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**Global Forum on Competition**

**Ex-Post Assessment of Merger Remedies – Summaries of contributions**

**8 December 2023**

This document reproduces summaries of contributions submitted under Session IV of the Global Forum on Competition to be held on 7-8 December 2023.

More documentation related to this discussion can be found at: [oe.cd/eamr](https://oe.cd/eamr).

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## *Summaries of contributions*

This document contains summaries of the various written contributions received for the discussion on Ex-Post Assessment of Merger Remedies (Global Forum on Competition to be held on 7-8 December 2023, Session IV). When the authors did not submit their own summary, the OECD Competition Division Secretariat summarised the contribution. Summaries by the OECD Secretariat are indicated by an \*.

## *Brazil*

In 2018, CADE published the Guide to Antitrust Remedies for determining, applying and monitoring antitrust remedies. It is a reference to its civil servants, petitioners, interested third parties, and to society.

CADE understands the relevance of remedies to mitigate potential harm to the competitive environment and the necessity to assess their effectiveness. The authority has published *ex post* antitrust remedies assessment studies of mergers and acquisitions that involved processed foods, passenger air transport and stock exchange. There are also studies dedicated to finding out the extent to which CADE adheres to remedies in accordance with the Guide. They assess the processes of designing and commitments execution regarding the antitrust remedies and were conducted by the external consultant and the technical team of CADE's Department of Economic Studies (DEE), either for internal projects or for academic purposes.

All of them are available as working papers at CADE's website and disseminated by its communications unit. Moreover, the studies may be the subject of seminars promoted by DEE/CADE through the participation of the public such as professionals who work in competition, researchers, and students.

## *BIAC*

*Business at OECD* (BIAC) appreciates the opportunity to make this written contribution to the hearing on the *ex post* assessment of merger remedies.

Vigilant enforcement by competition authorities worldwide to address anticompetitive mergers remains a recognised priority. Equally, bolstering enforcement with effective tools to optimize the efficacy of vigilant enforcement must be supported. Accordingly, the periodic review by competition agencies of merger remedies imposed in the past aimed at improving decision making in future cases is principally welcomed by business. While the *ex post* review of merger remedies can be a valuable tool to assess the efficacy of previous merger decisions, any such review by agencies in this regard should be underpinned and guided by principles of transparency, certainty, and predictability.<sup>1</sup>

*Ex post* merger remedy assessments typically aim to:

*determine whether these remedies have reached the objectives expected by the [competition authority] when it imposed them, what has determined their success, and if a different remedy could have been more effective in reaching these objectives. These studies only look at the remedies and do not try to determine whether the clearance of the merger had been appropriate or not. Hence, they do not evaluate how competition in the market has been affected by the merger, but they simply consider what specific impact each remedy has had.*<sup>2</sup>

Where *ex post* assessments of merger remedies are undertaken in the most effective manner, such measures can yield benefits both to competition authorities and businesses. The *ex post* review of remedies can, for instance, enable the development of analytical tools to identify whether remedial action is necessary for a particular transaction as well as what remedy is most appropriate (based on past experiences).<sup>3</sup>

Indeed, the OECD's Background Note emphasizes this point:

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<sup>1</sup> See Jan Broulík, *Predictability: A Mistreated Virtue of Competition Law*, 00 J. OF ANTITRUST ENFORCEMENT 1, 2, 16 (2023) (articulating the value that predictability and legal certainty presents in competition law matters).

<sup>2</sup> OECD, Reference Guide on Ex-Post Evaluation of Competition Agencies' Enforcement Decisions 35 (Apr. 2016), <https://www.oecd.org/daf/competition/Ref-guide-expost-evaluation-2016web.pdf>. These remedies may take the form of either structural or behavioral remedies. In this respect:

- Structural remedies refer to the permanent change in a market structure; and
- Behavioral remedies refer to the temporary modification or constraint of the behavior of the merging firms.
- Structural or divestiture remedies can in many instances result in firms selling off parts of the businesses already acquired and/or developed. Given the time and resources invested in integrating and streamlining new acquisitions and businesses, such remedies can be highly disruptive and expensive.

