Kluwer Competition Law Blog

Fixing the fix? The EU Commission's Study on Antitrust Remedies

Christian Ritz, Christoph Wünschmann, Florian von Schreitter (Hogan Lovells) · Wednesday, March 26th, 2025

- The European Commission's study on 20 years of EU antitrust remedies finds that while most remedies in antitrust cases were implemented, less than half achieved their intended effect.
- EU law currently subordinates structural remedies – such as divestments – to behavioral fixes. The study recommends scrapping this hierarchy, as behavioral remedies in particular often proved toothless.
- The study proposes appointing monitoring trustees as standard practice, ensuring remedies don't just look good on paper but actually work in practice.
- Lengthy enforcement procedures undermine the effectiveness of remedies. The study highlights the need for swifter proceedings, particularly in Article 7 cases, where delays can render interventions meaningless.
- The Commission has scheduled a workshop on 27 March 2025 to discuss the findings – a first step to potentially comprehensive reforms.

Introduction

In competition law, finding an infringement is one thing, but ensuring the market recovers and remains competitive is quite another. This is where antitrust remedies come in, aiming to undo the harm caused by anti-competitive conduct and prevent its recurrence.

Modern remedies are based on Regulation 1/2003, which marked a revolution in EU antitrust enforcement. The new framework granted the Commission broad powers to impose remedies under Article 7 (prohibition decisions) and Article 9 (commitments decisions). Article 7 allows the Commission to unilaterally impose remedies, but with behavioral remedies preferred; structural ones, like divestments, are deemed a last resort. Article 9, meanwhile, lets companies voluntarily propose remedies to address the Commission's concerns, avoiding the finding of an infringement and often leading to swifter case resolutions. Both provisions, however, ultimately pursue the same goal of remedying competitive harm.

The Study

By 2022, almost twenty years after the new system took effect, it was time for a critical look in the rear-view mirror: Had these remedies actually restored competition? Were they preventing companies from backsliding into old habits? The Commission, keen to evaluate the effectiveness of its enforcement arsenal, commissioned an **ex post study**, hoping to distill **lessons from the past two decades**. Drawing inspiration from its earlier 2005 merger remedies study – which led to a major policy overhaul – the Commission sought an objective, evidence-based review of antitrust remedies.

The study took a two-pronged approach:

- **A statistical analysis of all 108 non-cartel antitrust decisions** adopted under Regulation 1/2003 between **2003 and 2022**. This provided a **macro-level** view of enforcement trends, the types of remedies imposed, and their implementation rates.
- **A deep-dive evaluation of twelve key cases**, chosen for their significance and diversity in remedy design. This included "blockbuster cases" where remedies had played a central role in the Commission's enforcement strategy.

To assess whether remedies had **actually restored competition**, the researchers relied on:

- **Oral interviews and written questionnaires** with Commission case teams, decision addressees, and market participants.
- **A comprehensive literature review** covering over 120 economic and legal sources.
- **Open Source Intelligence (OSINT) research** to track how remedies played out in the real world.

The study defined **implementation** as whether the remedies were formally complied with, while **effectiveness** measured whether the remedies actually achieved their intended market outcomes.

The Verdict

And within that framework, the results are sobering. After analyzing 20 years of antitrust enforcement, the study found that while most remedies were formally complied with, **less than half were fully effective** in restoring competition. Some remedies had little to no impact, while others created unintended consequences that arguably worsened market conditions. The main culprits? Behavioral remedies.

According to the study, structural remedies – such as divestments – were always implemented and generally effective. However, behavioral remedies – such as price commitments, access obligations, or conduct changes – were often poorly enforced, partially implemented, or outright ineffective. The numbers tell the story: Structural remedies, though used far less frequently, achieved their intended market corrections, whereas two-thirds of purely behavioral remedies were either partially or even completely ineffective. Behavioral Remedies with structural elements (e.g., license transfers, access obligations with asset carve-outs) performed better than purely behavioral ones, but their effectiveness was still mixed.

