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Global Forum on Competition

NEW DEVELOPMENTS IN MERGER REMEDIES

Session II: Issues note and call for contributions

10 December 2026

This document was prepared by the OECD Secretariat to serve as background material and call for contributions for Session II of the Global Forum on Competition (GFC) to be held on 10-11 December 2026. GFC participants are invited to submit their contributions by 30 October 2026 at the latest.

The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.

More documentation related to this discussion can be found at:
https://www.oecd.org/en/publications/oecd-roundtables-on-competition-policy-papers_20758677.html

Ms Aura Garcia Pabon (aura.GARCIAPABON@oecd.org) and Mr Yuichi Tominaga (yuichi.TOMINAGA@oecd.org).

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1 Introduction

This year, the Global Forum on Competition (GFC) will hold a roundtable discussion on recent developments in merger remedies on 10 December 2026.[1] This document provides some background on the topic and is an invitation for written submissions to this Roundtable from those agencies that have relevant experience in this area.

Merger control is evolving at an unprecedented pace, as competition authorities around the world conduct their assessments to fully capture the effects of mergers on markets, while considering rapidly changing market dynamics. Remedies have always been part of the toolkit that competition authorities or courts (where applicable)[2] have to avoid transactions distorting competition, but as markets grow more complex, authorities have increasingly focused on how to craft more effective remedies for their interventions.

Although remedies are imposed in only a small number of cases, designing and assessing them remains a routine part of merger review work. The OECD's most recent report on competition enforcement statistics showed that notwithstanding increases in the number of mergers notified in the past decade, competition authorities have maintained relatively stable intervention levels, which include conditionally approving mergers, challenging or prohibiting them (according to the applicable legal regime) (OECD, 2025[1]). According to the report, 1.76% of the merger decisions issued by 59 OECD and Non-OECD competition authorities between 2015 and 2024 referred to conditional clearances, while prohibition decisions represented under 0.5%.

An OECD review of a sample of 335 merger decisions imposing remedies that 52 OECD and Non-OECD competition authorities took between 2023 and 2025,[3] shows that, as expected, the large majority of mergers cleared subject to remedies (close to 70%) involved horizontal competition concerns. This figure increases to approximately 85% when including cases combining both horizontal and non-horizontal concerns. In terms of remedy design, structural measures were predominant, accounting for around 45% of all imposed remedies and rising to about 60% when hybrid remedy packages (i.e. packages that include both structural and behavioural remedies) are included. Within this category, quasi-structural remedies (e.g. access commitments and licensing of non-tangible assets)[4] comprised approximately 4.2% of the total (see Figure 1).

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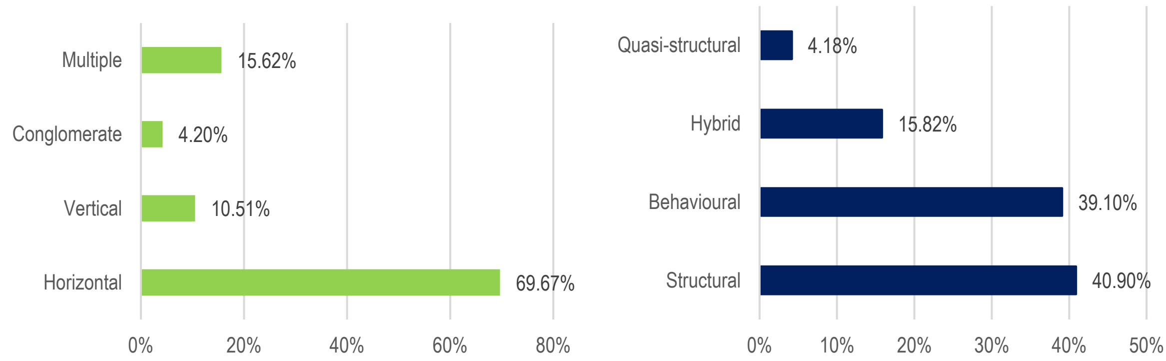
[1] This note was prepared by Aura García Pabón and Yuichi Tominaga of the OECD Competition Division. It benefited from comments by Ori Schwartz, head of the OECD Competition Division. It was prepared for the discussion on developments in merger remedies taking place at the OECD Global Forum on Competition. The opinions expressed and the arguments employed in the note do not necessarily reflect the official views of the Organisation or of the governments of its Member Countries.

[2] While the note refers to competition authorities, it acknowledges that in prosecutorial regimes, courts also have the possibility to review and/or impose remedies in merger cases. Thus, considerations are also applicable to them.

[3] The review relied exclusively on publicly available material on each competition authority's website; accordingly, the sample of merger decisions reflects only those non-confidential merger decisions that were accessible online. The list of jurisdictions reviewed is principally based on those participating in the OECD Competition Trends series for which data on the total number of merger decisions with remedies between 2023 and 2025 were available.

