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Co-operative Antitrust in Remedy Design – Background Note

– By the Secretariat –

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Abstract

As markets grow in complexity and scale, more co-operative approaches on remedies can improve enforcement effectiveness and prevent inconsistent outcomes. This paper explores the design of remedies in competition enforcement, with a particular focus on the value of co-operation between competition authorities and other public and private stakeholders. It introduces the concept of remedies, outlines key definitions and principles, and explores how collaboration can enhance remedies effectiveness. It also examines the architecture of co-operation, as well as the relevant challenges.

Keywords: Antitrust Law, Antitrust Policies, Imperfect Markets, Anticompetitive Practices, Merger Policy, Remedies

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Executive summary

As markets grow in complexity and scale, the role of competition authorities in preserving fair market dynamics becomes increasingly critical. This paper explores the co-operative design of remedies – conditions or commitments imposed to address anti-competitive concerns – as a key enforcement tool in merger control and antitrust investigations. Remedies represent a vital mechanism for correcting market distortions and deterring future anti-competitive conduct.

The design of effective remedies is inherently complex, requiring case-specific, fact-intensive approaches. Recognising these complexities, the paper emphasises the value of co-operative remedy design, involving collaboration between competition authorities, businesses, regulators, and other stakeholders. Such co-operation can enhance the feasibility, consistency, and efficiency of remedies, particularly in cases with cross-border implications.

The paper highlights how national and international co-operation can improve enforcement outcomes and prevent conflicting decisions. It reviews key principles and practices, including informal and formal coordination mechanisms, and outlines the benefits and challenges that competition authorities may face engaging with multiple actors in remedy design.

The paper concludes that fostering collaboration in remedy design may lead to more timely and effective interventions. It offers practical strategies for competition authorities to facilitate co-operation with different stakeholders according to their characteristics, while acknowledging the legal and procedural constraints that may shape the nature of such interactions.

The key takeaways are:

- Remedies are essential tools in antitrust enforcement and merger control, used to halt anti-competitive conduct, prevent its recurrence, and restore competition in the market.
- Effectiveness and proportionality are the guiding principles of remedy design, requiring careful case-by-case analysis. Stakeholder engagement may contribute to ensuring that these principles are the basis of remedy design outcomes.
- Effective co-operation with stakeholders can improve the identification, design, and implementation of remedies, as well as facilitate monitoring and compliance.

Despite challenges and limitations, as well as possible misalignment of objectives, competition authorities can adopt practical strategies. While not intended to be exhaustive, the paper offers some practical ideas for authorities that recognise the value of engaging in co-operative approaches to remedy design. These strategies can serve as a starting point for fostering more inclusive and effective processes, tailored to the specific context of each intervention and to the legal framework in the jurisdiction.

- **Early engagement with stakeholders.** Competition authorities could consider strategies to build trust and long-term relationships with stakeholders. This includes opportunities for engagement outside the framework of cases or requests for information early in the process of designing remedies.
- **Transparent communication of objectives and possible outcomes.** Competition authorities could issue clear guidance on roles, responsibilities and expected outcomes – including timelines and mechanisms – to help stakeholders understanding the process for effective collaboration.

- **Use of different tools to leveraging the different parties' expertise.** Competition authorities can use tools such as confidentiality waivers, incentives for early remedy proposals and market testing strategies to benefit from the knowledge and input of stakeholders.
- **Consider adjusting mechanisms.** Competition authorities could consider mechanisms that allow them to adapt and align remedy design to changing market conditions, past experiences, and future developments, especially when co-ordinating across jurisdictions.

1 Introduction

1. As markets evolve in complexity and scale, it becomes increasingly relevant to understand how the conduct of companies may influence competitive dynamics. The interconnected nature of economic activities means that business practices often have ripple effects, regardless of where they originate. In this context, effective competition increasingly relies on the ability of competition authorities to successfully intervene in situations where transactions or behaviour are distorting competition. To achieve effective enforcement, adopting remedies appears as an available tool for authorities for authorising mergers or as a way to close antitrust investigations. Remedies, if well-designed, can correct distortions to competition and deter future anti-competitive behaviour.¹

2. Remedy design is, however, a complex task. It is case-specific, fact-intensive and should respond to clear objectives, including the overarching goals of competition laws in each jurisdiction. There are situations where the process can benefit from the ability of all relevant actors – competition authorities, businesses and other stakeholders – to engage in co-operative design of the remedies.

3. As the OECD Recommendation of the Council Concerning International Co-operation on Competition Investigations and Proceedings [[OECD/LEGAL/0408](#)] recognises, co-operation includes a broad range of practices. They may go “*from informal discussions to more formal co-operation activities based on legal instruments at the national or international level*”. These practices are employed by competition authorities or courts to ensure more efficient or effective reviews of anticompetitive practices or mergers, and may also include more general discussions related to competition policy and enforcement practices. This paper addresses all types of practices, acknowledging that each may pose distinct challenges for authorities and that, depending on the legal framework or specific circumstances, some may be more readily applicable than others.

4. Fostering collaboration, as this paper illustrates, can enable a better design of remedies that are implementable and achieve the intended outcomes. Moreover, involving different actors in their design can help understand alternatives, guarantee consistency and avoid conflicting actions that may overshadow effectiveness of the intervention. When transactions or conduct may impact competitive dynamics abroad, interactions with other competition authorities may be beneficial. For example, transactions or behaviour may raise competition concerns in multiple jurisdictions, and, therefore, must change to correct market distortions. In the context of competition enforcement, investigations may involve foreign conduct with domestic harm or even global conduct with effects spanning multiple jurisdictions. In both situations, co-ordinating efforts to design remedies can improve enforcement effectiveness and prevent conflicting outcomes.

5. Remedies, while not used in a significant share of cases, are part of the regular activities of competition authorities. Per year, 3.2% of the mergers reviewed by competition authorities in the OECD CompStats database are approved with conditions. Simultaneously, each year, authorities terminate around one third of their abuse of dominance cases early with commitments (OECD, 2025^[1]).

6. The need for co-operation in antitrust remedy design, and broader considerations for the process of defining them have been extensively debated at the OECD. The theoretical and practical values, as well as challenges of co-operation have also been understood for many years. Discussions around remedies include the roundtables: “Ex-post Assessment of Merger Remedies” (OECD, 2023^[2]), “Remedies and

Commitments in Abuse Cases” (OECD, 2022^[3]), “Designing and Testing Effective Consumer-facing Remedies” (OECD, 2018^[4]) and “Commitment Decisions in Antitrust Cases” (OECD, 2016^[5]). Conversations have also touched upon cross-border issues, such as in 2024, when a roundtable on “Challenges and Sources of Divergence in Cross-border Merger Review” dealt with co-ordination between authorities in different areas of merger review, including remedies (OECD, 2024^[6]), and the discussion on “Extraterritorial Reach of Competition Remedies” (OECD, 2017^[7]).

7. Key principles governing remedy design have been consolidated in different OECD Recommendations. These include the following considerations on co-operation:

- The OECD Recommendation of the Council Concerning International Co-operation on Competition Investigations and Proceedings [[OECD/LEGAL/0408](#)], adopted in 2014, recommends its Adherents to co-ordinate in “*the design and implementation of remedies to address anticompetitive concerns identified by competition authorities in different Adherents*”.²
- The OECD Recommendation on Merger Review [[OECD/LEGAL/0333](#)], revised in 2025, recommends Adherents to “*co-operate with other reviewing jurisdictions on remedy design and implementation in transnational mergers, so as to bolster their effectiveness while avoiding inconsistencies*.” It further recommends Adherents to ensure that remedies are effective in light of applicable sectoral regulation, which in turn involves alignment with regulators and other relevant public stakeholders.
- The OECD Recommendation on Transparency and Procedural Fairness in Competition Law and Enforcement [[OECD/LEGAL/0465](#)] stresses the need to ensure non-discriminatory, proportionate and consistent enforcement decisions in general, which applies to remedy decisions.

8. This paper focuses on the co-operative aspect of remedy design in merger and abuse cases and market investigations between competition authorities and other stakeholders, leaving aside broader, general issues that authorities face when designing remedies, as well as other areas of co-operation (e.g. co-operation for market definition). In this sense, it centres on situations where there is value from co-operation, omitting scenarios where evident divergences do not leave room for collaboration (although co-operation may be a way to understand them). The discussion includes all remedies where co-operation may be useful, touching upon remedies with extraterritorial reach, but without engaging into a discussion on the need to prove effects of a foreign conduct.³

9. The remainder of the paper is structured as follows. The second section sets the scene, presenting key definitions and principles of remedies. The third section presents the rationale for following a co-operative approach in remedy design. The fourth one goes through the architecture of remedy design, discussing mechanisms for engagement by type of stakeholders, and describing general obstacles that may arise and limit co-operation. The final section sets some conclusions.

10. The paper concludes that a co-operative approach to the design of remedies can guarantee timely and effective intervention. Engaging with parties, market participants, sector regulators and other relevant private or public actors can enhance the quality, feasibility and legitimacy of remedies. It shows different strategies that competition authorities can employ to facilitate co-operation in remedy design, acknowledging obstacles and challenges that ultimately determine how the collaboration between the different actors looks like in each case.

2 Understanding remedies: definitions and principles

11. Before delving into the rationale and architecture of co-operative remedy design, it is important to establish a foundation for the discussion. This section briefly outlines the definition and objectives of remedies, the rules and general principles governing remedies in competition enforcement and the types of remedies available for competition authorities and courts. These elements influence the design remedies, as well as the degree of co-operation they may pursue with different stakeholders, including competition authorities from other jurisdictions.