In that regard, the study appears to confirm what many critics had suspected: **behavioral remedies are hard to police.** Unlike structural remedies, which permanently alter market structures, behavioral remedies require ongoing compliance and monitoring. Without strong oversight,

companies may exploit loopholes, delay implementation, or simply ignore the spirit of the remedy while formally adhering to its letter.

In addition to incomplete or insufficient remedies implementation, the study also identifies issues with regard to speed. While in hindsight some interventions were just poorly designed or lacked proper enforcement mechanisms, others just came in so late that the competitive harm had already been done. In other words: **The longer it takes to intervene, the harder it is to restore competition**. In one case for instance, the Commission found that a company had abused its dominance by refusing to provide interoperability information to rival developers, with the remedy being that the company *inter alia* had to share technical documentation. However, the study finds that the documentation provided was incomplete and unusable, and that it took years of legal battles before meaningful compliance was achieved. In another case, a patent-holding company, was accused of "patent ambush" tactics – misleading industry bodies into adopting standards that relied on its patents, then demanding excessive licensing fees. The Commission intervened, capping royalty rates. But by the time the Commission acted, the market had already adapted to the patent-holders' pricing, meaning that prices fell, but not as much as expected – suggesting the remedy was too little, too late.

Generally, the study shows that the average duration of Article 7 prohibition proceedings is approximately 45 months – almost four years – while Article 9 commitment procedures take about 26 months. Such timelines risk rendering the intervention obsolete by the time remedies are applied, an issue particularly relevant in fast-evolving or digital markets, where delay can lock in anticompetitive effects, entrench incumbents, and leave little space for corrective impact.

And besides timing issues and the apparent ineffectiveness of behavioral remedies, there may be cases where compliance is simply a "black box". In one case specifically, the company that was subjected to the remedies formally complied with them, but the authors of the study found themselves unable to verify the extent and effectiveness of such compliance: There was no monitoring trustee and all key market players refused to comment on whether the commitments had any impact.

The Recommendations

Against that backdrop, the European Commission's study does more than identify shortcomings – it lays out a clear path for reform. The **eighteen non-binding recommendations** aim to fix the most pressing issues. In that regard, the study emphasizes two overarching principles: first, that remedies should not only halt the unlawful conduct but also rectify any market distortions already incurred, wherever feasible and proportionate (Recommendation #1). Second, the ultimate benchmark for any remedy must be its effectiveness, meaning it should actively promote or restore competition rather than merely meeting formal criteria (Recommendation #2).

Below is a structured overview of the other recommendations:

Abolishing the Hierarchy Between Behavioral and Structural Remedies

Under current EU law, structural remedies (such as divestments) can only be imposed if no equally

effective behavioral remedy exists. The study argues that this hierarchy should be scrapped. Instead, the Commission should be free to impose the most effective remedy based on the case facts – not legal constraints. This directly addresses the need to remove the statutory requirement that structural measures are subordinated to behavioral ones in Article 7 cases (Recommendation #4).

Making Monitoring Trustees Standard Practice

Too often, remedies fail due to lack of oversight. The study calls for monitoring trustees to become the default, not the exception, in both Article 7 and Article 9 cases (Recommendation #13). Rigidly selected and trustees, potentially aided by technical experts, should ensure full compliance with remedies, have the authority to report violations to the Commission, and be independent and well-resourced, avoiding conflicts of interest. Additionally, the study proposes that the costs of a Monitoring Trustee be imposed on the infringing undertaking in Article 7 cases (Recommendation #5).

Faster Timelines

The study highlights that EU antitrust cases take too long, especially under Article 7 (prohibition decisions). Some cases drag on for years, rendering remedies ineffective by the time they are imposed. To fix this, the study recommends:

- Streamlining procedures for quicker case resolution (Recommendation #3).
- Separating infringement and remedy decisions to allow faster enforcement (Recommendation #6).
- Using interim measures under Article 8 more frequently in urgent cases (Recommendation #11).

Collectively, these steps reflect the importance of swift intervention. Moreover, the study suggests formalizing a cooperation procedure in Article 7 cases – complete with defined benefits and conditions – to incentivize companies to engage early and constructively in designing effective remedies (Recommendation #8).