[4] The categorisation for quasi-structural remedies was based on the following definition by (Competition Bureau, 2006[21]) and (OECD, 2012[22]): remedies allowing the merged entity to retain ownership of the asset(s) acquired in the

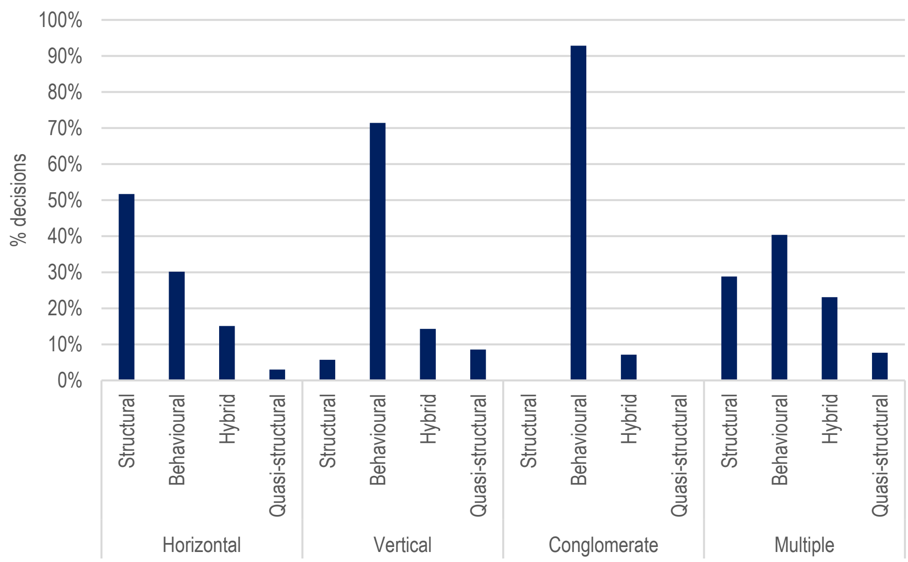
Figure 1. Types of competition concerns (left) and remedies (right) in merger decisions, 2023-2025



Source: OECD based on merger decisions published in competition authorities' websites

A more detailed examination of remedy design by type of concern reveals clear patterns. In mergers giving rise to horizontal issues, structural remedies were the most frequently applied, accounting for nearly 55% of cases, a share that rises to around 70% when hybrid remedy packages are included. Nevertheless, purely behavioural remedies also represented a significant proportion, covering roughly 30% of such cases. By contrast, in mergers involving vertical and conglomerate concerns, behavioural interventions were predominant: they were imposed in more than 70% of cases with vertical concerns and in over 92% of conglomerate cases, making them the most common remedy type in these contexts (see Figure 2).

Figure 2. Remedy type by competition concern in mergers with remedies, 2023-2025



Source: OECD based on merger decisions published in competition authorities' websites

merger, while having structural implications for the marketplace. This includes licensing of non-tangible assets (such as IP rights) and granting non-discriminatory access rights to networks, necessary infrastructure or key technology to facilitate entry or expansion.

In brief, the results show that the vast majority of mergers cleared with remedies reviewed involved horizontal concerns, either alone or together with other non-horizontal ones, and that structural remedies remained predominant in those situations. Behavioural remedies were more common in other types of cases. These are broadly consistent with well-established patterns in merger enforcement, suggesting that recent developments in merger control and in market dynamics have not largely impacted the overall selection of the type of remedies.

To move from use to impact, competition authorities have traditionally used ex-post assessments of merger remedies as a tool to inform themselves of the effectiveness of past measures to restore competition. In a 2023 OECD background note on ex-post assessment of merger remedies (OECD, 2023[2]), some lessons from recent studies[5] were identified:

- Remedies were successful in most cases, particularly where no concerns or implementation issues were raised by stakeholders during the design process.
- Structural divestitures still need to be implemented with careful procedures and processes, which include appropriate choice of assets, their maintenance to avoid degradation during the divestment process, a careful selection of purchaser, and the right choice of monitor or trustee.
- Behavioural remedies work better if market-tested and when appropriate monitoring mechanisms are put in place.

More recent studies, such as the European Commission's ex post evaluation study on antitrust remedies (2025) and New Zealand's Ex-post merger review report (2026) may inform on the effectiveness and implementability of certain measures (European Commission: Directorate-General for Competition et al., 2025[3]; Commerce Commission New Zealand, 2026[4]). While not focusing on merger remedies, the authors of the former found that nine out of 13 remedies studied were implemented fully, two partially and one was not implemented.[6] Regarding their effectiveness, the study concluded that only five of them were effective in achieving their intended objectives, five were partially effective and two were ineffective. When reviewing effectiveness by type of remedies, the ex post evaluation indicates that "*purely behavioural remedies were the least likely to be fully implemented, pointing to remedy design issues, the inability of purely behavioural remedies to alter the concerned undertaking's incentives to misbehave, as well as difficulties in monitoring implementation*". Overall, the evidence suggested that while most remedies can be formally implemented, their effectiveness in achieving intended policy objectives remains uneven, highlighting a significant gap between compliance and real-world impact.

New Zealand's review focused on structural measures and revealed that i) stand-alone business divestitures are most likely to be more effective than partial divestments or carve-outs; ii) the scale and competitive position of the purchaser are relevant considerations, particularly in dynamic markets or industries characterised by economies of scale or scope; and iii) transitional measures for implementing the remedy are relevant for effectiveness and should take into account whether the purchaser already operates in the relevant market, as this may affect the level of support and integration required for it to be able to compete effectively.