2.1. Definitions

12. Remedies in antitrust can be understood as “*measures that aim to stop current or future unlawful conduct, prevent its recurrence, cure or prevent the conduct’s anti-competitive effects, and restore competition*” (OECD, 2017^[7]). Their core universal goal is to correct harm to competition (ex-post if it has occurred) or preserve competition that would otherwise be lost (ex ante if the effect has not materialised, as it is the case in merger review) (Halperin, 2024^[8]) with some specific goals according to the framework in which they are used:

- In merger cases, the primary concern is that the transaction may lead to a company gaining or increasing its market power to anti-competitive levels. Authorities and courts impose remedies aimed at eliminating any potential harm to competition resulting from the merger. These remedies enable the approval of transactions that might otherwise be prohibited (OECD, 2012^[9]).
- Remedies in antitrust investigations may have an injunctive aim to stop companies from engaging in unlawful activity, as well as to correct its effects on competition. They may also have a preventive aim, seeking to prevent the occurrence of future infringements. Finally, they could be restorative, which implies correcting the effects caused by the infringement (Bostoen and van Wamel, 2023^[10]).
- In market investigations, authorities may identify competition concerns that are not necessarily linked to violations of antitrust laws. In such cases, remedies are designed to resolve the concerns by introducing changes in market structure or behaviour, regardless of any wrongdoing by businesses. Remedies can serve as early interventions to prevent situations where risks of anti-competitive conduct could eventually lead to actual infringements (Van den Boom et al., 2023^[11]).⁴

13. Box 2.1 presents relevant definitions applicable to remedies, including different types of remedies available and processes for imposing or accepting remedies in mergers and antitrust investigations.

Box 2.1. Definitions of key concepts and terms relating to remedies

Type of remedies

Behavioural remedies (or conduct remedies) alter how a firm conducts its operations. Behavioural remedies can take the form of either negative or positive obligations that the firm must comply with.

In contrast, **structural remedies** require firms to divest, release or carve-out certain of their tangible or intangible assets. They are generally one-off remedies that intend to restore the competitive structure of the market.

In some cases, **demand-side remedies** (or consumer-facing remedies) may be considered, which generally involve applying insights from behavioural economics to identify and address existing consumer biases.

Key processes for imposing or accepting remedies

A unilateral conduct proceeding may result in a **formal decision**, confirming the finding that the abuse of dominance has occurred and including (as relevant) fines, cease-and-desist orders and remedies, or a **commitment decision**, accepting commitments voluntarily offered by the party itself during an ongoing investigation. Different jurisdictions use different terminology to refer to these procedures, including settlements, undertakings, consent agreements or consent orders or decrees. For the purposes of this paper, the measures imposed through these procedures will be referred as remedies.

Merger proceedings may also result in remedies being imposed or accepted in the form of **commitments** offered by the merging party.

Also relevant are **interim measures**, which are protective and corrective tools that may be adopted while an investigation is ongoing, with the primary objective of preventing anti-competitive harm that may occur between the opening of an investigation and a final decision

Source: OECD (2025^[12]), "Remedies in digital markets in Latin America and the Caribbean", *OECD Roundtables on Competition Policy Papers*, No. 326, OECD Publishing, Paris, <https://doi.org/10.1787/34bbc7e4-en>.

14. To guarantee transparency and predictability, many competition authorities have published guidelines or manuals specifying their criteria in considering remedies, including explaining similarities and differences between the procedures applicable to mergers, conduct and, when relevant, market investigations.⁵ While all scenarios have different procedures applicable, for the purposes of this note, they will all be referred to as remedies, with appropriate distinctions made when needed.⁶

2.2. Principles

15. Whether imposed at the conclusion of an enforcement investigation or as part of a merger review, remedies serve a set of common objectives, as illustrated above, and are guided by the two following shared principles that are widely recognised across competition authorities.

Effectiveness

16. One core principle recognised by authorities and courts around the world is that competition remedies should be effective. Remedies must put an end to (1) the harmful behaviour (or the possibility

for it to materialise) and (2) its effects. In this context, the remedy should have the ability to stop the behaviour, prevent its repetition and re-establish competition (Mandrescu, 2024^[13]).⁷

17. Remedies should also be tailored to the underlying harm (Ohlhausen and Taladay, 2022^[14]). When imposing remedies, authorities aim at addressing a past, current or potential distortion of competition. This requires clearly identifying the competition concern so that the remedy can be properly tailored and directly connected to it. Effectiveness is also linked to timing considerations. A remedy should address the competition concern as soon as possible. Changes in market dynamics, future implementation and monitoring costs and time required for the materialisation of the intended effects should be considered. Generally, the remedy application should be long enough to allow for the intended effects and short enough to account for the dynamic nature of markets (OECD, 2022^[3]). When remedies are offered by the parties, it is common that competition authorities require the company to clearly establish the timeframe for their implementation. When remedies are of behavioural nature, the proposal must establish the period in which the company expects to maintain its commitment.

18. Finally, effectiveness encompasses implementability and enforceability. This means that all parties concerned should be able to comply with the remedy within the established period (implementability) and non-compliance should be considered a violation of competition laws subject to sanctions (enforceability). Effectiveness also requires verifiability, meaning that competition authorities must establish mechanisms to monitor compliance, verify implementation and assess the remedy's effects.

Proportionality

19. There are limits on authorities' ability to impose antitrust remedies. Remedies must be proportionate. They must correspond to the nature and scope of the identified harm and must be necessary to correct it. An implication of the proportionality principle is that, whenever there are multiple, equally effective options available, the authority must choose the one that is least burdensome on the parties. In other words, the remedy should be the least restrictive effective mean to address the competition concern. The proportionality test can be different depending on whether the authority is the one imposing the remedy or whether it comes as a proposal from the parties.⁸

20. Proportionality also involves causality between the harm and the remedy, meaning that the remedy corrects the identified (and no other) harm. Overall, what proportionality means is that form, intensity and duration should be limited to the necessary to address the competition concern (whether arising from a merger transaction or from anticompetitive conduct), without going beyond. This means that the remedy should not be used for other purposes, including adding more competition into the market than what would have existed in the absence of the transaction or conduct.

3 Rationale for a co-operative design of remedies

21. Designing remedies is rarely straightforward. It requires balancing legal, economic and practical considerations, to ensure interventions are both effective and proportionate and that they meet the criteria described above. This task becomes even more demanding in the current enforcement landscape, where markets are increasingly global, complex and dynamic. In such an environment, a unilateral approach to remedy design might prove insufficient. Authorities face information asymmetries (vis-à-vis investigated or merging parties, but also sectoral regulators and other public and private actors), and a growing probability that remedies adopted in one jurisdiction will interact with or even contradict those imposed elsewhere. These challenges explain why co-operative approaches to remedy design have gained prominence and why they are increasingly important.

22. Recent ex post assessments of remedies suggest that effectiveness cannot be taken for granted and this provides useful context for understanding the growing focus on co-operation in their design. The European Commission's study on twenty years of antitrust remedies⁹ found that although most commitments were formally implemented, fewer than half achieved their intended competitive effect (European Commission: Directorate-General for Competition et al., 2025^[15]). Behavioural measures in particular were cited as toothless, partly because of the absence of adequate monitoring mechanisms and the lengthy duration of proceedings, which undermined their impact. By contrast, a comprehensive, although less recent review conducted by the US Federal Trade Commission of nearly 90 merger remedy orders adopted between 2006 and 2012 reached more optimistic conclusions: around 80% of remedies maintained or restored competition, with divestitures of ongoing businesses proving especially reliable (US Federal Trade Commission, 2017^[16]).

23. These studies highlight that the way in which remedies are designed (including the degree of engagement with parties, potential buyers and market participants) can play a decisive role in their success. In this context, co-operation can improve the quality, feasibility and legitimacy of remedies. It helps address information asymmetries and reduces the risk of conflicting or inconsistent measures. A co-operative process can also facilitate faster, smoother implementation and greater compliance, as parties are more likely to support remedies they helped shape.

24. This section sets out the main reasons for adopting a co-operative approach in remedy design. It highlights the benefits for competition authorities in terms of remedy effectiveness, proportionality and enforceability.

25. Co-operation in remedy design matters for several reasons. First, it responds directly to the complexity of modern markets, in which competition authorities cannot always rely solely on their internal expertise to identify and implement suitable solutions. Remedies (both behavioural and structural) often involve highly technical issues. The design of remedies is not a purely legal exercise, it depends on an accurate understanding of business models, technological dynamics and consumer behaviour, which often requires input by other stakeholders. Co-operation enables competition authorities to bridge knowledge gaps and to test whether proposed measures will function effectively in practice.

26. Second, co-operation mitigates the risk of fragmented or conflicting outcomes. In a context where mergers are often notified in multiple jurisdictions or where conduct by large multinational firms can have effects across borders, the likelihood of parallel enforcement is high. If each authority designs remedies independently, the outcome may be fragmented and inconsistent (OECD, 2024^[6]). Remedies imposed in one jurisdiction may render those in another less effective, or they may generate contradictory incentives that increase costs for firms and consumers alike. Co-operation helps ensure that the remedial package contributes to preserving competition, rather than creating new distortions. For the firms concerned, consistency also facilitates compliance, as co-operation can contribute to avoiding inconsistent remedies (EU Merger Working Group, 2011^[17]). For the authorities, co-ordination reduces duplication of efforts and supports international comity. In this regard, the OECD Recommendation Concerning International Co-operation on Competition Investigations and Proceedings [OECD/LEGAL/0408] calls on its adherents to co-ordinate the design and implementation of remedies and avoid possible conflicting approaches and outcomes.

27. There are specific contexts in which the case for co-operation is particularly strong. Cross-border merger cases are one of these. Each authority must ensure that its own competition concerns are addressed, yet the remedies imposed should, when possible, aim at allowing for the consummation of mergers that may generate efficiencies and welfare gains globally (OECD, 2024^[6]). Similarly, when conduct has effects in multiple jurisdictions, alignment in remedies may boost their efficiency. In these settings, the goal is not necessarily to reach identical outcomes everywhere, but to avoid inconsistent ones (OECD, 2024^[6]). Divergences in remedy packages are acceptable so long as they do not contradict one another. One risk that is worth considering in the design of remedies is when uncoordinated remedies push the parties to abandon a transaction that could have been rendered benefits without harming competition through a consistent package across jurisdictions (OECD, 2024^[6]) or that generate suboptimal outcomes for jurisdictions aiming at correcting anticompetitive behaviour. Co-operative approaches to remedy design (through various mechanisms, described in Section 4 below) can therefore prevent contradictory outcomes and maximise both the effectiveness and implementation of interventions.

28. Third, co-operative approaches enhance the acceptance of remedies. Parties may be more likely to comply with conditions they have had the opportunity to shape. For instance, in merger review, merging parties may provide detailed information on the conditions for the implementation of the remedies (ICN, 2016^[18]). Simultaneously, remedies that reflect input from different regulators, consumers and market participants are more likely to proportionally and effectively address competition concerns. They also allow authorities to benefit from early warnings about unintended consequences or implementation difficulties, having the potential to improve the overall quality of the outcome.

