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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Global Forum on Competition**

**REMEDIES AND COMMITMENTS IN ABUSE CASES**

**- Session IV – Call for country contributions**

1-2 December 2022

This document is a call for country contributions for Session IV of the Global Forum on Competition to be held on 1-2 December 2022. GFC participants are invited to submit their contributions by **28 October 2022** at the latest.

JT03500978

## TO ALL GLOBAL FORUM PARTICIPANTS

### **RE: Roundtable on “Remedies and commitments in abuse cases”**

#### **21<sup>st</sup> Global Forum on Competition (1-2 December 2022)**

Dear GFC Participant,

On 2 December 2022, the [Global Forum on Competition](#) (GFC) will hold a Roundtable on “*Remedies and commitments in abuse cases*”. We are writing to you to provide you with some background information about the topic and the organisation of the session, and to invite you to submit a written contribution.

It is widely accepted that competition law and policy are fundamental for ensuring a well-functioning economy. However, they can deliver the desired effects, in the form of lower prices, increased output and dynamic innovation, only if they are effectively implemented and enforced. Effective enforcement in abuse cases requires, among others, effective sanctions and/or remedies and commitments. This Roundtable will discuss the types of remedies and commitments that can be imposed or accepted and aims to focus on agency experiences regarding the effectiveness of such measures.

The Competition Committee has discussed remedies, commitments and other aspects relevant to the discussion, for example in Roundtables and reports on [Interim Measures in Antitrust Investigations](#) (2022), [Divestiture of Assets as a Competition Remedy](#) (2019), [Commitment Decisions in Antitrust Cases](#) (2016), [Remedies in Merger Cases](#) (2011), and [Remedies and Sanctions in Abuse of Dominance Cases](#) (OECD, 2006). However, the debate is evolving and it is worthwhile to explore the latest developments and insights from enforcement in abuse of dominance cases, and to see which lessons can be drawn.

First, competition agencies have focused a great deal of their attention on investigating abuse of dominance in specific sectors, in particular in the pharmaceutical, big tech and energy sectors. Actions taken recently against big tech companies have sparked an intense debate about the relative efficacy of antitrust remedies. Second, even though competition agencies worldwide impose each year many remedies in a variety of sectors, the design of remedies that would be adequate, effective, and proportionate remains both highly challenging and disputed. Third, competition agencies are increasingly asked to intervene in situations of crisis when significant and unexpected disruptions to both demand and supply lead to high prices and market power is suspected to be a contributing factor.

The complex task of designing and enforcing appropriate remedies or commitments can become even more demanding for young or less experienced competition authorities, which may face additional institutional constraints (such as insufficient financial or human resources, lack of necessary expertise, lack of widespread awareness about and acceptance of the benefits of competition law and policy). Against this background, this roundtable discussion aims to provide practical insights and an overview of current experiences in the application of remedies and commitments in unilateral conduct cases. In particular, this roundtable will cover:

- Rules and principles for deciding whether to resolve the case through remedies or voluntary commitments instead of or in addition to sanctions.
- Rules and principles for deciding whether to impose or accept behavioural or structural remedies or commitments, considering practices that competition agencies have developed since the last discussions.

- Compliance with remedies and commitments and experiences with agency monitoring
- Experiences with ex-post evaluation of adopted solutions, and lessons that could be transposed, if any, from ex post evaluation of mergers.
- Remedies and commitments in regulated sectors and the interplay with sector regulators.

While the session will focus on remedies and commitments in unilateral conduct cases, where relevant, it will also draw on experiences concerning the use of remedies and commitments in merger cases.

*The Secretariat will prepare a background note that explores these issues. The OECD webpage on “Remedies and commitments in abuse cases” ([oe.cd/gfc](https://www.oecd.org/gfc)) will be the primary vehicle for conveying documentation and related links on this subject (see the GFC website: [oe.cd/gfc](https://www.oecd.org/gfc) and our main roundtables page at [www.oecd.org/competition/roundtable](https://www.oecd.org/competition/roundtable)). Unless explicitly requested not to do so, the Secretariat will reproduce all written contributions on the site.*

*We would like to remind you that the Secretariat will compile short summaries of the written contributions to be distributed before the meeting. I invite you to submit such a short summary (no more than one page) together with your contribution. Alternatively, the Secretariat will produce one, but given the time constraints you might not be in a position to check it before distribution on O.N.E.*

We refer you to the suggested reference materials at the end of this letter and to the list of questions included in the Annex. The list in the Annex is not exhaustive and you are encouraged to raise and address other issues in your submission and during the discussion.