In recent years, at the OECD, there have been multiple discussions that have touched upon remedy design and implementation in merger control. This includes roundtables held since 2023 on Co-operative antitrust in remedy design (2025), Remedies in digital markets in Latin America and the Caribbean (2025), Efficiencies in merger control (2025), Challenges and sources of divergence in cross-border merger review (2024), Ex-post Assessment of Merger Remedies (2023), and Theories of Harm for Digital Mergers (2023).

[5] The review included: (ACCC, 2022[16]), (Autorité de la Concurrence, 2019[17]), (CMA, 2023[24]), (Competition Bureau Canada, 2011[18]), (FTC, 2017[19]) and (European Commission DG Competition, 2005[20]).

[6] For one case, the results were inconclusive due to lack of relevant evidence.

Informed by this dialogue, as well as by the relevant work by other entities in the area of merger review, in particular that of the International Competition Network (ICN), the OECD Council revised its Recommendation on Merger Review [OECD/LEGAL/0333] in June 2025 with a view to reflecting the latest developments and internationally recognised best practices in merger review and analysis. The Recommendation includes relevant principles on the need for clear guidance for the design, assessment and adoption of merger remedies. It highlights the preference for accepting remedies that resolve entirely the concerns resulting from a merger and to prioritise structural remedies over behavioural ones, emphasising a preference towards the divestiture of standalone businesses. It also recommends considering the possibility of adopting or seeking prohibition decisions if there are no available effective remedies that would fully resolve the concerns. The Recommendation suggests ensuring that remedies are effective in light of market dynamics and applicable sectoral regulation, acknowledging the need for flexibility to account for changing market dynamics.

This GFC session will provide a timely overview of the most significant recent developments shaping merger remedies across the world, based on the principles described and focusing on evolving expectations and practical challenges. The discussion aims to enable competition authorities to better understand recent global trends in merger remedy design and to inform future enforcement and methodological advances. It also gives authorities the opportunity to exchange experiences on what has worked best, as well as areas where merger remedies have proven to be ineffective or difficult to implement.

To support the discussion, this note will review some of the most recent developments in merger remedies and will raise some discussion points around them. It will highlight how merger remedies continue to evolve as competition authorities and/or courts refine their approach to addressing competitive concerns raised by mergers. While structural remedies remain the preferred tool, particularly for transactions with horizontal effects, authorities are increasingly scrutinising divestiture packages and purchaser suitability, reflecting lessons drawn from recent enforcement experience. At the same time, a growing category of remedies such as licensing, IP-based, and access commitments, has emerged as a response to markets where competitive assets are largely intangible. Alongside these structural developments, practical dimensions of remedy design, including negotiation timing, monitoring capacity, and the use of review clauses, are receiving greater attention as authorities seek to balance efficiency, flexibility, and legal certainty in remedy implementation.

The session will be organised in two parts: a plenary session and two breakout sessions. The breakout sessions will discuss in detail the most recent developments in merger remedies, focusing on recent practice, particularly on principles underpinning merger remedies and on practical aspects of remedy design, such as timing considerations and interaction with parties. Therefore, a review of relevant experience from a wide range of jurisdictions will be essential for the discussion.

The webpage for OECD Roundtables on Competition Policy Papers will be the primary vehicle for conveying documentation and related links on this subject (see https://www.oecd.org/en/publications/oecd-roundtables-on-competition-policy-papers_20758677.html). Unless explicitly requested not to do so, the Secretariat will reproduce all written contributions on the site. The Secretariat will compile short summaries of the written contributions to be distributed before the meeting. We invite you to submit such a short summary (no more than one page) together with your contribution.

In order to ensure effective preparation of the roundtable discussion, we would be grateful if you could let the Secretariat know by **25 September 2026** at the latest if you are planning to make a written contribution on the topic. Written submissions are due by **30 October 2026** and failure to meet this deadline may result in your contribution not being distributed to delegates in a timely fashion in advance of the meeting.

All communications regarding the documentation for this roundtable should be sent to Ms Angelique Servin (Angelique.SERVIN@oecd.org). Please address all substantive queries relating to this discussion to Ms Aura Garcia Pabon (Aura.GARCIAPABON@oecd.org) and Mr Yuichi Tominaga (Yuichi.TOMINAGA@oecd.org).

2 Potential issues for discussion

This chapter examines relevant emerging trends in merger remedies and identifies potential issues for discussion in this context. In brief, the trends explored are:

- Reinforced preference for structural remedies, with higher design standards. Authorities continue to favour divestitures of standalone, viable businesses, but recent cases show growing scrutiny of divestiture packages, purchaser experience, and transitional arrangements, alongside wider use of fix-it-first solutions and crown jewel provisions to strengthen implementation.
- Rise of quasi-structural remedies as a "third way." Licensing and access-based remedies are increasingly used in digital, pharma, and technology-intensive sectors where market power derives from intangible assets, though these remedies raise similar monitoring and durability challenges as purely behavioural remedies, prompting reliance on mechanisms such as monitoring trustees and arbitration.
- Growing focus on practical implementation with a shift to faster reviews, earlier engagement and strengthened monitoring and review. Authorities are seeking to accelerate remedy negotiations through earlier engagement, while simultaneously strengthening monitoring capacity (including through digital tools) and making more structured use of review clauses to keep long-duration remedies fit for purpose over time.