<sup>3</sup> OECD, Impact of Evaluation of Merger Decisions, DAF/COMP(2011)24, at 143 (Sept. 18, 2012), <https://www.oecd.org/daf/competition/Impactevaluationofmergerdecisions2011.pdf>. See also Competition & Mkts Auth., Merger Remedy Evaluations: Report on Case Study Research 6 (June 18, 2019), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/811252/Merger\\_remedy\\_evaluations\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/811252/Merger_remedy_evaluations_2019.pdf).

In addition to providing insights to improve several aspects of merger remedy decision making and implementation, ex-post studies have the potential to improve stakeholder relations by allowing interactions with stakeholders outside of an active case. Ex-post assessments can also improve agency reputation, by demonstrating accountability and increased transparency, although it must also be acknowledged that there are risks to short-term reputation if the findings of the review publicise errors. Nonetheless, openly striving to be accountable and improve practices is a positive measure that can be communicated to stakeholders and will likely make the authority seem more transparent.<sup>4</sup>

Merger reviews, the potential imposition of remedies, and any subsequent assessments thereof by competition authorities should be conducted in a manner that provides businesses with certainty in relation to the process that the respective agency will follow. While *ex post* reviews of merger remedies can limit agencies' ability to prevent future anticompetitive harms, such reviews do have the potential to impose costs to businesses.<sup>5</sup> In this regard, it is important that activities of individual competition regimes result in, *inter alia*, the lowest possible implementation costs to businesses, particularly those that operate across a number of jurisdictions and are susceptible to multiple merger regimes.<sup>6</sup>

The *ex post* review of merger remedies involves competition authorities assessing previous decisions in order to improve the quality of future decisions.<sup>7</sup> This is adequately achieved when such assessments are defined against clear parameters, undertaken in an objective manner, and are concluded within a finite period and in a reasonable proximate time period following the implementation of a merger.

It has been suggested that the scope of ex-post analyses be extended to include non-price effects, such as innovation, quality, and product diversity.<sup>8</sup> However, in our view, price effects are likely to prove a clearer and more accurate means of quantifying the effects of merger remedies, especially given the scope for arbitrage when it comes to assessing non-price effects. Where, however, *ex post* reviews extend to non-price effects, there must be objectivity in the determination of such factors and transparency in the way such reviews will be conducted.

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<sup>4</sup> OECD, Ex-post Assessment of Merger Remedies – Background Note 14 (2023), <http://www.oecd.org/daf/competition/ex-post-assessment-of-merger-remedies-2023.pdf> (citations omitted).

<sup>5</sup> It is worth noting, as an example, that the State Aid Modernization of 2012-2016 led to a number of *ex post* evaluations in the domain of state aid. However, it has remained unclear how the results of such evaluations will/have been used to improve future state aid schemes.

<sup>6</sup> See William E. Kovacic, *Assessing the Quality of Competition Policy: The Case of Horizontal Merger Enforcement*, 5 COMPETITION POLICY INT'L 129, 132 (2009), [https://www.ftc.gov/sites/default/files/documents/public\\_statements/assessing-quality-competition-policy-case-horizontal-merger-enforcement/2009horizontalmerger.pdf](https://www.ftc.gov/sites/default/files/documents/public_statements/assessing-quality-competition-policy-case-horizontal-merger-enforcement/2009horizontalmerger.pdf) (addressing the criteria for the effective assessment of merger decisions as 1) whether the merger policy has improved economic performance by reducing the price or improving the quality of goods or services; 2) whether the individual competition systems minimize unnecessary implementation costs within and across jurisdictions; and 3) whether the competition system is committed to a process of continuous reassessment and improvement).