29. Sectors subject to specific regulation also illustrate the importance of co-operative design. In industries such as telecommunications, energy, transport or financial services, competition remedies frequently overlap with the mandates of sectoral regulators and other relevant public bodies. In these settings, the existence of regulation does not necessarily remove the need for an antitrust remedy, but it does shape how such remedies can be designed and implemented (Antitrust Division, U.S. Department of Justice, 2020^[19]). Co-operation with the relevant regulatory agency is therefore beneficial: it allows authorities to avoid imposing remedies with inconsistent requirements and ensures that remedies do not contradict regulatory frameworks. In some instances, regulators may even be better placed than competition authorities to monitor compliance, given their ongoing supervision of the sector (see section 4.1). Engaging with them during the design phase can help to secure remedies that are not only effective and proportionate but also feasible within the broader regulatory framework.

30. The digital economy further strengthens the rationale for co-operation. Digital markets are characterised by multi-sided platforms, strong network effects and rapid innovation cycles. Remedies in these contexts are especially difficult to design because they often target conduct embedded in product

design, algorithms or business models. Box 3.1 describes some characteristics unique to digital markets that make co-operation particularly relevant in remedy design in these markets.

Box 3.1. The case for co-operation in remedy design in digital markets

Practical difficulties of remedy design may be present in all cases. However, some features in digital markets and the complexity of business models may intensify these challenges. At the same time, these difficulties are the ones that create more grounds for co-operation.

Information asymmetries between competition authorities and parties are greater in digital markets, due to the complexities in their functioning. Digital markets are a good example of how authorities, without constant interaction with market players, may not have the capacity to choose the remedies themselves. For example, as platforms operate in the market, the remedy needs to account for the impact on each side and the interaction of effects between them. If the remedy needs to account for leveraging, considering vertically integrated markets makes the task more complex. Considerations on whether market players are competing for or in the market are also relevant, particularly if the remedy's objective is to restore competition. Finally, intervening by imposing measures that impact product design or the business model itself, may come with a higher risk of unintended consequences that the authority is not capable to observe. This, in turn, may impact the proportionality of the remedy.

Timing issues are more pressing in digital markets as well. On one side, because due to tipping issues, once market power is obtained or strengthened, it is more difficult to reverse. Second, because digital markets are dynamic, and medium to longer-term effects more difficult to predict. This makes prescriptiveness of the remedies a problem. The more detailed the remedy is, the more quickly it risks losing its intended effects.

All these considerations require relevant technical knowledge for designing a remedy, which significantly increase the resources needed. For that, the authority requires a co-operative approach, creating mechanisms to account for the asymmetry. Similarly, approaching the regulator may involve acquiring a relevant source of information, even when the authority is designing remedies mostly to correct behaviour (intervening the markets ex-post) while the regulator is focused on doing it ex ante. Co-operation with sector regulators may also help to reduce the risk of competition remedies jeopardising other policy objectives. This is particularly important as there may be relevant overlaps between other policies (e.g. consumer or data protection) and competition issues in digital markets.

One final consideration is engaging in international co-operation. Digital markets broaden geographical considerations of markets. Whether it is a merger or an anti-competitive conduct, the probabilities of it impacting more than one jurisdiction are higher in the digital context. So far, it is possible to see cross-border mergers reviewed in multiple jurisdictions, as well as patterns of similar investigations by multiple competition authorities on abuse of dominance by tech firms. While this has not necessarily extended to co-ordination in the design of remedies, this could be a way forward.

Source: Bostoen and van Wamel (2023^[10]), Antitrust Remedies: From Caution to Creativity, Journal of European Competition Law & Practice, Volume 14, Issue 8, December 2023, Pages 540–552, <https://doi.org/10.1093/jeclap/lpad051>.

31. Co-operation with the parties has also become an increasingly relevant feature of remedy design. While investigated or merging firms are expected to engage with the competition authorities during the different stages of an investigation or a merger review, their role in designing remedies may increase the scope and extend of their co-operation with the authority or court. Parties are best placed to tailor remedies to their business realities. However, authorities face the risk that parties may strategically use the process to delay proceedings, limit the scope of the remedy or steer outcomes in ways that favour their business

interests rather than fully restoring competition. This tension underscores the importance of clear timelines, transparency in negotiations and robust scrutiny of proposed measures. In the EU, commentators have described the evolution of enforcement practice as a gradual “transactionalisation” of competition law, marked by the increasing use of settlement and commitment procedures (European Commission: Directorate-General for Competition et al., 2025^[15]).

32. Co-operative mechanisms allow firms to obtain benefits such as reduced fines, increased certainty, or reputational advantages, while enabling the authority to secure more nuanced remedies and avoid lengthy litigation. Yet, this approach also raises challenges, including questions about the degree of co-operation required from defendants, the balance between coercion and negotiation, and the implications for the development of competition law (European Commission: Directorate-General for Competition et al., 2025^[15]).

33. The importance of co-operation with parties and third parties is particularly visible when structural remedies, and especially divestitures, are contemplated. For divestitures to be effective, parties must demonstrate that all elements necessary to operate competitively are included, and this often requires engagement not only with the authority but also with potential buyers and market participants to test viability. Practical experience confirms that divestitures succeed when the divested package amounts to a standalone, viable business, supported by strong buyers with the capacity to compete effectively (European Commission: Directorate-General for Competition et al., 2025^[15]; US Federal Trade Commission, 2017^[16]). Co-operation with parties and third parties can help ensure that structural remedies restore competition in practice, and to minimise the risk that remedies look robust on paper but fail in the market. Early and open engagement with prospective purchasers and market participants can spot red flags and integration risks that are not evident from paperwork alone. Where those risks persist, agencies may need to adjust the package, identify alternative buyers or reconsider whether a divestiture can realistically restore competition in the relevant markets.

34. Box 3.2 presents a case illustrating the risks when divested assets are transferred to a buyer that lacks the financial and operational capacity to run them effectively. As the experience shows, structural remedies should not only be about transferring assets on paper; they must ensure that the purchaser can emerge as a strong, lasting competitor.

35. From the above, it is possible to see the overall benefits of co-operation in remedy design, as well as situation in which collaborating may result in further gains. However, co-operation among different stakeholders is not without its challenges. From logistical and operational hurdles to deeper limitations issued in different priorities and strategic interests, there are multiple issues that may limit co-operation or its outcome. The following section explores the practical architecture of co-operation, examining how different actors (parties, third parties, regulators and other public bodies and competition authorities) can engage in collaborative design, challenges that constraint the competition authorities’ ability to do so, and how mechanisms can be structured to overcome those obstacles to achieve its benefits.

Box 3.2. Challenges to designing divestitures: the case of Albertsons/Safeway–Haggen

In 2015, the US FTC cleared Albertsons' USD 9.2 billion acquisition of Safeway subject to a particularly large divestiture package: 168 supermarkets across 8 states, with 146 stores to be sold to Haggen Holdings and the remainder split among 3 other acquirers. On paper, the structural remedy was designed to preserve local rivalry in affected markets.

The outcome of the divestiture, however, included unintended consequences that hindered its effectiveness. Within months, Haggen struggled to integrate the new stores, faced operational and pricing problems, and eventually filed for bankruptcy protection. Most of the acquired stores were shut down or resold. As part of Haggen's restructuring, a significant number of these stores were ultimately repurchased by Albertsons itself, raising questions about whether the original divestiture achieved meaningful protection of competition.

The Albertsons/Safeway experience underscores the need for scrutiny of proposed buyers as an integral part of co-operative structural remedy design.

Sources:

US FTC (2015), Press Release: FTC Requires Albertsons and Safeway to Sell 168 Stores as a Condition of Merger, <https://www.ftc.gov/news-events/news/press-releases/2015/01/ftc-requires-albertsons-safeway-sell-168-stores-condition-merger>; Lazenby (2015), Inside the Haggen grocery chain's spectacular acquisition failure, The Bellingham Business Journal, <https://www.heraldnet.com/business/inside-the-haggen-grocery-chains-spectacular-acquisition-failure/>; The Bellingham Business Journal (2016), Timeline of Haggen's downfall, <https://bbjtoday.com/blog/timeline-of-haggens-downfall/33547/>; Springer (2015), Judge approves sale of 47 Haggen stores; 33 to Albertsons, Supermarket News, <https://www.supermarketnews.com/grocery-operations/judge-approves-sale-of-47-haggen-stores-33-to-albertsons>.

4 The architecture of co-operation in remedy design

36. The previous section highlighted key reasons for co-operation in remedy design, including the rationale for co-operating with sector regulators, other public bodies and private actors, as well as between competition authorities in cross-border matters. In 2022, the OECD held a roundtable on the “Interactions between Competition Authorities and Sector Regulators” (2022^[20]) and identified available tools for the co-operation between them. This includes necessary legal frameworks, formal and informal mechanisms, and methods to approach the conversation according to the objectives pursued. Following the OECD discussion, the International Competition Network (ICN) published a report in 2024 on co-operation between competition authorities and sector regulators that gathers existing frameworks and experiences in areas such as privacy and sustainability (ICN, 2024^[21]).

37. Similarly, the 2021 joint OECD/ICN Report on International Co-operation in Competition Enforcement (2021^[22]) acknowledged key drivers of international co-operation such as the continued growth of interconnectedness and developments in the digital economy, which translate into authorities more likely to investigate the same cross-border matters and to consider the same or similar solutions to these common issues. Moreover, it identified different available legal bases and instruments for international co-operation such as provisions in national competition laws, bilateral and multilateral agreements or treaties and the use of confidentiality waivers.

38. This section will deepen the discussion of the architecture of co-operation focused solely on remedy design.¹⁰ It will present considerations on remedy design with different types of stakeholders at different stages of the process, highlighting opportunities for co-operating in each of them and alternatives to overcome challenges.

39. It shows that engaging in co-operation with sector regulators, other public bodies and private actors may be valuable to boost remedy effectiveness and implementation. It also reveals that designing effective remedies for cross-border conduct and mergers following a collaborative approach demands strong alignment of competition authorities’ goals and even substantive standards, backed by reinforced co-operation among authorities. As economic integration deepens, enforcing national competition laws increasingly hinges on respecting international comity and refining mechanisms for international co-operation. Similar challenges and alternatives to enhance international co-operation emerge for collaboration with national actors.

