Key Findings From EU Report On Antitrust Remedies

By **Nicole Kar, Fynn Dewald and Timothy Noelanders** (March 12, 2025)

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On Feb. 20, the European Commission published a report on the implementation and effectiveness of remedies in antitrust behavioral cases.[1]

The report, prepared by a multidisciplinary consortium, including the Grimaldi Alliance, NERA and academics from the University of Leeds, covers 108 behavioral antitrust decisions, i.e., not merger control or cartel cases, adopted by the commission between 2003 and 2022, and conducts in-depth evaluations of 12 significant cases involving remedies.

While the report is an ex post review and its findings are not binding on the commission or other competition authorities, it 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 article summarizes the report's key findings and recommendations and how these may affect remedies going forward.

Background and Statistics

The report was commissioned by the directorate-general for competition of the commission to mark the 20th anniversary of Regulation 1/2003, which governs the enforcement of antitrust rules in the European Union.

This regulation brought about significant changes, decentralizing enforcement to member states' competition authorities and courts, and giving the commission greater flexibility in setting enforcement priorities. The primary objective of the report is to assess the effectiveness of the commission's antitrust policy and practice in cases involving remedies, and to outline possible areas for improvement.

The report provides detail on the commission's enforcement practice under Articles 101 and 102 of the Treaty on the Functioning of the EU, explaining how the commission has engaged with both abuse of dominance and cartel investigations. The report makes the following findings from January 2003 until December 2022:

- The commission adopted 108 antitrust behavioral cases over 20 years, averaging 5.4 decisions per year.
- There were 57 prohibition decisions and 51 commitments decisions.[2]
- Decisions were almost equally split between Articles 101 and 102 of the TFEU — 52 and 51 decisions, respectively, with five decisions based on both articles.
- Single-firm exclusionary conduct was the main concern in 40% of the decisions.[3]

- Only 12 Article 7, or prohibition, decisions remedies beyond cease-and-desist orders,[4] with structural remedies imposed just once.[5]

- In Article 9 cases — commitment decisions — behavioral remedies[6] were more common (38) than structural remedies (6). Seven cases involved behavioral remedies with structural elements.[7]

Main Findings

The report, despite focusing on a case sample size of merely 12 out of 108 cases, makes findings on the following:

- Implementation and effectiveness of antitrust remedies;

- The effectiveness of interim measures;

- Commission enforcement progress over time;

- The divide between structural and behavioral remedies; and

- The role on expert and monitoring trustees and transparency and review of antitrust remedies.

Implementation and Effectiveness

The report reveals that fewer than half of the remedies imposed are effective in achieving their intended objectives. Purely behavioral remedies, e.g., unbundling or price capping, are the least likely to be fully implemented and effective, suggesting issues with remedy design, choice and monitoring. The report also finds that the effectiveness of remedies depends on their timeliness, i.e., the remedy addresses the competition issue as soon as the remedy is implemented.

Structural vs. Behavioral Remedies

The report emphasizes the need to reconsider the statutory subordination of structural to behavioral remedies under Article 7 of Regulation 1/2003. The current framework requires that structural remedies can only be imposed where there is no equally effective behavioral remedy, or where any equally effective behavioral remedy would be more burdensome for the undertaking concerned.

The report recommends removing this subordination, leaving the choice of remedy type to the principles of effectiveness and proportionality.

Interim Measures

The report concludes that the use of interim measures can significantly enhance the effectiveness of remedies. Interim measures are particularly useful in urgent cases where there is a risk of serious and irreparable damage to competition. By halting allegedly abusive behavior early, interim measures are capable of reducing the incentives for companies to delay investigations, and can lead to quicker resolutions.

The report recommends that the commission make more frequent use of interim measures, especially in cases where there are synergies between the interim measure and a future potential remedy.

There are, however, two main disincentives for relying on interim measures, which also explains why they are seldom used by the commission. First, the standard of proof of "serious and irreparable harm" to competition is often seen as too high.[8] Second, the procedure for interim measures is burdensome, as it is the same as for a prohibition decision.

Progress Over Time

The report finds that the commission's remedy practice has improved over time, with issues of implementation and effectiveness mostly found in older cases. This indicates a learning curve, and that the commission has become more adept at designing remedies that are both implementable and effective, reflecting a maturation of its antitrust enforcement practices.

Experts and Monitoring Trustees

The report finds that the appointment of independent experts and monitoring trustees is crucial for ensuring the effectiveness of complex remedies. The report suggests that the commission should rely more on independent experts in complex cases and make the appointment of a monitoring trustee a default practice. This would provide an additional layer of oversight and ensure that remedies are being properly enforced.

Importance Of Reporting Obligations

The report finds that reporting obligations are crucial for verifying the implementation of remedies, emphasizing that reporting obligations provide a mechanism for the commission to monitor compliance. This is particularly important given that ordinary business incentives may be at odds with the terms of remedies required, such that reporting is a necessary element of compliance with the letter and spirit of the remedies decision.

Transparency and Review

The report calls for greater transparency and review in the implementation of antitrust remedies. The report recommends that the commission should publish guidance on antitrust behavioral remedies, similar to the guidance provided for merger remedies, and evaluate remedies after their implementation.

It should consider establishing a dedicated remedy unit active across different regulatory frameworks — antitrust, merger control, Digital Markets Act, or DMA, etc. This would promote coherence in the identification of remedies and ensure that best practices are consistently applied.

Expected Impact

The commission is not obliged to adopt the report's findings, but it may have some influence on future cases and promote coherence in the identification of remedies across instruments.

For instance, the recommendation to include reporting obligations in remedy decisions could be implemented in the merger control context. In its last ex post assessment of merger remedies, the commission found that remedies had been effective in only 57% of cases.[9] The commission could therefore use the findings to review its merger remedy practice in view of improving its effectiveness.

Moreover, the report could have implications for the DMA, which enables the commission to impose anticipated obligations and prohibitions on platforms designated as gatekeepers, as well as additional remedies in case of systematic noncompliance.

The report's findings on the effectiveness of behavioral remedies and the preference for structural remedies could inform the commission's approach to the design and enforcement of the DMA's obligations and remedies. The report could also inspire the commission to adopt guidance on the DMA's remedies, and to rely on expert and monitoring trustees to ensure their implementation.

Finally, the report could also affect the commission's interaction with national competition authorities and courts, which may have different views or practices on remedies. The report could serve as a benchmark for the commission to promote convergence and cooperation among national competition authorities and courts, especially in cases where the commission has a coordinating role or where remedies have cross-border effects.

The report could also provide useful insights for national competition authorities and courts when assessing remedies in their own jurisdictions, as well as for parties involved in antitrust proceedings, who may have to propose or comply with remedies.

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