<sup>7</sup> OECD, Impact of Evaluation of Merger Decisions, *supra* note 3, at 13.

<sup>8</sup> Fabienne Ilzkovitz, *Ex-Post Economic Evaluation of Competition Policy: The EU Experience*, VoxEU –CEPR (Aug. 27, 2020), <https://cepr.org/voxeu/columns/ex-post-economic-evaluation-competition-policy-eu-experience>.

The OECD roundtable on the impact of evaluation of merger decisions provided the following guidance to competition authorities when conducting *ex post* merger assessments:

- Reviews should be conducted on a “regular, pre-determined basis, using wide representative samples of merger decisions.”<sup>9</sup>
- The methodology utilized by the agency should be “sufficiently flexible to take into account the differing priorities of and resources available to any given competition agency” and should be “consistent over time (allowing for fine tuning and incremental improvement).”<sup>10</sup>
- Authorities should give consideration to “the use of independent assessments of past merger decisions, as opposed to competition agencies relying solely on self-evaluation.”<sup>11</sup>

BIAC agrees with this approach and emphasizes that it is equally important for the agency to make the results of each assessment publicly available to ensure transparency and certainty.<sup>12</sup>

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<sup>9</sup> OECD, Impact of Evaluation of Merger Decisions, *supra* note 3, at 148.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See OECD, Ex-post Assessment of Merger Remedies – Background Note, *supra* note 4, at 27.

## *Fiji*

The Fijian Competition and Consumer Commission (FCCC) is Fiji's competition regulator, and enforces Fiji's merger control regime as set out in Sections 72 and 73 of the Fijian Competition and Consumer Commission Act 2010 (FCCC Act 2010). The FCCC's merger control regime operates according to a dominance test.

The FCCC has required remedial undertakings for a number of major merger and acquisition cases under Sections 72 and 73 in recent years.

In carrying out ex-post assessments of competition cases, the FCCC typically makes use of one of two approaches. Firstly, we may make use of our Impact Assessment Framework, which was developed in 2019 based on the best practice of other agencies. Secondly, the FCCC may, especially in cases where we believe the market is systemically important to the Fijian economy, conduct follow-up market studies which are intended to re-assess competitive conditions in the market in question.

In practice, the FCCC's ex-post assessment of merger remedies has recently focused predominantly on follow-up market studies. This reflects a number of considerations.

Firstly, a number of recent transactions assessed under Sections 72 and 73 have affected markets which the FCCC considers to be systemically important to the Fijian economy, including (for example) transactions relating to major players in the freight shipping, natural gas and telecommunications sectors in Fiji. The systemic importance of these markets to the economy as a whole is considered by the FCCC to justify an especially thorough approach to ex-post evaluation, both of our original analysis and, where remedies or undertakings were introduced, of the effectiveness of the remedy and undertaking packages.

Secondly, the FCCC oversees a regulatory remit which is relatively wide by the standards of peer competition regulators internationally and, in some cases, our ability to intervene in markets if our remedies had proven ineffective would be concomitantly greater. The FCCC has not, as of 2023, considered there to be justification for further intervention in any of these markets as a result of an ex-post assessment. However, given the breadth of our regulatory remit, ongoing study of such markets is in any case important for the carrying out of the FCCC's responsibilities and, if required, further regulatory intervention could be possible. Nonetheless, it should be noted that so far no such secondary intervention has been considered necessary.

Ex-post assessment of merger remedies produces a number of useful outputs for the FCCC, not least of which is that the FCCC is using ex-post assessments of merger remedies to inform the development of our remedies framework.

The FCCC does not currently have formal guidelines for the ex-ante evaluation of proposed merger remedies or undertakings in merger cases, and has previously analysed proposed remedies on a case-by-case basis following the best practice of peer agencies in other jurisdictions.