4.1. Co-operation with sector regulators and other public bodies

40. Remedy design may benefit from co-operation between competition authorities and sector regulators, ministries, and other public bodies when a transaction or conduct impacts a regulated sector (such as energy, telecoms, or media) or intersects with other policy objectives like data privacy, consumer protection, or intellectual property rights, and there are remedy solutions that can be suitable for the harm to competition and the impact on the relevant sector/policy.

41. Competition authorities, sector regulators and other relevant public bodies—depending on the sector—operate under distinct mandates and pursue different objectives. As such, effective collaboration, particularly in remedy design, requires a shared understanding of each authority’s goals, roles and the institutional framework that governs their interaction.

42. Previous OECD work has discussed objectives of competition authorities and sector regulators, concluding that the latter “tend to have broader aims”, some of which are aligned with the promotion of competition, and some which may pursue other goals that may contrast with competition or, at least, considered more relevant (OECD, 2022^[20]). The tools that each authority have for carrying out their mandates also differ, which may lead to challenges to consistency in approach.

43. Misalignment in objectives, preferences and approaches may generate lack of trust between the authorities in the design of remedies. Issues such as unclear law mandates, administrative costs, different levels of independence, risks of regulatory capture,¹¹ and differences in priorities represent a challenge for effective co-operation between competition authorities and other public bodies (Lancieri and Pereira Neto, 2021^[23]). However, trust and reciprocity can facilitate collaboration. Clear delineation of roles, and a consistent, long-term relationship between authorities may positively impact the depth of their co-operation when it comes to the design of remedies. To lay the groundwork for trust and facilitate engagement in future remedy design opportunities, competition authorities may collaborate with other national public bodies outside the context of specific cases. Box 4.1 presents a strategy followed by CADE that has contributed to engage with regulators and put in place co-operation mechanisms that have proven useful in collaborations in remedy design.

Box 4.1. Building a collaborative environment for remedy design in Brazil

In recent years, the Brazilian Competition Authority (CADE) has carried out market studies in some regulated markets, including fuel, health, payment systems, maritime transport, air transport and port services.

In the process of elaboration of the studies, CADE created collaboration opportunities with sector regulators that have proven to be relevant for subsequent enforcement cases. CADE consulted the relevant regulators to understand the dynamics of the markets and, most importantly, to discuss preliminary measures that could be imposed and would be adequate according to the markets’ particularities.

As a result, some of these studies include entire chapters dedicated to possible remedies to be applied on those markets to increase competition. A handful of the proposed measures have been used posteriorly for enforcement and merger interventions.

Source: Brazil’s contribution to the OECD Roundtable on Remedies and Commitments in Abuse Cases (OECD, 2022^[3]) in https://www.oecd.org/en/publications/remedies-and-commitments-in-abuse-cases_b975b0e3-en.html

44. In a case-specific context, early consultations with regulators to benefit from their perspective before starting the design process are also desirable. Regulators and other public bodies can be asked to provide initial insights and submit opinions that include alternatives for remedies even before a remedy is crafted. This could be relevant even when remedies are put forward by the parties, as part of a preliminary assessment of their sufficiency. Initial information sharing on market dynamics and history may also be relevant as a starting point, for instance, through requests for information at early stages of investigations or merger reviews. Early interactions between competition authorities and regulators during the design of remedies are typically not documented in final decisions, making it difficult to assess whether and to what extent these initial discussions influenced the choice of remedy alternatives.

45. As the remedy design process must account for causality, the determination of the nature and scope of the harm can also benefit from co-ordination with sector regulators and other relevant public bodies. The reasoning behind this is that these have deep insights into existing market issues, including persistent anti-competitive behaviour, structural barriers to competition, and the sector's history—such as mergers and acquisitions, even those that escaped scrutiny by the competition authority.

46. When the design of the remedy starts taking place, collaboration with regulators and other public bodies can take different forms. A one-time or a continuous sharing of information on market dynamics and players' conduct may help competition authorities better understand the regulatory framework in which companies operate, and in which the remedy would be implemented, including limitations on their behaviour that are already in place and interactions that the remedy may have with existing or envisaged regulation. Box 4.2 presents an example. Co-operation can also take the form of commenting directly on the remedy proposal. Deeper co-operation may include the formation of working groups targeted at co-operation on specific features of the remedy design process or design of complementary measures when the issue is being investigated by both agencies.

Box 4.2. European Central Bank's role in Apple commitments

In 2024, the European Commission accepted commitments offered by Apple in an investigation on Apple's potential restriction to competition for mobile wallets on iPhones. The Commission's preliminary concern was that Apple had abused its dominant position by restricting access to the technology needed to make payments by iPhones (NFC technology) to competing mobile wallet developers.

To address the concerns, Apple offered a set of commitments that was market tested. The Commission got feedback from multiple banks, app developers, card issuers, financial associations and the European Central Bank (ECB). The ECB submitted comments during the market testing stage, pointing out remaining gaps, such as Apple not giving access to the secure element in the hardware that, according to the submission, affected user experience.

After the market test, Apple offered improved remedies, which the Commission accepted. In summary, Apple committed to give access to NFC functionality to third-party mobile wallets free of charge within a software solution. Apple Pay would continue relying on the hardware element in the iPhone, but the solution proposed was deemed equivalent in terms of security and user experience, and easier to implement for both Apple and wallet developers.

The ECB confirmed its support for the final set of measures. Given the expected regulation under a potential digital euro (a European digital currency planned to be introduced), also flagged by the ECB in its comments, the Commission made explicit that the commitments were without prejudice to further obligations that may apply under this expected regulation. It also clarified that the commitments accepted concerned practices that are covered by the Digital Markets Act (DMA) and that the measures impose obligations that go further than what is required by the DMA. This showed the complementarity between the two frameworks.

Sources: Case AT. 40452 Apple; EC (2024), Remarks by Executive Vice-President Vestager on the decision to make binding commitments offered by Apple, https://ec.europa.eu/commission/presscorner/detail/en/speech_24_3746; ECB (2024), Feedback on commitments offered by Apple over access restrictions to near-field communication technology, https://www.ecb.europa.eu/pub/pdf/other/ecb.letter240419_Vestager-8f8210db09.en.pdf

47. Mechanisms for engaging with other national authorities differ across legal frameworks. In some jurisdictions, consultations are required by law. In others, they are provided as voluntary, and in a small group, they are left out from competition laws and regulators. Specifics of the relationship between agencies are dealt with mostly through MoUs. These agreements shape the extent into which the regulator

would contribute to the competition authority's investigation and can go from general high-level principles to details on how co-operation may occur in practice.

48. Engaging with regulators and other public bodies may involve certain considerations related to temporal aspects. Bureaucratic procedures may increase the timing of contacts between competition authorities and sector regulators and other public bodies within the jurisdiction, or limit confidential information exchanges, which may be particularly limiting in merger reviews where deadlines are tighter.

49. Agreeing on substantial issues or aligning objectives to pursue with the imposition of a remedy complicates the task even more. However, differences between competition authorities and regulators' expertise and legal mandate may serve to exploit their complementarities for the design of a remedy. For example, competition authorities are better placed to conclude that some form of data or asset is essential to competition, given their expertise across a wide range of industries, but may lack expertise (in hands of the regulator) on how to access the data for a specific sector, the periodicity in which it is collected, standards for data sharing, among others (Lancieri and Pereira Neto, 2021^[23]). Box 4.3 illustrates some examples of different levels of co-operation between competition authorities and regulators in the choice of remedies.

50. The degree of collaboration with the regulator may also vary depending on the conduct or theory of harm identified. Some violations or concerns in merger review may be more directly linked to the activities of the regulator (e.g. refusal to deal, discriminatory conduct) than others. In the design of consumer-faced remedies, collaborating with the consumer protection agency (and consumer associations) may be particularly important. They may have clearer insights on consumer behaviour patterns and biases that can inform the design of the remedy. If the theory of harm involves data interoperability, co-ordination with the data protection authority becomes more pertinent.¹²

51. Finally, there could be value in co-operation with regulators and other public bodies for monitoring compliance, even in cases where the remedy design process itself did not benefit from it. Competition authorities may request other bodies for support. For instance, when they interact more often with market players, as this may reduce some costs associated to the monitoring. Regulators may also have better knowledge on how to collect and analyse data for understanding whether the remedy was implemented and if the implementation had the intended effects.¹³ An alternative that has also been implemented in some cases is joint monitoring. In the form of monitoring committees, competition authorities and regulators could oversee compliance, benefiting from each other's expertise and responsibilities. In Korea, for example, these committees have been used frequently, particularly in cases where complex and technical data analysis is required.¹⁴

Box 4.3. Selected examples on co-operation with sector regulators for remedy choice and design

United States

In 2020, Sprint and T-Mobile merged in the United States. The regulatory process included reviews by the DOJ and the Federal Communications Commission (FCC). Both companies operated mobile networks and offered nationwide coverage to consumers, accounting for roughly 30% of retail clients on prepaid services. On the side of the FCC's assessment, the regulator took into account how the merger plan would contribute to the deployment of 5G, one of its immediate priorities, and decided to approve the merger with some remedies. These included the requirement for 5G being deployed to 97% of Americans within 3 years of the merger closing, with certain speed and latency conditions.

For the DOJ, the transaction raised significant concerns in the prepaid market and the approval of the transaction required additional remedies than those imposed by the FCC. The parties reached a

settlement in which divestitures of Sprint's prepaid business were to be imposed. The DOJ's main goal was to enable a viable facilities-based competitor to enter the market. The settlement included also divestitures of certain spectrum assets and the obligation to make available a certain amount of cell sites and retail location, as well as access to T-Mobile network for a period of seven years while the acquirer built out its own network. According to the DOJ, "In crafting this remedy, we are also mindful of the significant commitments T-Mobile, Sprint, and Dish have made to the Federal Communications Commission."