The quality and utility of this session will be greatly strengthened by written contributions. To assist you in preparing your contribution, the next sections present a non-exhaustive list of topics for discussion, informed by information available on the websites of the authorities, recent OECD Competition Committee discussions and related workshops. Each section contains a number of questions for discussion on which you may wish to focus. To guarantee that experiences reflect the most recent developments, you are encouraged to refer to relevant cases or initiatives in the past three years (e.g. since 2023) where appropriate to illustrate your answers.

2.1. Principles of merger remedies

Merger remedies sit at the core of the toolkit for addressing the competitive concerns raised by anticompetitive transactions, and the principles governing their selection and assessment continue to evolve. While this section does not aim to offer an exhaustive list of current issues around those principles, it presents a set of questions that illustrate how authorities are currently approaching remedy design. It focuses on developments around effectiveness, proportionality and verifiability of measures, and the typology of remedies that authorities are willing to accept.

What measures are being taken to ensure that structural remedies work?

The OECD Recommendation on Merger Review [OECD/LEGAL/0333] highlights the preference for structural remedies over behavioural ones, prioritising, when possible, the divestiture of standalone businesses. Many competition authorities explicitly articulate this preference in their merger guidelines (e.g. Australia, Brazil, Canada, Colombia, Korea and Singapore as explored in (OECD, 2022[5])), including in those that have undergone recent revisions. In the UK, for example, the CMA's October 2025 revised remedies guideline maintains a clear preference for structural remedies as the most effective means of addressing concerns, keeping them at the core of remedy discussions while providing greater clarity on their application to mitigate risks associated with complex designs.[7] Statistics support this preference, particularly for transactions that raise horizontal concerns. As shown in the OECD review of recent cases above, structural remedies were imposed, either on their own or in combination with behavioural remedies, in more than 65% of the cases.

When imposing structural remedies, authorities typically demand that the divested businesses be stand-alone, viable, and capable of competing effectively. These elements are combined with criteria for purchaser suitability, which include experience and incentives to replace lost competition, to guarantee the effectiveness of the divestment (see previous OECD work on merger remedies such as (OECD, 2025[6]; 2025[7])). Identifying a buyer up-front is a common strategy to ensure that the authority evaluates whether there is a match between the skills, capabilities and capacity of the purchaser and the assets to be divested (Evans and Parcel, 2026[8]).[8]

New Zealand's Ex-post merger review report (2026) concluded that while both full and partial divestments can fully eliminate competitive overlap between merging parties, full divestments tend to be the most reliable means of restoring competition. Partial divestments, by contrast, proved to require more intensive monitoring and more detailed remedy design by the Commerce Commission (Commerce Commission New Zealand, 2026[4]).

In recent years, some cases have illustrated how competition authorities are increasingly scrutinising remedy packages and proposals for buyers, as well as strengthening transitional measures to secure a successful implementation. This includes instances where mergers were blocked after it was found that the divestiture proposed was not sufficient to mitigate the anticompetitive effects of the merger[9] or approving structural measures with additional conditions for the remedy-taker to start operations in the market before the consummation of the merger. [10]

Fix-it first remedy strategies where merging parties restructure their deal to remove a competition concern before the competition authority's decision have also been at the forefront in recent years. Reducing the product or geographic scope of a transaction,[11] excluding certain assets from the transaction,[12] or

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[7] CMA (2025). Merger Remedies. Available at: https://assets.publishing.service.gov.uk/media/6944062e501cdd438f4cf5f8/merger_remedies.pdf

[8] For example, as reflected during the discussions held at Federal Trade Commission, Eleventh-Hour Antitrust Remedy Proposals and Litigating the Fix Workshop (May 20, 2026): https://www.ftc.gov/news-events/events/2026/05/eleventh-hour-antitrust-remedy-proposals-litigating-fix .

[9] In the United States, for example, federal courts blocked the Kroger/Albertsons merger after finding that it was unlikely that the proposed divestiture, which included 579 stores, would have significantly mitigated the anticompetitive effects of the merger. Reasons for this conclusion included that the package was a selection of unconnected stores, banners, brands and other assets rather than a stand-alone business, that the proposed purchaser lacked operating experience at scale and that transition measures could have left the buyer dependent on the merging companies for years. United States District Court for the District of Oregon (2024), Opinion & Order, Federal Trade Commission et al. v. Kroger Company and Albertsons Companies, Inc., case No.: 3:24-cv-00347-AN, Available at https://law.justia.com/cases/federal/district-courts/oregon/ordce/3:2024cv00347/178374/521/. Recent literature has argued that "mix-and-match" divestitures have advantages ranging from giving more flexibility in targeting the harm to expanding the set of potential buyers, suggesting that in some cases, these advantages outweigh their drawbacks and calling for a case-by-case review (Heinsalu and Israilevich, 2026[23]).

[10] In the European Union (EU), the Commission accepted structural remedies in the Korean Air/Asiana merger with the condition that the remedy-taker would actually commence operations on the overlap passenger routes before the merger could close. European Commission Case No. M. 10149.

[11] Such as in the Tim/Telefonica merger in Brazil, CADE (2025) Case No. 08700.006506/2024-22.

[12] As in the Penta Investments/Apotheke case in the Slovak Republic, Slovak Competition Authority (2023) Case 2023/KOH/SKP/3/21; or the Louis Delhaize/Colruyt merger in Belgium, Belgian Competition Authority, Press Release

identifying a purchaser and entering into a binding agreement with them either before notification or during the authority's assessment[13] are common strategies followed across jurisdictions.