While we believe that this approach has produced effective packages of remedies and undertakings in past cases, we understand the benefits that can be achieved by the development of formal guidelines which inform our practice and are available to businesses and other stakeholders.

As such, the FCCC is in the process of developing merger remedy guidelines which we intended to complete within the current financial year. These guidelines will be based on international best practice, but will also incorporate key lessons from ex-post assessment of previous remedies and undertakings from previous merger cases assessed by the FCCC.

The importance of ex-post assessment of previous remedies packages in informing best practice in future cases is perhaps the key motivator of ex-post assessment, and is of particular significance to younger agencies. By strengthening institutional memory of past approaches to remedies, and by focusing closely on the effectiveness of past remedies, a rigorous approach to ex-post evaluation can allow competition agencies to develop guidelines which reflect the specific economic context in which they operate. Such an approach is perhaps especially valuable for younger agencies and agencies in developing countries, which may be faced with economic conditions that differ in important ways from those faced by many of longer established competition agencies.

## *Georgia*

The Georgian Law on Competition defines the control of concentrations and its agreement with the Agency if the total turnover of the participating companies is equal to or greater than 20 million GEL, and not less than 5 million GEL individually. Companies are obligated to obtain approval from the Agency for such mergers. In 2020, the Parliament of Georgia adopted amendments to the Law of Georgian on Competition, which significantly enhanced the enforcement policy, specifically concerning the control of concentrations.

The adoption of amendments in Georgia has resulted in the implementation of a two-stage concentration control system that follows a successful European practice. If a company engages in a merger or acquisition without notifying the Agency, the Agency has an effective system in place to detect, verify, and respond to it.

Since the improvement of competition law, compliance with the Agency has significantly increased. The Agency has created an effective mechanism to monitor registered concentrations, allowing for the detection of unreported concentrations. In Georgia, the process of business registration, share purchasing, and merging companies is fully digitized, simple, and transparent. Accordingly, we receive complete information regarding registered concentrations in Georgia every quarter from the National Agency of Public Registry of the Ministry of Justice of Georgia. This information is then processed and filtered according to relevant criteria. If it is found that any of them were subject to notification, we initiate the relevant procedures, penalize the supplier, and assess its compatibility with the competitive environment.

After the improvement of the law, from 2020 to 2023, the National Competition Agency approved both horizontal and vertical concentrations of 16 units in various sectors of the economy. Among them, 7 units were implemented without notification of the Agency.

The National Competition Agency to improve the legislation in the direction of effective control of concentrations, in the near future it is planned to complete several by-laws. The evaluation of the legislative documentation is ongoing within the framework of the EU Twinning project with the active support of our Austrian and Lithuanian colleagues.

## *Greece*

This Roundtable will consider several aspects of ex-post assessments of merger remedies, including reviews that consider the implementation of the remedy as well as those that consider its design. It will also discuss the need for them in competition authorities' toolkits, and how best to implement them effectively according to the resources available. More specifically, the OECD Global Forum on Competition will discuss:

- What experiences have jurisdictions had with ex-post assessment of merger remedies? What are the different scopes and types of review available?
- What are the benefits of conducting ex-post assessments of merger remedies? How can these be maximized, and lessons incorporated into future practices?
- Are there any challenges in these reviews? How can these be overcome? What are their resource requirements?
- What are the best practices for conducting ex-post assessments of merger remedies? How should cases for review be selected?
- How do these reviews relate to ongoing remedies? What actions can authorities take if they find remedies are not working well?

## Italy

In 2019, the Autorità Garante della Concorrenza e del Mercato (the “AGCM” or “Authority”) conducted an *ex-post* assessment of its practice in defining and implementing merger remedies. The study analysed the characteristics and implementation of both structural and behavioural remedies imposed by the AGCM in merger decisions adopted in the 2007-2017 period, focusing in particular on the effectiveness of structural remedies.