Brazil

In July 2017, Itaú Unibanco S.A., Brazil's largest private bank, announced its intention to acquire shares issued by XP Investimentos S.A., a nascent company that developed investment products through a digital platform. The assessment of the merger by CADE revealed the following main concerns: (1) weakening of the competition exercised by XP over the other banks, based on the influence of Itaú on its management; and (2) increased barriers to entry into the financial market segment, due to the increase in market power of XP with its association with Itaú.

This case was the first transaction in the banking sector that CADE reviewed after signing an MoU with the Central Bank. The agreement allowed for co-operation between the Council and the Central Bank that began during the Superintendence-General's investigation phase and continued in court, through contact between the technical teams of both agencies, with an exchange of views on issues such as the appropriateness and effectiveness of the potential remedies. The Brazilian Securities and Exchange Commission (CVM) also collaborated with CADE in the investigation phase. CADE's final decision included the imposition of obligations aiming at minimising Itaú's influence on XP's strategic decisions and the prevention of exclusivities, discriminatory practices and other behaviour that could prevent consumers to benefit from innovative products. The collaboration between CADE and the Central Bank ensured that the final decisions were consistent in time and substance.

Mexico

In 2020, The Comisión Federal de Competencia Económica - COFECE, Mexico's Competition Authority (now Comisión Nacional Antimonopolios - CNA) accepted commitments from the Association of Public Brokers to correct possible anticompetitive conducts in the shape of discriminatory treatment in the market for affiliation services of public brokers. COFECE imposed commitments with some modifications to the Association's proposal based on the input from the Ministry of Economy, which acts as a regulator as it authorises public brokers to serve as commercial agents. According to COFECE, the support of the Ministry was key in making sure that the commitments were appropriate and legally and economically feasible.

Source: US DOJ (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>; CADE (2018). Press release: Cade approves with restrictions Itaú's acquisition of a stake in XP Investimentos, available at: <https://www.gov.br/cade/en/matters/news/cade-approves-with-restrictions-itaus-acquisition-of-a-stake-in-xp-investimentos>; COFECE Case No. DE-018-2018 and Press release No. COFECE-022-2020 available at: <https://www.cofece.mx/wp-content/uploads/2020/06/COFECE-022-2020-English.pdf>; Contribution by Mexico to the OECD Roundtable on Interactions Between Competition Authorities and Sector Regulators, available at: [https://one.oecd.org/document/DAF/COMP/GF/WD\(2022\)20/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2022)20/en/pdf)

4.2. Co-operation with other competition authorities

52. Co-operation between competition authorities in remedy design is relevant when transactions or conduct to be remedied cross borders. As recognised by the ICN, it "increases the likelihood of non-conflicting remedies". This is increasingly more common as globalisation and free trade have created far

more interconnections between markets and cross-border activity involving worldwide supply chains and large multinational firms.

53. Co-operation between competition authorities in remedy design may have different shapes and result in different strategies. It can range from informal, high-level contact – often without detailed discussions on remedy options – to formal, case-specific engagement that may even involve joint work. The nature and depth of this collaboration can lead to varying outcomes, depending on how closely authorities coordinate throughout the process, including:

- Large, uniform, remedy packages that are feasible and appropriate to all participating jurisdictions (even when local particularities require for additional jurisdiction-specific measures).
- Domestic (but co-ordinated) remedy packages that solve concerns identified in each jurisdiction, and that do not contradict one another or even that complement each other.
- Identification of a situation in which concerns do not overlap or the design does not require co-ordinated efforts and, thus, remedy packages that do not necessarily align but have been informed by other competition authorities' activity.

54. The extent of co-operation between authorities depends on the nature of the competitive concerns and the specificities considered in each jurisdiction, including characteristics and dynamics in the markets. Given that a transaction or conduct may have varying competitive effects across jurisdictions, the remedies proposed by the merging parties may differ accordingly even when close co-operation takes place.

55. As it is the case with national regulators, the interaction between competition authorities across jurisdictions is impacted by differences in legal frameworks, rules and standards. While they all have the protection of competition as part of their mandates, they are bounded by their laws to account for harm to competition in their own territory to intervene.¹⁵ This makes their enforcement objectives to be domestic, thus not overlapping with other competition authorities from other jurisdictions. Moreover, among their goals, there is heterogeneity, with some competition authorities having goals broader than competition. Divergences may also be originated in the tools and powers available. In remedy design, for instance, some authorities have powers to impose remedies in merger cases, while others are bounded to remedy proposals brought by the parties. Similarly, mechanisms to accept remedies in antitrust investigation vary, as briefly highlighted in section 2.

56. Recent OECD work reviewed challenges and sources of divergence in cross-border merger review. The OECD background note found that, while the risk of conflicting outcomes is often low (OECD, 2024^[6]), it must still be managed. It concluded that, as markets become increasingly interconnected through global supply chains and digitalisation, the need for a cohesive and collaborative regulatory approach becomes ever more critical. In other words, this is where co-operation could be most valuable.

57. Consistency should also be the starting point in co-operating with other competition authorities. From informal to formal mechanisms to co-operate, authorities may find continuous exchanges as a good baseline for co-operating in case-specific remedy design. This may result from experiences in which the absence of formal co-operation mechanisms has significantly limited their ability to collaborate, reducing opportunities to inform and improve future cases. Box 4.4 presents some strategies that some jurisdictions have followed to put in place co-operation mechanisms for future collaborations in remedy design.

Box 4.4. From informal to formal co-operation mechanisms in Central America

In 2019, Telefónica, a Spanish telecommunications operator decided to sell its subsidiaries in several Central American countries (Costa Rica, Guatemala, El Salvador, Nicaragua and Panama), mostly to two of its main competitors in the region. These transactions impacted the sector in the region and, according to each jurisdiction's merger regime, regulatory responses had different procedures and outcomes.

Competition authorities in the region discussed informally in the framework of the Central American Network of Competition Authorities (RECAC). The main interactions were between SUTEL, Costa Rica's telecommunications competition authority and regulator, and the Superintendencia de Competencia, the competition authority in El Salvador. The merger ended up being approved in Costa Rica and approved with remedies in El Salvador, where the Superintendencia required the acquirer to give back some spectrum. The authorities recognised that their co-operation was very limited, as they could not discuss confidential information, for instance, regarding the remedy design in El Salvador. As a result, both authorities decided to sign a MoU that formalised their co-operation mechanisms and opened the door for case-specific collaboration in the future.

Source: SUTEL's contribution to the OECD Roundtable on Cross-border Mergers (OECD, 2024^[6]) in https://www.oecd.org/en/publications/challenges-and-sources-of-divergence-in-cross-border-merger-review_61972545-en.html; Superintendencia de Competencia El Salvador (2020). Convenio suscrito con SUTEL-Costa Rica – ConvenioSC: https://www.sc.gob.sv/index.php/sala_multimedia/convenio-con-sutel/

58. Beyond the various stages where competition authorities may collaborate with one another, initiating contact at an early stage could include a preliminary discussion on potential remedy planning. Even if the investigation has not yet fully identified the competition concerns, such early coordination can help align timelines and support future decisions regarding the suitability and feasibility of proposed measures. As recognised by the ICN Merger Remedies Guide, initiation of contact between competition authorities may even occur prior to a merger notification, particularly if the possibility of remedies being required arises from pre-notification consultations by the parties. These early contacts could trigger alignment of timeframes and early provisions of confidentiality waivers, as well as initial provisions on timing extensions if needed.

59. Co-ordination between competition authorities can also reveal the need for considering concerns more broadly than in national borders. Even when remedies still need to be suitable to the local needs, as solutions should be proportional and effective in the jurisdiction, by definition, a broader solution may be required for a broader problem. Identifying the scope of the conduct or effects of the transaction is a good step for the identification of a suitable remedy. Moreover, it could also give initial insights for competition dynamics across jurisdictions (i.e. the possibility of entrants from other geographical areas). This co-operative approach could specially help smaller jurisdictions in the design of remedies suitable to their concerns (OECD, 2024^[6]).¹⁶

60. Whenever a transaction or conduct involves firms operating internationally, their competitive effects sometimes extend beyond national borders. As jurisdictions evaluate the effects of mergers in their respective geographical area, this could prevent authorities from fully grasping the overall implications of the transaction or conduct, i.e. they could miss the whole picture. Co-ordinated efforts can occasionally help uncover whether the theory of harm – and consequently the remedy – should reflect global rather than local market dynamics. Box 4.5 illustrates this by presenting multiple investigations against Amazon by multiple jurisdictions for alleged abuse of dominance conduct linked to the use of its Buy Box where similarities in concerns can be observed.

61. Competition authorities could also take into account each other's interests, whenever possible, while designing their own remedies, in return for others doing the same (international comity).¹⁷ Negative comity could involve a situation in which one or a set of jurisdictions abstain from imposing remedies as their concerns get solved by another jurisdiction's conditions, and no action avoids entering into conflict with that decision. Positive comity could also be relevant, as requesting other authorities to perform certain actions (e.g. to adjust a remedy) to guarantee alignment may boost effectiveness of the intervention. In both cases, what comity may contribute to is the obtention of effective and non-conflicting remedies that comprehensively address competition concerns (Yeoun Ahn, 2022^[24]).

Box 4.5. Abuse of dominance cases against Amazon – selected cases to illustrate convergence in concerns related to its Buy Box

A recent global trend has been the initiation of investigations into digital platforms by competition authorities across multiple jurisdictions for self-preferencing conduct.* Amazon has been particularly involved in these investigations for the way its Buy Box operates.¹ However, relatively few remedies have been imposed to address these concerns all of them of a behavioural nature. Some investigations remain ongoing.