Clearer Remedy Rules

Despite 20 years of enforcement, the EU lacks clear guidance on how remedies should be designed and enforced. That would make remedy design more predictable, leading to stronger enforcement and fewer legal challenges. The study suggests:

- Issuing an EU Antitrust Remedies Notice, similar to the 2008 Merger Remedies Notice (Recommendation #15).
- Formalizing market testing of remedies before they are imposed (Recommendation #7).
- Providing clearer criteria for when behavioral vs. structural remedies should be used (Recommendation #4).

Building on these points, the study also advises inviting independent external experts early in the design process to address technical or industry-specific challenges (Recommendation #14). Taken together, these measures bolster the call for targeted, realistic, and more effective remedies (Recommendation #15).

Strengthening Reporting Obligations

To ensure meaningful remedies implementation, the study suggests comprehensive reporting obligations (Recommendation #12), i.e.,

- Requiring detailed reports from companies on how they are fulfilling their commitments and making such reporting obligations a standard feature of enforcement decisions.
- Imposing sanctions for misleading or incomplete compliance reports.
- Increasing transparency so that rivals and market participants can flag non-compliance.

A Dedicated Remedies Unit

The Commission should consider creating a dedicated Remedies Unit. Formalizing such Unit would not only centralize expertise (Recommendation #18), but also help achieve sector-wide synergies by systematically applying knowledge gained from previous enforcement actions, irrespective of industry segment (Recommendation #17). The Unit would consist of a team of specialists who:

- Support case teams in designing better remedies.
- Ensure cross-case consistency, so lessons from past cases inform future ones.
- Take proactive steps to enforce remedies, rather than waiting for non-compliance to become an issue.

Encouraging the Use of Article 9 Commitments

Commitments under Article 9 allow for faster resolutions than full prohibition decisions under Article 7. The study recommends using them more often, but with better safeguards (Recommendation #9). Specifically, the study advocates

- Stronger oversight mechanisms, including the involvement of rigidly selected monitoring trustees and technical experts (Recommendation #13).
- Faster approval timelines, cutting unnecessary red tape.
- More flexibility in modifying commitments if they prove ineffective.

In addition, the study also calls for simplifying the mandatory market-test steps – e.g., by streamlining publication and translation requirements – to accelerate feedback without compromising rigor (Recommendation #10).

Ex-Post Evaluation

Finally, the study advocates enhanced ex-post evaluations – collecting and analyzing market data at set intervals – to verify that remedies have a sustainable impact, identify any unintended consequences, and refine future enforcement strategies (Recommendation #16).

The Path ahead

Faced with these findings and recommendations, the Commission may pursue one of three paths:

1. Fully embrace change by taking decisive action and pushing through major reforms – most notably abolishing the hierarchy between behavioral and structural remedies, making monitoring trustees mandatory in all remedies cases, and creating a dedicated Remedies Unit to oversee enforcement.
2. Implement only incremental tweaks rather than comprehensive reform – e.g., by merely strengthening reporting obligations in individual cases or increasing the use of monitoring trustees without making them mandatory.
3. Acknowledge the study but otherwise continue with "business as usual."

The third scenario appears the least likely. While institutional inertia can always stall reform, the study's findings are too clear and its recommendations too assertive for the Commission to ignore. Given the resources invested in the study and the Commission's desire to maintain its image as an active and effective enforcer – particularly under Teresa Ribera's new DG COMP leadership – further action seems inevitable.

As a first step, the Commission has **scheduled a workshop on 27 March 2025**. This event will bring together the study's authors, Commission officials, industry stakeholders (including businesses affected by past remedies), as well as academics and legal experts (the registry link can be found **here**).

Companies operating in the EU would do well to monitor these developments closely. If implemented, the recommendations could reshape EU antitrust enforcement for the next decade – and developing a penchant for structural remedies may well be just the tip of the iceberg.

***

This post was first published here.

This entry was posted on Wednesday, March 26th, 2025 at 5:35 pm and is filed under Source: OECD“>Competition, European Commission, European Union, Remedies
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.