Similarly, authorities are using "crown jewel" or back-up remedy clauses that mandate alternative divestitures if the initial package fails to attract viable purchasers, as well as other transitional measures to support the implementation of divestitures.[14]

All the above may suggest that competition authorities have developed different strategies to strengthen the design of structural measures. The session could discuss authorities' experiences with them and explore different possibilities and conditions that could support effective implementation of structural remedies. The following questions may be considered:

- Has your jurisdiction recently changed its preferences between structural and non-structural merger remedies (e.g. in regulation, guidelines, case law)? If so, does this change show an increasing preference for "fix-it-first" remedies? Please share any recent cases or guidance illustrating this trend.
- What do you take into account when assessing the financial strength and operational capability of purchasers in structural remedies? Has the way you scrutinise purchasers' suitability or carve-outs from integrated businesses changed in recent years?
- Have the rules or expectations governing transitional measures (e.g. transitional service agreements) become more restrictive?

Are access and licensing remedies emerging as a "third way"?

In addition to standard structural and behavioural remedies, authorities are increasingly using licensing, IP-based remedies and access commitments in markets where competitive assets are mostly intangible and reductions in barriers to entry or expansion are required. Remedies such as a perpetual, royalty-free, irrevocable licence of a key patent transfer a quasi-property right that durably changes a rival's competitive position. This means that they are structural in effect yet are delivered through an ongoing obligation framed in conduct terms. In the sample reviewed, they were imposed in 14 cases since 2023, accounting for 4.2% of the total.

In sectors such as digital, pharma, semiconductors, and standards-heavy markets, these remedies may account for the fact that the source of market power is increasingly an intangible asset that cannot be physically carved out and sold as a standalone business. Ecosystem-related considerations may further support the use of quasi-structural remedies. In some cases, a full divestiture may undermine the viability or effectiveness of the assets concerned if they are removed from the broader ecosystem in which they are embedded. In others, structural separation may simply not be feasible due to the high degree of interdependence between the relevant assets and others (Fonseca, Tucker and Vasconcelos, 2026[9]).

No. 14 of 2024, BCA approves acquisition of 54 of 57 Louis Delhaize Group shops (under the brand Smatch/Match/Louis Delhaize) in first phase after modification of the merger by the parties, available at: https://www.belgiancompetition.be/sites/default/files/content/download/files/20240417_Press_release_14_BCA.pdf

[13] Like in Synopsys/Ansys in the United States, Federal Trade Commission (2025), Synopsys, Inc. and ANSYS, Inc., In the Matter of, Docket No. C-4820; or MRGAM/ERGO/Gjensidige in Lithuania, Competition Council (2025). Press release AFTER TAKING THE COMMITMENTS, THE GERMAN COMPANY WILL BE ABLE TO CARRY OUT THE TRANSACTION IN THE INSURANCE MARKET, available at: https://kt.gov.lt/en/news/after-taking-the-commitments-the-german-company-will-be-able-to-carry-out-the-transaction-in-the-insurance-market

[14] e.g. Lufthansa / ITA Airways in Europe, European Commission Case M. 11071.

Examples such as PVM/Mondelez in Portugal,[15] Schlumberger/ChampionX in the United Kingdom[16] and Broadcom/VMware in Korea,[17] where licensing remedies were imposed, illustrate this approach by competition authorities, with remedies' duration ranging from 5-7 years to 50 years or undetermined timeframes that are linked to structural features of the market.

A second suggested driver of the increased use of access and licensing remedies has been preservation of merger-specific efficiencies. Access remedies have been used as a means to neutralise foreclosure concerns while possibly letting efficiencies through.[18]

Scepticism regarding the use of access and licensing remedies remains. Weaknesses revealed are closely related to those of traditional behavioural remedies: monitoring and durability. They require the competition authority to supervise an ongoing relationship between competitors, often for years, policing behaviour regarding imposition of royalty rates, access terms, technical quality, and non-discrimination, among other variables. On this aspect, authorities that have imposed quasi-structural remedies have tended to prioritise the use of monitoring trustees to oversee compliance and clear, often fast-tracked, arbitration rules to resolve disputes related to non-compliance claims.[19]

Other sources of uncertainty regarding the effectiveness of these remedies, as is also the case with behavioural measures, relate to the specific terms of the remedy and the possibility of circumvention. Competition authorities generally seek to mitigate these risks through careful remedy design and multiple rounds of market testing. Nevertheless, the risk is often not eliminated entirely. Breaches of merger remedies demonstrate that compliance and implementation risks may arise irrespective of the remedy ultimately imposed. A survey by (A&O Shearman, 2026[10]) found that fines for breaches of merger remedies surged in 2025 and accounted for 83% of total fines imposed worldwide for merger control infringements.

The Microsoft/Activision cloud-streaming commitments illustrate differences approaches to licensing commitments across jurisdictions. Licensing remedies in the framework of this transaction were accepted by the European Commission[20] while initially deemed insufficient by others such as the CMA[21] and the US FTC.[22] Considerations for the different outcomes included discussions on sufficiency of the remedies, the complexity of monitoring them and the risk of their circumvention. In 2024, the OECD Global Forum on Competition held a broader discussion reviewing sources of divergence in cross-border merger review, touching upon differences in preferences related to merger remedies as one of the reasons for different outcomes from the assessment of the same transaction (OECD, 2024[11]).