In Italy, the competition authority found in 2021 that Amazon had abused its dominant position by giving favourable rankings to products from retailers using its delivery services, making them more likely to appear in the Buy Box than products of other third-party retailers. Given that the Buy Box is displayed prominently on Amazon's website and allow consumers to purchase items faster, this would give significant advantages to Amazon's retailers.² The AGCM fined Amazon with over EUR 1.1 billion and required it to change its practices through certain behavioural remedies that included granting sales benefits and visibility to all third-party sellers complying with certain standards on Amazon's Italian website. The EC and the UK CMA carried out similar investigations that were closed in 2022 and 2023, respectively, by accepting behavioural commitments with the same objective as the remedies imposed in Italy: to ensure equal access to the Buy Box for all retailers using Amazon Marketplace.³

Some investigations are still ongoing. The Competition Bureau in Canada opened an investigation in 2020 to examine whether Amazon's policies had a negative impact on competition, particularly by affecting third-party retailers. By July 2025, the Bureau had obtained a court order from the Federal Court that required Amazon to produce records and share relevant information with the authority.⁴

In 2023, the US FTC filed a complaint alleging similar behaviour, claiming that Amazon illegally maintained its monopoly power through strategies that included downgrading of third-party retailers' rankings, among others.⁵ In October 2024, the plaintiffs submitted a second amended complaint, and the action is ongoing. Finally, in 2024, COFECE in Mexico, issued a preliminary opinion on its investigation against Amazon and Mercado Libre. The authority concluded that the companies were favouring their own logistic services through their Buy Box and suggests that companies should modify the criteria for retailers to be featured in Buy Boxes to eliminate its concerns.⁶

As evidenced, the outcome has been a situation of *de facto* convergence after a series of investigations across multiple jurisdictions, leaving other regions where the company operates unaffected.

Note:

* Self-preferencing concerns in digital markets can arise when platforms use their position in one market to favour their own products in an ancillary market, thus distorting competition in the related market. See (OECD, 2024^[25]).

Sources:

¹ OECD (2025^[12]), "Remedies in digital markets in Latin America and the Caribbean", *OECD Roundtables on Competition Policy Papers*, No. 326, OECD Publishing, Paris, <https://doi.org/10.1787/34bbc7e4-en>.

² AGCM decision of 9 December 2021, A528 FBA Amazon.

³ EC decision of 20 December 2022, AT.40462, Amazon Marketplace and CMA decision of 3 November 2023, 51184, Amazon Marketplace.

⁴ See <https://www.canada.ca/en/competition-bureau/news/2025/07/competition-bureau-advances-investigation-of-amazons-marketplace-fair-pricing-policy.html>

⁵ Complaint in FTC v. Amazon (Case 2:23-cv-01495-JHC).

⁶ COFECE, File IEBC-001-2022, Preliminary Opinion issued on February 6, 2024.

62. Some challenges that limit co-operation between authorities in remedy design may arise. A survey conducted by the OECD and the ICN in 2021 revealed five different types of challenges for international co-operation (OECD/ICN, 2021^[22]). Although the survey focused on general issues, all may apply to co-operation in remedy design. These are:

- constrained resources;
- misalignments in timing;
- practical issues such as bureaucratic procedures, language barriers and time differences;
- legal limitations related to information sharing and investigative assistance, including provisions that allow for co-operation but are generic, without specifying the details of how to co-operate in practice or in which stages of a process it is possible to do so
- limited trust and reciprocity.

61. Within formal co-operation mechanisms, authorities could overcome some of these barriers with confidentiality waivers, bilateral agreements and MoUs. Procedural and resource challenges can be mitigated by early engagement and by developing long-term relationships that reduce transaction costs in individual cases.

62. As with other areas of co-operation, undoubtedly, the granting of confidentiality waivers is the most common strategy to facilitate co-ordination between competition authorities. In merger cases, this seems to be the norm and co-operation among competition authorities is usually driven by the parties themselves. Parties grant them because it is in their best interest to facilitate information sharing, and authorities request them because in the process of designing remedies, confidential information about the parties' businesses in other jurisdictions may be crucial. In conduct investigations, waivers are not as commonly observed. In some situations, because the investigated parties' defense strategy may not involve the proposal of commitments to allow for early discussions. In others, waivers are not considered because the different standards assessing the conduct in the multiple jurisdictions generate asymmetries between the negotiation process.

63. Practical advice to facilitate co-operation in designing effective remedies is to exchange and compare draft remedies as soon as possible. This allows for deeper collaboration that, when possible, involves co-ordinated reviews of practical matters, market testing strategies, joint inquiries, co-ordinated selection of monitoring strategies and the definition of other practical aspects such as timing of the final decision and even the release of the public statement.

64. Operational hurdles such as language barriers may also imply the use of more resources for translations, or time differences, which extend the delay of communications between authorities, have an impact on the overall length of remedy design. As adding these additional layers to remedy design is costly, availability of time and resources becomes a key consideration that could significantly impact the extent of co-operation. Box 4.6 presents some key recent findings in Europe on these challenges.

Box 4.6. Challenges in the implementation of remedies across EU jurisdictions

The 2025 EC ex-post evaluation report on antitrust remedies evaluated some cases where remedies with effects in multiple EU jurisdictions were imposed. It touched upon challenges in the implementation phase due to differences in the different jurisdictions that were not considered in the design of the remedy.

The report revealed that, for one of the cases reviewed, “*although commitments were designed for fast and proper implementation, compliance with regulatory systems and processes of all Member States was time-consuming and complex*”. Given that the decision was made at EU level, no co-operation between the Commission and other competition authorities or with different national regulatory agencies (relevant health authorities) was foreseen but proved to be needed.

Language barriers and differences in regulatory requirements also represented significant challenges for the company when engaging with national regulators. If such a remedy were to be implemented outside the EU—where the co-ordination mechanisms are not as well established as within the Union—the challenge could be significantly greater, due to more variations in regulatory frameworks and enforcement practices.

Source: European Commission: Directorate-General for Competition et al. (2025^[15]), Ex post evaluation of the implementation and effectiveness of EU antitrust remedies – Final report, on the Aspen decision (AT.40394) of 2021, <https://op.europa.eu/en/publication-detail/-/publication/a5132bd9-fb05-11ef-b7db-01aa75ed71a1/language-en>.

65. Generally, timing issues may be reduced through early engagements that allow for alignment of timelines or through alternatives that introduce flexibility to the remedy design. On the latter, sunset or review clauses that allow for more flexibility to review the remedies in the future (by any of the competition authorities), particularly those of a behavioural nature, may help reducing differences across jurisdictions. Modifications in the event of changed circumstances may give remedies the sufficient flexibility to adjust for both effectiveness and proportionality. They could also reduce risks of unintended consequences and may release authorities from monitoring when it is no longer necessary, thereby reducing costs. Box 4.7 shows an example.

66. As is the case with sector regulators and other national bodies, co-operation with other competition authorities for the monitoring and implementation of remedies is also valuable. Remedies can be difficult to enforce in situations where assets are in other jurisdictions or where monitoring the behaviour implies looking at conduct outside national borders. As referred above, principles of international comity may be the key to ensure that remedy design involve considering extra-territorial remedies only in those situations in which including them is needed to effectively redress harm and is consistent with the relevant jurisdiction’s laws, policies and practices (OECD, 2017^[26]). Whenever extra-territorial remedies are chosen, the use of mechanisms to guarantee co-operation in the implementation phase is needed.

67. When possible, competition authorities rely on the role of a monitoring *trustee* for co-ordination purposes and appointing a common trustee can be valuable in cross-border scenarios. Trustees enable authorities to rely on an independent (and shared) source of information regarding remedy implementation. In turn, this reduces duplication of efforts and minimises the risk of inconsistent assessments across jurisdictions. Communication between competition authorities regarding specific issues in the implementation of remedies could also be part of the co-operation between them. Reciprocal consent decrees may be used a strategy to alleviate concerns on asymmetries in the implementation and guarantee enforceability of remedies when involving cross-border considerations.¹⁸

Box 4.7. An amendment to the remedies in the Korean Air-Asiana merger

In 2024, during the OECD roundtable on cross-border mergers, the KFTC presented the Korean Air-Asiana merger as one of the most illustrative cases the authority handled that dealt with co-operation with regulators and other competition authorities for remedy design.¹

When the KFTC first cleared the merger, in February 2022, it did it subject to structural and behavioural remedies that included transfers of slots and traffic rights, limits to fare increases, prohibitions on the reduction of supplied seats, and other conduct measures for a period of ten years. The KFTC highlighted during the OECD roundtable its collaboration with other competition authorities as crucial in remedy design, particularly as the authority lacked experience in evaluating analogous mergers in the sector, as well as the decision to design the remedies rather than accepting a proposal from the merging parties.

The KFTC included in its decision a provision that implied a revision of the remedies in the future, to take into account the review outcomes of other competition authorities, as well as changes in market dynamics due to impacts of COVID-19.² The KFTC used this reviewing clause as a mechanism to guarantee effectiveness and implementability of the remedies.

In December 2024, the KFTC held a plenary meeting to finalise the corrective measures for the transaction. Some of the remedies related to the traffic rights were lifted, as the assessment of the European Commission and the measures it imposed involved the entry of a new competitor in some of the relevant routes. From the original divestiture that included 14 domestic routes, competitive conditions in 6 of those were deemed to have changed, and thus the structural remedy remained only for 8 routes. The KFTC indicated that these changes would limit unnecessary supply reduction, making the measures more proportionate. Times for the divestitures were also adjusted from 3 to 2.5 years post-closing. As for the number of seats supplied, the KFTC determined the percentage required, considering some indicators and that restrictions on seat occupation due to COVID-19 were lifted.³

Sources:

¹ see Korea's contribution to the Roundtable and the OECD background note for the discussion in https://www.oecd.org/en/publications/challenges-and-sources-of-divergence-in-cross-border-merger-review_61972545-en.html

² KFTC Press Release, KFTC gives conditional approval to Korean Air-Asiana Airlines merger, <https://tinyurl.com/56h56869>.

³ see (Gu, 2024^[27]), *Announcement of the results of the review of the amendment to the Korean Air-Asiana merger*, <https://www.korea.kr/briefing/policyBriefingView.do?newsId=156665399>

4.3. Engagement with private actors

68. Co-operation between competition authorities and private entities – particularly those under investigation or involved in merger proceedings – differs significantly in nature from co-operation with other public bodies, whether national or international. First, co-operation between the competition authorities and companies for remedy design should be distinguished from procedural engagement. It entails a framework of interaction that complements legal duties while respecting due process.

69. Second, objectives from competition authorities and private actors do not align. While conflicts may not always be explicit, firms focus on profit maximisation, which does not incorporate the enhancement of market competition as a criterion for their strategic decisions. When transactions or conduct are motivated by a desire to gain or consolidate market power, any expected behaviour from the parties would run counter to the objectives of competition authorities. This misalignment of incentives introduces bias into interactions with private actors and raises legitimate concerns about the credibility and reliability of

their engagement in competition processes, including remedy design. However, strategies to engage with private actors while mitigating those risks are available, thus allowing competition authorities to benefit from their participation in the design process.

