competition-policy.ec.europa.eu/document/download/53e9348d-4f11-46ef-9098-526e24313ee8_en?filename=kd0125000enn_ex-post_evaluation_antitrust_remedies_study_e-version.pdf.

Interim measures. The Commission should make use of interim measures in urgent cases and where synergies exist between the interim measure and a future potential remedy.

Expert and monitoring trustees. The Commission should rely on independent experts in complex cases; the appointment of a monitoring trustee should be the default practice to ensure the effectiveness and implementation of the given remedy.

Transparency and review. The Commission should publish guidance on antitrust behavioral remedies (as it does for merger remedies) and evaluate remedies after their implementation. It should consider a dedicated remedy unit active across instruments (antitrust, merger control, Digital Markets Act, etc.).

The Commission does not need to follow the Report's findings, but it may have some influence on future cases and promote coherence in the identification of remedies across instruments.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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