[15] Portuguese Competition Authority (2023), Case No. Ccent/2023/4 – PVM / Mondelez, available at: https://extranet.concorrencia.pt/PesquisAdC/Page.aspx?IsEnglish=False&Ref=Ccent_2023_4

[16] CMA (2025), Schlumberger / ChampionX merger inquiry, https://www.gov.uk/cma-cases/schlumberger-slash-championx-merger-inquiry

[17] KFTC (2023), Case No. 2023-161 Broadcom Incorporated / VMware Incorporated.

[18] Vodafone/Three in the United Kingdom clearly exemplifies this discussion. CMA (2025), Vodafone/ CK Hutchison JV, Available at: https://www.gov.uk/cma-cases/vodafone-slash-ck-hutchison-jv-merger-inquiry

[19] See, for example, European Commission Case No. M. 10663 where the Commission evaluated the suitability of arbitration measures and the use of a monitoring trustee. In Microsoft / Activision, the Commission also market-tested arbitration measures, which were modified by the parties to guarantee the availability of dispute resolution mechanisms within the EEA (European Commission Case No. M. 10646).

[20] European Commission Case No. M. 10646.

[21] CMA (2022), Microsoft / Activision Blizzard merger inquiry, https://www.gov.uk/cma-cases/microsoft-slash-activision-blizzard-merger-inquiry

[22] US FTC (2022), Complaint in Docket No. 9412 Microsoft/Activision Blizzard, In the Matter of, https://www.ftc.gov/system/files/ftc_gov/pdf/D09412MicrosoftActivisionAdministrativeComplaintPublicVersionFinal.pdf

The roundtable could discuss the use of access and licensing measures, examining the market conditions and transaction characteristics that make them particularly suitable, as well as exploring strategies to maximise their effectiveness and enforceability. The following questions may be considered:

- What is your authority's recent experience with the imposition of quasi-structural remedies (for example, supply commitments, guarantees, access remedies, interoperability requirements, and investment commitments)? Please share how these have been designed and applied in recent cases.
- In your experience, do such remedies succeed primarily because they are well-designed, or chiefly in markets where the beneficiary is already strong enough to self-enforce them?
- How difficult and costly has it been to monitor these remedies in practice?
- In cases where the authority has considered imposing access remedies, have you taken into account the possible risk of taking on a quasi-regulatory role? Did this consideration play a key role in your decision on whether to impose said remedies?
- Are there particular considerations or preferences in your jurisdiction regarding the imposition of behavioural remedies in mergers impacting regulated sectors?

Are efficiencies playing a more prominent role in remedy design?

In the 2025 roundtable of the OECD Competition Committee on Efficiencies in Merger Control, different jurisdictions shared experiences on how efficiencies are factored in, including when reviewing remedy proposals.[23] BIAC's contribution indicated that remedies may be structured around the realisation of specific efficiencies. For example, remedies may include investment obligations, access guarantees, or R&D commitments that "*can address competition issues while ensuring that consumers and markets benefit from the proposed transaction*".[24]

Some authorities, however, remain sceptical of the effectiveness of investment remedies, particularly when aimed at resolving innovation-related concerns. For example, the European Commission indicated that proposals that relate to innovation efficiencies are only accepted if the Commission has a relevant degree of certainty that they will likely maintain effective competition and that they will be fully implemented, weighing in the assessment the possibility that the commitments will not be fully implemented due to the evolution of market circumstances, a risk that is higher in innovation markets.[25]

The roundtable could discuss the role of efficiencies in remedy design, including whether they should be given greater consideration, and the conditions under which this would lead to better outcomes. It could further examine ex post evidence on the extent to which remedies have supported the realisation of merger-related efficiencies. The following questions may be considered:

- Do you consider efficiencies in the assessment of remedies? How?

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[23] For example, in T-Mobile/Sprint in the United States, the Department of Justice and the Federal Communications Commission accepted investment remedies based on the conclusion that deployment of 5G infrastructure would deliver substantial benefits to consumers that were less likely if the companies remained independent. US Department of Justice (2019), Press release: Justice Department Settles with T-Mobile and Sprint in Their Proposed Merger by Requiring a Package of Divestitures to Dish, Available at: https://www.justice.gov/archives/opa/pr/justice-department-settles-t-mobile-and-sprint-their-proposed-merger-requiring-package. See also footnote 22.

[24] OECD (2025), Efficiencies in Merger Control – Note by BIAC, Available at https://one.oecd.org/document/DAF/COMP/WP3/WD(2025)20/en/pdf

[25] OECD (2025), Efficiencies in Merger Control – Note by the European Union, Available at https://one.oecd.org/document/DAF/COMP/WP3/WD(2025)19/en/pdf

- Does your assessment of remedies change in cases where efficiencies were a relevant part of the effects of the transaction in the market compared to those cases where efficiencies were not analysed?
- Have efficiencies played a key role in any merger that you cleared with remedies? If so, have you assessed retrospectively whether those efficiencies materialised? What did you find?

Should authorities allow for imperfect remedies?