We would encourage you to submit a written contribution that describes your experience or views on the use of remedies and commitments in abuse cases in your jurisdiction. Should you wish to provide a contribution, please inform the Secretariat by **23 September 2022**. Written replies to this call for contributions are due by **28 October 2022** to enable the Secretariat to prepare the summary of the responses in advance of the session. Please note that not meeting this deadline may result in your contribution not being distributed to delegates in a timely fashion in advance of the meeting.

All communications regarding documentation and logistics for this roundtable should be sent to Angélique Servin ([angelique.servin@oecd.org](mailto:angelique.servin@oecd.org)). All substantive queries regarding this session should be sent to Sabine Zigelski ([sabine.zigelski@oecd.org](mailto:sabine.zigelski@oecd.org)) or Lynn Robertson ([lynn.robertson@oecd.org](mailto:lynn.robertson@oecd.org)).

## Annex A. Suggested questions for consideration in written contributions

This Annex provides a list of questions for consideration in preparing a written contribution. A contribution does not need to cover every listed question, and you may wish to address issues not listed here. Please prepare your contribution as an integrated essay rather than a list of answers to questions.

You are encouraged to refer to practical examples that demonstrate how and when remedies and commitments in abuse of dominance cases were used.

### Type of decision/remedy

Abuse of dominance cases can be resolved with a prohibition decision, sanctions, and/or remedies and commitments. Which rules govern the agency considerations when deciding on a specific path of action and implementing it, and how has agency practice evolved?

1. Which criteria do you apply when deciding whether a remedy should be imposed, or a commitment accepted in an abuse case?
2. What are the requirements and procedural steps for concluding an investigation by adopting remedies or commitments?
  - Is there a deadline/time limit for submitting commitments?
  - Do remedies or commitments have to be subject to market testing and are there rules that govern the market testing?
  - Can commitment decisions be appealed and what are the rules concerning the right to appeal?
3. Have remedy or commitment decisions in abuse of dominance cases, if available in your jurisdiction, become more or less frequent over the last five to ten years, and is this trend ongoing?
4. Are guidelines or specific procedural rules on remedy and commitment procedures available in your jurisdiction?

### Structural and behavioural remedies and commitments

The design and implementation of effective remedies and commitments is a challenging task. What are best practices that can provide useful guidance in the process?

1. Which criteria do competition agencies use to determine whether to use a behavioural or a structural remedy or commitment in an abuse of dominance case?
2. Is the choice of a specific type of remedy unfettered or is it constrained by law?
3. Do different market structures and different stages of development of a given sector warrant different types of remedies?
4. When unilateral conduct cases targeted novel theories of abuse (i.e. self-preferencing, privacy policy tying), have new forms of remedies or commitments been imposed or accepted?
5. At which investigation phase should competition agencies identify potential remedies or commitments to help them consider potential obstacles to their implementation?

## Compliance with remedies and commitments

Firms are more likely to comply with remedies and commitments if non-compliance is likely to result in appreciable negative consequences for them. In this sense, the threat of dissuasive sanctions and possibly more restrictive remedies must be real, not just hypothetical.

1. What are your agency's experiences with the implementation of and compliance with remedies and commitments in abuse cases?
  - Are there differences between structural or behavioural remedies or commitments?
  - Are there noticeable differences between industry sectors?
2. Has your agency imposed fines for non-compliance with a commitment decision or with imposed remedies?
3. Has your agency established a monitoring unit or taken other measures aimed at ensuring and/or improving the monitoring process, such as the use of trustees?
4. In case of non-compliance or recidivism, have you evaluated the shortcomings of the previously imposed measure(s) and what are the implications of such finding for your future enforcement cases?

## Remedies and commitments in regulated sectors

1. Is there a scope for collaboration between competition and regulatory agencies in the design, implementation and monitoring of remedies in regulated sectors? Can any useful insights in that regard be drawn from the enforcement of merger remedies?
2. Have you intervened in regulated sectors through the use of remedies and commitments in abuse cases? What issues, if any, may such an approach raise?

## Ex-post evaluation of adopted measures

The past record of imposed remedies and accepted commitments might offer invaluable insights on their effectiveness and impact on competition and consumer welfare. What lessons can competition agencies learn from their experience? Ideally, competition agencies should regularly engage in ex-post evaluations of the remedies they impose and commitments they accept. However, this does not seem to be the norm.

1. Has your agency carried out such ex-post evaluations in abuse cases and what were the main results?
2. If no ex-post evaluations were done, what are the main reasons? How could ex-post evaluations be facilitated in the future?

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