The *ex-post* assessment allowed the AGCM to identify some relevant differences between structural and behavioural remedies in terms of (i) the effectiveness and timeliness of the measures and (ii) the compliance processes. In addition, the study led to a number of proposals to strengthen the effectiveness of the remedies adopted by the Authority to restore an adequate level of competition in the relevant markets, bringing to changes in the Authority’s practice of the last few years.

With regard to structural remedies, the *ex-post* study highlighted the importance of clearly identifying the assets to be divested in the final decision rather than during the compliance phase, despite the strict deadline for Phase II merger investigations (with the current rules, in force since 1990, only 45 calendar days). Moreover, the study suggested that a shorter timeframe would make the divestiture of assets more effective, together with the imposition of fire sale provisions and a more regular use of divestiture trustees.

The identification of the methodology for the study was informed by the *ex-post* reviews of other competition authorities, and aimed to provide a fact-based, neutral review of the overall activity carried of the AGCM over a decade, rather than focusing on individual decisions, which would have required the involvement of external consultants and raised questions about the sample selection, with the risk of singling out some specific stakeholders.

## *Japan*

The Japan Fair Trade Commission (JFTC) has long conducted ex-post evaluations of merger reviews. While most of the ex-post evaluations verified the appropriateness of merger reviews themselves, those conducted in 2007 and 2021 are also related to the evaluation of remedies.

In 2007 evaluation, the JFTC conducted an ex-post evaluation of the remedy of a merger. One of the contents of the remedies was that the merging companies would license their patent to their competitors after the merger, if requested. In the ex-post evaluation, the JFTC found that no such request was made after the merger. However, given the fact that, among others, merged companies held patents essential for entry into the market, the report concluded that the remedy had a certain effect in terms of ensuring entry pressure. Also, the report drew some lessons from the results, including that it is important in a case like this to take measures to ensure that the remedies are well known.

In 2021 evaluation, the impact of a merger on the product prices was analyzed. It examined how the market price of one of the relevant products changed after the merger by using the Difference in Differences method. The analysis revealed that, in the same conditions other than the existence of the merger, there was no significant change in the price of another product similar to the product treated, while the price of the treated product was significantly lower after the merger than before. According to the evaluation, this result could be due to a variety of factors, including effective remedies, efficiency increased by the merger and no market power after the merger. Since the analysis was aimed at identifying the impact of the merger on prices, it did not reveal what was the cause of the decrease in the prices.

## *Kazakhstan*

The pivotal role of mergers and acquisitions (M&A) in Kazakhstan's corporate landscape, driven by the nation's abundant resources and diverse business sector. The M&A market, particularly vibrant in industries like oil and gas, finance, telecommunications, and renewable energy, plays a key role in Kazakhstan's economic modernization and attracts both domestic and international investors.

The antimonopoly authority regulates economic concentration under the Entrepreneurial Code, overseeing various forms of M&A transactions. Key markets for economic concentration include oil and gas, renewable energy, finance, and information technology. The Agency for the Protection and Development of Competition administers the review process, offering it as a public service through an online portal.

Trends in economic concentration regulation involve partial automation, a two-stage evaluation process, and revisiting cases for non-compliance. The introduction of the trustee system and a register of authorized persons aims to enhance monitoring and control. Legislative changes, influenced by specific cases, include revising thresholds and addressing loopholes.

While the M&A market offers growth opportunities, companies exploiting antimonopoly law loopholes can have adverse effects on economic activity. Adherence to antimonopoly legislation is emphasized to maintain a healthy and competitive business environment in Kazakhstan.

## *Kenya*

Merger control is an important part of any competition regime, and effective merger remedies are needed to ensure its efficacy. Remedies are a distinct process within merger control and represent a number of specific challenges that warrant careful consideration, including how remedies are designed as well as how they are implemented. Ex-post assessments of merger remedies permit competition agencies to reflect on past merger decisions with respect to whether the remedy achieves the intended purpose or otherwise or whether the decision has had an expected impact on the market or sector. Additionally, ex-post evaluations are increasingly being appreciated by competition authorities in assessing the economic impacts of not only merger decisions but also enforcement decisions including coordinated conducts as well as unilateral conducts. The Competition Authority of Kenya ('the Authority') has in the past five years conducted ex-post impact assessment on its past decisions in various sectors involving both merger remedies and cartel conducts.