In line with the 2025 OECD Recommendation on Merger Review [OECD/LEGAL/0333], competition authorities seek remedies that fully address competition concerns, with prohibitions and challenges remaining an available option for cases in which no effective remedies are feasible or available. According to the latest OECD Competition Trends report, 2024 was the year with the most prohibited or challenged mergers as a proportion of total merger decisions since 2015. Moreover, in the 2024 version of the report, an analysis of 216 prohibition or challenge decisions between 2015 and 2022 revealed that theories of harm based on unilateral, horizontal effects make up the majority of these decisions (OECD, 2025[12]). However, it also showed that prohibitions remain highly concentrated in a few OECD jurisdictions,[26] and are relatively rare in non-OECD jurisdictions, representing less than 0.1% of merger decisions in 2024.

There are situations in which remedies that fully resolve concerns do not exist or are not available. These could be transaction-related (i.e. due to features of the transaction, such as the high degree of overlap between the parties, the elimination of a uniquely close competitor, or the lack of a viable standalone divestiture package), market-specific (e.g. due to high barriers to entry, the absence of a suitable purchaser, network effects, or structural characteristics that prevent a divested business from competing effectively), or due to the unavailability of tools for the competition authority (e.g. when the authority can only accept remedies proposed by the parties, and the proposals are insufficient, instead of being able to unilaterally impose measures, or where it lacks effective means to monitor and enforce behavioural commitments over time). In some of these cases, competition authorities have looked for corrective measures as a middle-ground solution that allowed the transaction to go through rather than having sought a prohibition or challenge. For example, there have been situations where authorities have declared that partially effective remedies can still be considered as a path for merger clearance. As an example, the latest UK CMA's Merger Remedies Guidance highlights that in exceptional circumstances, when implementation costs of remedial actions are disproportionate to the scale of the distortion of competition, the authority may consider remedies which will only be partially effective in resolving the concerns.

Similarly, in jurisdictions where competition authorities do not decide on the transaction, but instead must challenge it in court, the uncertainty regarding the outcome of litigation and the costs associated with it are criteria for a competition authority when deciding whether to settle.[27] This may create scope for authorities to accept remedies that restore competition imperfectly, bringing the transaction to a situation in which it no longer significantly distorts competition, on the basis that a more certain, lower-cost outcome is preferable to the residual risk of full litigation.

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[26] United States, United Kingdom, Israel, Australia and Mexico accounted for 45% of the mergers prohibited or challenged.

[27] In 2025, the Chairman of the US FTC highlighted that the reasons for choosing settling in merger cases included the uncertainty of litigation. In his view, even when the authority is confident of the concerns that a merger raises for its effects on competition, it may be difficult to convince judges of the same facts. However, he emphasised that "the Commission should accept settlements in merger cases only when it is confident that the settlement will protect competition in the relevant market to the same extent that successful litigation would". US FTC (2025), Statement of Chairman Andrew N Ferguson Joined by Commissioner Melissa Holyoak and Commissioner Mark R. Meador In the Matter of Synopsys, Inc. / Ansys, Inc. Matter Number 2410059, https://www.ftc.gov/system/files/ftc_gov/pdf/synopsys-ansys-ferguson-statement-joined-by-holyoak-meador.pdf

The roundtable could discuss whether there are situations in which remedies that are only partially effective can still be considered to clear a transaction in the absence of an alternative that would fully do so. The following questions may be considered:

- Has there been a notable rise in outright prohibitions in your jurisdiction in cases where remedies were deemed insufficient or unavailable? Has this involved proposed structural remedies?
- How do you balance the possibility of blocking a transaction where remedies do not fully address your concerns with the possibility of clearing it conditionally even where a remedy only partially resolves the identified issues?

2.2. Practical considerations: negotiation dynamics, timing, implementation, review and monitoring

Have the timing and remedy negotiation dynamics changed in recent years?

There has been increasing momentum in recent years towards shortening merger review timelines, making it necessary to understand how the timing and dynamics of remedy negotiations are evolving within this environment.

For example, in Korea, a fast-track mechanism has been introduced to encourage the early submission of remedy proposals, allowing eligible parties to benefit from shorter review periods and moving more quickly to remedy discussions (Lee & Ko, 2024[13]).

In the UK, recent reforms have sought to encourage earlier engagement in remedies and, more generally, to accelerate merger reviews. In 2024, the CMA revised its Guidance on the CMA's Jurisdiction and Procedure to reflect procedural changes to the merger review process, including measures designed to facilitate earlier remedy discussions and align procedural rules with the updated remedies guidance.[28] Regarding negotiation dynamics, the changes also revealed signals from the CMA encouraging without-prejudice remedies discussions during Phase 1 and even in pre-notification, with statements to the effect that the earlier parties engage on remedies, the more likely the Phase 1 acceptance standard will be met.[29]

Likewise, the review process of the EU Merger Guidelines has underscored the value of early engagement between competition authorities and merging parties. During the conferences and workshops organised by the European Commission, early and proactive dialogue has repeatedly been identified as an important means of addressing competition concerns, assessing efficiencies and exploring potential remedies early in the review process (Akin Gump Strauss Hauer & Feld LLP, 2026[14]).