70. With parties, the misalignment in incentives, together with asymmetries of information on their behaviour and other market dynamics that are not easily observable, constitute a relevant impediment to establishing trust. However, it is this asymmetry that often makes it more challenging to design an appropriate remedy without engaging with the parties responsible for its implementation. To mitigate the impact of private actors and competition authorities having different interests, early engagement is also desired. Legal advisors recommend an early planning of the remedy package (both in mergers and investigations) to save time, minimise business disruptions, have sufficient time to market-test their feasibility and suitability, and even start considering implementation strategies (Harkrider and O'Mara, 2023^[28]). In a cross-border context, this may include considerations on setting up a global co-ordination team that aligns local strategies in all reviewing jurisdictions to a global strategy.

71. While in the interaction with public actors, co-operation is not impacted by the type of enforcement activity, this does have a role in the extent interaction with private actors. In mergers and market investigations, where procedures are less contentious, co-operation is easier to achieve than in conduct cases. Even within conduct investigations, co-operation is more straightforward when remedies are designed through commitments or other negotiated processes, than when they are imposed as part of an infringement decision (in which case, there is more engagement than actual co-operation). In commitment decisions, companies have incentives to co-operate and propose suitable remedies, as they may want to avoid the impact of an infringement decision on their reputation, especially when there is a formal finding of an infringement against them. Outside the context of a commitment decision, when parties' participation in remedy design is rewarded by a reduction of the fine in an infringement decision, parties may have more incentives to contribute.¹⁹ While this latter scenario is not as common, it is an interesting avenue for authorities to consider in certain cases.

72. When remedies are proposed by the parties – as in the case of commitments or most merger reviews involving conditions – their engagement in the design is therefore ensured. In those cases, communication at early stages may involve sharing of expectations on processes, including internal deadlines and expectations. Depending on the circumstances, these communications may include initial proposals for potential remedies, with the sharing of preliminary concerns and views. Outside the framework of commitments, co-operation in infringement investigations is not granted and any engagement from companies on the design of remedies that come within an infringement decision is more reactive than preventive. In those cases, their engagement is linked to reductions in fines but may still be beneficial for the authority. Box 4.8 presents a recent case in which the French Competition Authority used the settlement procedure in an abuse of dominance case in which it accepted remedies and additional co-operation from the investigated party in exchange of a reduction in fines.

Box 4.8. A settlement with commitments in the EDF abuse case in France

In 2022, the French *Autorité de la Concurrence* imposed a sanction of EUR 300 million on EDF for having abused its dominant position. The company abusively exploited resources, including customers data at its disposal, as an electricity supplier offering regulated electricity tariffs (TRV for its name in French), to develop the marketing of gas and energy services market offers, and to convert a large part of its customer base at the pivotal moment when TRV electricity was ending for some business customers. The objective was to maintain its market share in the electricity supply sector and to strengthen its position in the related gas and energy services supply markets. The conduct lasted for 17 years, between 2004 and 2021.

After the authority had issued a statement of objections clearly identifying the abusive conduct and the harm to competition, EDF applied for a settlement procedure. As part of the procedure, the company proposed several commitments in addition to waive its rights to contest the facts of the statement of objections in exchange of a reduction in the fine. The commitments included (1) making EDF's TRV Bleu customer file available to alternative electricity suppliers who requested it, and (2) to separate the telephone subscriptions of clients and prospects of TRV Bleu from those with non-regulated tariffs.

While the commitment proposal came at a late stage, in which the authority had already taken a clear position and decided on a path towards issuing an infringement position, it was highlighted in its press release that co-operation with the parties was essential to guarantee that the remedies imposed not only put an end to the conduct but also that they were proportional and effective to restore competition in the markets.

Source: Autorité de la Concurrence, Decision No. 22-D-06 of 2022 and press release: *Dans le cadre d'une procédure négociée, l'Autorité inflige une sanction de 300 millions d'euros à l'encontre d'EDF, et plusieurs de ses filiales, pour abus de position dominante*, <https://www.autoritedelaconcurrence.fr/fr/communiqués-de-presse/dans-le-cadre-d'une-procedure-negociee-lautorite-inflige-une-sanction-de-300>

73. When competition authorities and courts have defined the competition problem, stakeholders may contribute to the definition of suitable alternatives, if they exist, and may inform the authority on their expected effectiveness. They may also suggest whether the remedy is proportionate to the harm and if there is causality between the two.

74. One standard strategy followed by competition authorities to trigger the engagement of parties in remedy design is to allow them to come up with an initial remedy proposal, to then assess their suitability. Allowing parties to submit an initial proposal enables competition authorities to begin their assessment of effectiveness and enforceability from a reference point where the likelihood of proportionality is higher. This is because parties are incentivised to propose solutions that are minimally disruptive to their operations, thus making it highly improbable for the parties themselves to propose remedies that are disproportionate. It is particularly important for infringement decisions where the proposed remedy is introduced after the authority or court has already established the theory of harm, leaving limited room for remedy solutions to satisfy the proportionality test. However, these same incentives may work against effectiveness, as parties can leverage their informational advantage to steer the discussion in a direction that serves their interests and design remedies “where they cannot lose” (Bostoen and van Wamel, 2023^[10]).

75. Moreover, competition authorities should seek to avoid situations in which parties may strategically increase the time that co-ordination on remedy design requires, to extend the timeline for the implementation of the remedy. As identified by the European Commission's 2025 report on the Ex-post evaluation of the implementation and effectiveness of EU antitrust remedies, timing may also be impacted

by strategic decisions of the companies involved. For example, in the case of voluntary commitments, investigated parties may have the incentive to “*drag on commitments discussions with the Commission for as long as possible, to continue profiting from their possibly anticompetitive behaviour*” (European Commission: Directorate-General for Competition et al., 2025^[15]). Thus, when engaging in collaboration with other stakeholders, competition authorities should seek for clear timelines and avoid situations that cause unjustified extensions. For conduct investigations, interim measures may be used as a temporary solution to guarantee effectiveness of the remedy when imposed.

76. In cases where parties are not directly engaged in proposing remedies or participating in their design, there may still be room for their contribution. Generating situations for receiving feedback and instances in which the involved parties agree prior to the imposition may result in a tailor-made remedy with clearly defined terms, rather than a principle-based approach that addresses the conduct but defers the evaluation of technical compliance to a later stage (Ibáñez Colomo, 2025^[29]). Parties’ involvement in remedy design may follow formal procedures or may be informal. While in some jurisdictions their interactions with the authority are documented in final decisions, with competition authorities detailing the different proposals received by the parties with modifications during the discussion processes, others contain low or no detail on the procedure, presenting only the final, accepted remedy package.

77. Third parties’ opinions may also weigh in. Depending on their position in the market, they can contribute to the design of remedies by sharing insights from their experience, their interactions with the investigated or merging parties, and relevant market history. Such input can help counterbalance the subjectivity of information provided by the parties, although their incentives may also be biased according to the interests they aim to protect. Therefore, competition authorities should also carefully balance their involvement in remedy design.

78. Market testing is the most relevant tool to gather third party views and review *ex ante* the effectiveness of a remedy. It enables the acquisition of information to identify the most suitable remedy (Domingues Alves and Vasconcelos, 2024^[30]). It also and reduces risks of trust as it allows for obtaining evidence and understanding of many practical aspects of remedy design and collect input from stakeholders that otherwise would not have engaged with the competition authority. Finally, market testing can be the source of new information on different forms of behaviour that are not caught by the remedy proposed but that can generate the same outcome (see Box 4.9).

79. Many jurisdictions have specific legal provisions for market testing remedies. Market testing remedies is more common in negotiated procedures, and less so when the remedies come as an imposition complementary to a sanction in an infringement decision.²⁰ Market testing may be a static one-time exercise in some jurisdictions, while conceived as an iterative process in others.²¹ Other authorities follow similar procedures, even when subsequent consultations are not provided by the law.²² When market testing is not available or is inconvenient, directed consultations with external technical experts may be a suitable alternative.²³ This is mostly the case for the imposition of remedies in infringement decisions, as the process tends to be less public and revealing information on remedies is not explicitly provided in the procedure.

80. Market testing may also be time-consuming. As stated previously, this is a particularly pressing issue in merger cases, where deadlines are tight. It can also be a situation to avoid in dynamic markets, as the longer it takes to remedy the action, the less effective the measure may be. However, shorter processes can be achieved by designing targeted tests that focus on the key aspects of the remedy requiring robustness checks, and by shortening the timeframe for stakeholder feedback. Early engagement with third parties also facilitates this, as it ensures that market test participants are already familiar with the general context of the case.

Box 4.9. The role of market testing in the CMA’s private healthcare market investigation

In 2012, the Competition Commission in the United Kingdom (predecessor of the Competition and Markets Authority – CMA) started a market investigation into private healthcare. As a result of the investigation, a number of remedies were imposed, including divestitures in the London market.

After an appeal, the Competition Appeal Tribunal (CAT) sent the case back to the CMA to reconsider its structural remedy, giving some errors in the pricing analysis used to justify some of the competitive concerns found. The CMA updated its analysis and published the provisional findings report again in 2015 with similar findings but having corrected the errors. The CMA also published a notice of provisional remedies, including the initial thought divestiture, as well as behavioural remedies such as the provision of greater information on the hospitals’ performance for patients.

The CMA held hearings with a range of industry customers and interested parties and published the provisional remedies for market consultation. After evaluating the responses, the CMA reached the conclusion that none of the proposed remedies would be effective and proportionate. While still concluding that the market required more competition, it observed that the proposed divestiture was no longer a proportionate remedy, as new evidence on a probable entry in the short term was presented during the testing phase. Other remedies considered, such as price controls, were deemed to be ineffective, particularly as some behavioural measures were already introduced by the first set of remedies.

Source: CMA (2016) CMA publishes final report on private healthcare remittal, <https://www.gov.uk/government/news/cma-publishes-final-report-on-private-healthcare-remittal>; Case webpage: <https://www.gov.uk/cma-cases/private-healthcare-market-investigation>.