This paper highlights the experiences that the Authority has had with ex-post assessments of merger remedies; the benefits of conducting ex-post assessments of merger remedies; how to maximize the benefits of ex-post-merger review, and lessons incorporated into future practices; the ex-post-merger review and how to overcome the challenges; the best practices for conducting ex-post assessment of merger remedies, the basis for selection of the cases for review; the relation of ex-post-merger reviews to on-going cases and the action that could be adopted in instances where merger remedies are not working.

Merger control is important because it plays a critical role in maintaining competitive, fair, and efficient markets. The key learning point of convergence with other competition agencies is the need to consistently conduct ex-post evaluations of not only merger decisions but also cartel enforcement decisions. In addition, through the assessments, the Authority has improved its analysis of merger filings as well as investigation processes to incorporate probable future impacts of the decisions. Ex-post assessments of merger remedies are essential tools for competition authorities to ensure that mergers do not harm market competition and consumer welfare. They help maintain the integrity of the merger review process and provide a mechanism to correct any competition issues that may arise following the completion of a merger. Lastly, ex-post assessment of merger remedies in Kenya plays a vital role in ensuring that competition in the marketplace is safeguarded following mergers and acquisitions.

## *Mexico*

### **Federal Economic Competition Commission (COFECE or the Commission)**

The Federal Economic Competition Commission conducts both ex-ante and ex-post assessments to analyse the effects and quality of its decisions, optimize the use of its resources and disseminate the benefits to society for every Mexican pesos invested in the institution. Particularly, ex-post assessments quantify the economic benefits from the Commission's past actions and study the dynamics of the markets once they have internalized the effects of such decisions. The results of these exercises contribute, not only, to measure the impact of Cofece's actions, but also to improve the quality of future interventions. Cofece has developed a methodology for carrying out such assessments which sets out the criteria to determine which interventions may be subject to an evaluation which in the case of mergers includes those operations that were blocked or conditioned. To this day, the commission has conducted 4 (four) ex-post assessments related to merger cases, of these, the contribution presents two examples: a merger in the airline industry and a merger in the chemical industry.

### **Federal Telecommunications Institute (IFT)**

At the IFT, merger analysis is not just about 1) big M&A transactions that exceed the notification thresholds. The IFT also implement merger analysis for 2) regulatory transactions review and 3) regulatory proceedings, and these come as an advantage of bringing the regulatory and antitrust powers into the same agency.

So far, the IFT has not issued a formal ex-post assessment of merger remedies. Instead, it has closely monitored the imposed remedies on landmark decisions, and it has distinguished key elements to determine how effective those remedies have been. The key elements identified in this contribution may anticipate how successful certain remedies have proven to be in the three types of merger assessments done by the IFT.

Additionally, the IFT has conducted studies to assess the behavior of certain markets after a decision has been placed upon them, specifically in dealing with merger and auction decisions.

## *Türkiye*

On 17.11.2011, the joint control of MARS cinemas and AFM cinemas by Esas Holding and Actera Partners L.P. was approved by the Board (the MARS/AFM decision)<sup>13</sup>, within the framework of the commitments made by the undertakings that are party to the transaction. In the MARS/AFM decision, it was envisaged that nine cinemas had to be divested and three cinemas had to be closed within the scope of the commitment package submitted by the undertakings.