Moreover, the US DOJ announced in July 2026 a return to targeted Second Request investigations and issued a model timing agreement to facilitate merger review. Under such an agreement, the parties first provide the material sought by the Second Request that may answer the Division's questions before full compliance, while the authority receives that material on an efficient schedule and with more certainty

[28] CMA (2025), Mergers: guidance on the CMA's jurisdiction and procedure. https://assets.publishing.service.gov.uk/media/6970f2c7011505255b2d430d/mergers_guidance_cma_jurisdiction_procedure_1.pdf and Press release on the finalisation of the process: https://www.gov.uk/government/news/new-phase-2-investigation-process-adopted-by-cma. The reforms also aim to increase the pace of reviews. For example, the CMA shortened its targeted timetables for reviews, introducing a Key Performance Indicator (KPI) under which the pre-notification phase should be completed within 40 working days, compared with a previous average of 65 working days, and shortened straightforward Phase 1 cases from 35 to 25 working days. See: CMA (2025), New CMA proposals to drive growth, investment and business confidence, https://competitionandmarkets.blog.gov.uk/2025/02/13/new-cma-proposals-to-drive-growth-investment-and-business-confidence/

[29] This approach comes as a result of the CMA's consultation on proposed changes to the merger remedies guidance https://www.gov.uk/government/consultations/revised-merger-remedies-guidance

about when key stages will occur. Those measures seek to reduce the burden and cost for merging parties without weakening the authority's ability to thoroughly investigate transactions that may raise competition concerns.[30]

The foregoing discussion has highlighted that, while some competition authorities are seeking to shorten merger review procedures, they increasingly expect parties to facilitate the swift resolution of cases through the timely submission of remedy proposals. Against this background, this session could examine whether the timing and dynamics of remedy negotiations are changing in practice, whether remedy negotiations are becoming more prolonged and complex in response to evolving market realities and enforcement expectations, and what differences, common approaches, and emerging trends can be observed across jurisdictions. The following questions may be considered:

- Have you seen remedy negotiations being brought forward in recent cases?
- From your recent experience, what are the respective advantages and challenges of assessing an early-stage remedy proposal, as opposed to a more developed proposal submitted later in the review process?
- What institutional mechanisms are used to incentivise early remedy proposals by the parties, such as pre-notification consultations and fast-track procedures?
- If your jurisdiction operates a two-phase review system, is there a qualitative or quantitative difference between the types of remedies that may be accepted at Phase 1 and Phase 2?

What practical measures are competition authorities adopting to strengthen remedy monitoring and review with constrained resources?

Effective monitoring of long-term and technically complex remedies is crucial, but it may also require significant commitment of resources from competition authorities and/or courts. At the same time, advances in digital technologies, including AI and algorithmic monitoring tools, may have made remedy monitoring easier and faster than in the past. For example, competition authorities have increasingly strengthened their digital capabilities through initiatives such as establishing dedicated data units and recruiting data scientists. While the focus of these units has been on the development and deployment of tools for detecting bid-rigging and other forms of anticompetitive conduct, the rapid adoption of AI may further support authorities in areas such as information gathering and the assessment or modification of remedies (OECD, 2025[15]).

In addition to monitoring, the possibility of adapting remedies to changes in market dynamics also requires resources from authorities. Review clauses have become increasingly relevant, particularly in rapidly evolving cases, including digital cases, making remedy reviews an important area of focus for competition authorities. According to the (European Commission: Directorate-General for Competition et al., 2025[3]) report, behavioural measures typically last between five and ten years. In digital cases, for example, commitments may remain in force for much longer to ensure their effectiveness. In Google/Fitbit, the ads commitments could remain in force for a maximum of twenty years if the period is extended after an assessment of the initial ten-year obligations.[31] Moreover, in the UK, the competition authority is required

[30] US DOJ (2026), Justice Department Resumes Targeted HSR Merger Review Process, https://www.justice.gov/opa/pr/justice-department-resumes-targeted-hsr-merger-review-process

[31] European Commission Case No. M.9660.

to review remedies on its own initiative,[32] rather than only in response to an application by the parties, and a considerable number of remedies have recently been released or revoked.[33]

The session could examine the practical and institutional challenges of remedy monitoring, the tools available to address them, and the evolving role of digital technologies in enhancing the effectiveness, efficiency, and transparency of remedy oversight. It could also consider how review clauses could ensure that remedies remain fit for purpose over time, the circumstances and evidence underpinning their use, and how competition authorities assess market, technological, and other developments when determining whether their use is warranted. The following questions may be considered:

- How is the monitoring function organised within the authority, including the use of dedicated units or case officers and arrangements for the handover of responsibilities after the conclusion of a case review?
- To what extent could AI and data analytics transform the way that you monitor merger remedies? Is a shift from periodic reporting towards continuous monitoring based on real-time data a prospect that you have considered?
- Do you consider review clauses to be used sufficiently at present in your decisions, or is there still significant scope for their broader use? Are you using them more in cases involving rapidly evolving environments?

[32] Section 92 of the Enterprise Act 2002, https://www.legislation.gov.uk/ukpga/2002/40/section/92
[33] The CMA announced 37 remedies subject to release or revocation in January 2026, following a public consultation. CMA (2026), Final Notice of Release of Remedies, https://assets.publishing.service.gov.uk/media/69734e7c3f2908a349040598/Notice_of_release_of_remedies_23_January_2026.pdf

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