In the MARS/AFM decision, the relevant product market was basically defined as movie theater services. The relevant geographical market consists of Türkiye and Istanbul, Ankara, İzmir, Antalya provinces. In addition, it was concluded that Istanbul can be divided into sub-geographic markets on the Anatolian and European sides. Additionally, an ex-ante economic study was conducted to investigate the impact of the transaction on final consumer prices. In this study, a total of 38 separate geographical markets were identified in four provinces where concentration took place. The effects of the transaction on regional competitive conditions in these markets were examined.

Regarding ex-post evaluation of merger remedies, a cinema sector inquiry was initiated to closely monitor the post-decision competitive conditions in various markets of the cinema industry, such as production, distribution and film screening services. The final report of sector inquiry evaluated the changes in the competitive conditions in the cinema sector in light of the MARS/AFM decision.

The survey method has chosen to screen the market. In order to examine the changes that took place after the MARS/AFM decision, a web-based survey was conducted in addition to interviews with industry representatives. The TCA carried out an economic analysis, and in this context, the changes in the structure of the relevant markets and prices after the decision were examined.

The sector review consists of evaluations about the competitive structure especially entries and exits, price levels and market shares, investments and acquisitions and the effect of digital transformation. The market shares were at the predicted levels. In economic analysis it was calculated that there was a real decrease in prices. On the other hand MARS advertising revenue much higher than its competitors. Although the market has been growing, the investment costs created by the digital transformation in the display market lead to exits from the market. MARS had also protected its buyer power especially against medium-small scale distributors. The report emphasize that MARS did not notify its acquisitions. Taking into account MARS's ongoing investments, high advertisement revenue and market power, the report warned that Mars had the potential to use its market power to exclude competitors.

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<sup>13</sup> Board's decision dated 17.11.2011 and numbered 11-57/1473-539

## *United Kingdom*

In October 2023, the United Kingdom Competition and Markets Authority (CMA) published the latest update in its merger remedy evaluation programme.<sup>14</sup> The CMA merger remedy evaluation programme is an established programme that evaluates its merger remedies. This is part of the CMA's wider work to evaluate the impact of its interventions, which is an important aspect of public policy. Evaluations help policymakers understand what worked well and what has been less successful. They provide the basis for continuous improvement and can drive legislative reform and policy development, as well as informing future interventions.

The CMA merger remedy evaluation programme has been undertaken in seven tranches, starting in 2007.<sup>15</sup> There have been 23 merger remedy evaluations conducted to date, including the five new cases covered in the most recent update. The individual merger cases included in the programme were selected to cover a variety of remedy types, including structural remedies such as full divestiture and partial divestitures, behavioural remedies such as price controls and vertical separation, as well as intellectual property (IP) and licensing remedies.

The CMA's submission focusses on our latest update to our merger remedies evaluation programme, which evaluated and identified learnings from a set of merger case studies where the CMA required 'carve-out' divestiture remedies to be implemented. As set out in more detail in the paper, we refer to carve-out remedies as being a limited form of partial divestiture, but where the divestiture is limited to the divestment of a combination of assets, contracts and staff, which were not previously a self-standing business or business unit.

The key learning points specific to the 5 new case studies indicate that carve-out divestitures are subject to increased composition and purchaser risks that have the potential to undermine the divestment business's ability to compete effectively. The research also concludes that:

- Purchasers face challenges in conducting robust due diligence on divestment packages in carve-out remedies. This limits the usefulness of such due diligence to the CMA as a safeguard against composition risks; and
- Fallback remedies (which have been a feature of some carve-out remedies) may not be an effective safeguard against the higher composition risks of initial divestiture packages and may play only a limited role in reducing the risk profile of poorly-specified remedies.

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<sup>14</sup> [Understanding past merger remedies – 2023 update - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118114/Understanding_past_merger_remedies_-_2023_update.pdf)

<sup>15</sup> The Competition Commission (CC), a predecessor organisation to the CMA, published 11 case studies in four tranches between 2007 and 2012. The CMA has since published 12 case studies in four tranches, in 2015, 2017, 2019 and 2023.