81. After all, the use of strategies that allow participation from market players help the competition authority to acquire detailed operational knowledge and insights into market dynamics that otherwise it would not be able to fully capture alone. By involving the parties subject to the remedy, as well as competitors, providers, consumers and other relevant businesses, competition authorities can better understand potential implementation challenges, identify unintended consequences, and more likely tailor solutions that are proportionate and sustainable. This collaborative approach not only enhances the likelihood of compliance but also contributes to remedies that genuinely restore competition without imposing unnecessary burdens.

82. Finally, “*A remedy should be capable of being implemented, monitored and enforced*” (ICN, 2016_[18]). This means that once remedies have been designed, co-ordination may still be needed and valuable for implementation and monitoring. Having co-operated with the parties in the design of remedies may also foster their compliance and reduce the risk of implementation and monitoring happening in a confrontational procedure. However, for all instances, having an appropriate monitoring and sanctioning framework for non-compliance is essential to secure proper implementation. The ICN Merger Remedies Guide suggest, particularly for non-structural remedies, that “*competition authorities should ensure that monitoring and enforcement are feasible and that non-compliance or evasion is detectable and subject to effective sanctions or penalties*” (ICN, 2016_[18]).

4.4. Learning from past experiences

83. Past experiences from similar cases, including in other jurisdictions, may also inform remedy design. Reviewing past experiences may also involve co-operation with other authorities or market players (those that were object to the past remedies), even if indirect. Retrospective studies are a relevant tool to

review effectiveness and implementation of remedies (OECD, 2025^[31]) and to learn from past experiences. Whenever they provide useful insights on what went right or wrong or what could have gone better, they provide a valuable source of information for future remedy design.

84. In recent years, few competition authorities have published ex-post assessments of mergers and antitrust remedies, as well as broader studies evaluating their interventions or decisions.²⁴ One of the most recent reports was the 2025 EC Report on the Implementation and Effectiveness of Remedies in Antitrust Behavioural Cases (European Commission: Directorate-General for Competition et al., 2025^[15]), reviewing more than 100 enforcement cases in Europe involving non-cartel agreements and unilateral conduct. Regarding co-operation with stakeholders, the report made four recommendations:

- Encouraging market testing in remedies within infringement decisions to the extent possible and simplify formalities around market testing in the interest of agility;
- Formalising a co-operation procedure;
- Appointing independent advisors in remedy design whenever the process requires technical expertise, or the implementation may be particularly complex;
- Exploiting synergies between antitrust remedies adopted in different decisions and using the experience and market knowledge gained from antitrust remedies to inform and pro-competitively enhance sector regulation.

85. Past experiences may also inform about opportunities for more co-operation. In Brazil, CADE published a working paper in 2020 analysing how the authority applied antitrust remedies between 2014 and 2019. The paper concluded that although the practice mainly follows what the Guide on Remedies (published in 2018) establishes, some tools, like the use of market testing, have been underused and that a broader use may encourage parties to submit their opinions and would allow CADE to receive more representative feedback on the measures proposed (CADE, 2020^[32]). The authority also considered that it is a good practice to review similar cases where remedies have been imposed and adjust the current design for any missed considerations or to strengthen their effectiveness. Box 4.10 presents an example in which CADE imposed interim measures in an investigation against Apple considering remedies imposed in other jurisdictions and adjusting the measures according to some non-compliant behaviour observed in such cases. The review of similar cases serves as a natural experiment and, although competition authorities must be able to differentiate conditions that were relevant at that point and are not anymore, they may serve as a good starting point.

86. Finally, cases in which competition authorities observed limited or no co-operation, yet where such co-operation could have added value, may also offer important lessons for future enforcement actions. Non-compliance with measures may reveal less co-operation with parties than the optimal, including with third parties that could have informed the authority of current or potential practices to circumvent or avoid the remedy. Opposing or inconsistent action by sector regulators also expose lack of co-operation between public bodies at national level. These conflicting dynamics could reduce or prevent the effectiveness of the remedies and generate opposite consequences, thereby reducing competition further in the market and, often, giving the companies an objective argument not to comply with the remedies.²⁵

Box 4.10. Interim measures against Apple in Brazil – a learning process

In November 2024, the Office of the Superintendent General at CADE in Brazil imposed interim measures against Apple in an investigation for an alleged abuse of a dominant position in the distribution market of apps on iOS devices. Apple appealed the decision, but in May 2025, CADE's tribunal unanimously decided to uphold the interim measure.

For its decision, the Tribunal analysed in-depth the design of the remedies. When doing it so, it took into account analogous remedies imposed in jurisdictions such as the European Union and the United States, as well as the resulting behaviour and changes that Apple did to its practices in those jurisdictions. For instance, the Tribunal considered that in Europe, amendments to Apple's App Store Review Guidelines were not sufficient to address concerns that were similar to CADE's and that further technical and contractual provisions had to be adjusted. It also took into account that in the United States, the District Court for the Northern District of California also found that Apple had violated a court order, requiring the imposition further restrictions to the company's conduct.

In light of those precedents, the Tribunal considered that there was a "substantial risk that Apple will implement technical or informational obstacles that could create friction in the user experience, undermining the effectiveness of the competition remedy". Therefore, it acknowledged that the conditions imposed by the Superintendent General were necessary to guarantee that the company could not use any mechanism that undermined the main objective of the interim measure.

Source: Appeal No. 08700.009932/2024-18, https://www.gov.br/cade/en/matters/news/cade-upholds-interim-measure-against-apple/copy_of_AppleAppealCADEsDecisionEnligshversion.pdf

5 Conclusion

87. Remedies in antitrust enforcement serve as essential instruments to stop ongoing anticompetitive conduct, prevent its recurrence, and address its effects by restoring competitive conditions in the market. Remedies are a core component of the enforcement toolkit, enabling authorities to ensure that their interventions are effective.

88. Two guiding principles consistently underpin remedy design: effectiveness and proportionality. These, in turn, involve considerations on causality between the harm and the remedy, and enforceability of the measures. Achieving remedies that are both effective and proportionate is a complex task, requiring not only knowledge of the market dynamics but also a careful judgment and an in-depth case-by-case analysis. In this regard, competition authorities can enhance the effectiveness of the process by using a co-operative approach to design their remedies. Engaging parties, market participants, sector regulators and other relevant actors can enhance the quality, feasibility and legitimacy of remedies. Such inclusive design processes contribute to more robust outcomes, reinforcing the overall effectiveness of antitrust enforcement.

89. Competition authorities may initiate a dialogue with different actors early in the process. As with co-operation in other stages of an investigation or a merger review, early contact is desirable. Co-operation may also be key in identifying the competition concerns that require the imposition of a remedy, the alternatives of remedies that can address the issues, and the aspects of efficiency and proportionality of those alternatives. It can also be useful in assessing practicability, implementability and enforceability and, in later stages, in monitoring compliance.

90. While co-operating with stakeholders will always bring challenges related to issues like resources, timing, procedures, legal limitations and even trust and reciprocity, there are strategies that can be followed to achieve effective levels of co-operation. Ultimately, the way authorities deal with these challenges will shape how co-operation in remedy design looks like.

91. There are several strategies that competition authorities already employ to facilitate collaboration in remedy design, as identified in the paper and that could be considered, when possible and suitable. They can be considered around early engagements with stakeholders, the need for transparent communication of objectives and possible outcomes, the use of different tools to leveraging the different stakeholders' expertise and adjusting mechanisms that give flexibility to remedy design.

Early engagement with stakeholders

- Competition authorities could consider strategies to generate opportunities for co-operation outside the framework of cases to build trust and long-term relationships. For example, through informal consultations or international networks.
- When possible, they could initiate contact with other authorities, including sector regulators, public bodies and other competition agencies to discuss initial insights on the issues to remedy and early proposals of remedies.
- As part of the usual requests information to sector regulators, they could include questions regarding key information in the market that is useful for remedy design. Often, consultation is mandatory but, when optional, it could still be considered.

- When multiple authorities are considering imposing remedies, it could be helpful for authorities to exchange and compare draft remedies as soon as possible. Co-ordination may also involve designing jointly the market testing strategies and the timing of the decisions.

Transparent communication of objectives and possible outcomes

- To increase transparency, authorities could issue clear guidance to parties on the mechanisms and possible outcomes of their collaboration with the authority, including potential rewards from doing so, according to the legal framework.
- Authorities could follow different strategies that aim to clarify roles and responsibilities, for instance, when the same issues are being examined by multiple authorities simultaneously.
- When possible and desirable, competition authorities could create joint working groups with other relevant public authorities for remedy design. They could also discuss alternatives to guarantee effective monitoring of the remedies. Based on possibilities within the legal framework, they could even consider joint monitoring, the appointment of (joint) trustees or requests for specific support.
- In contacts with stakeholders, it could be helpful to establish clear timelines and limits to extensions of discussions to avoid remedy design becoming lengthier than required.
- If possible, authorities could seek to apply principles of international comity when remedies have cross-border effects.

Use of different tools to leveraging the different parties' expertise

- Whenever useful, authorities could seek for the grant of confidentiality waivers for co-operation with relevant authorities.
- They could also consider implementing strategies to incentivise parties to come up with an initial remedy proposal.
- Market test remedies when possible. There are different alternatives to market testing and some legal frameworks allow for more flexibility on how to do so.

Consider adjusting mechanisms

- If considering alignment of remedies with other competition authorities, it could be helpful to review specificities of local markets to make sure that the remedies fully counter harmful effects in the relevant domestic markets and that they are proportionate to the effects in the jurisdiction.
- Consider using sunset or review clauses that allow for flexibility to review remedies in the future.
- Using past experiences to design remedies could also be helpful. Co-ordinating with other agents may also involve sharing of past experiences that contribute to a better design of remedies in similar cases.
- Carrying out retrospective studies is useful in this context.

92. While not intended to be exhaustive, the list above offers some practical ideas for authorities that recognise the value of engaging in co-operative approaches to remedy design. These strategies can serve as a starting point for fostering more inclusive and effective processes, tailored to the specific context of each intervention and to the legal framework in the jurisdiction.

93. In sum, co-operative approaches to remedy design have become an important component of modern competition enforcement. As markets grow more global, digital, and complex, the effectiveness of remedies is increasingly shaped by the ability of competition authorities to engage with parties, third parties, regulators, and international counterparts in ways that are transparent, balanced and pragmatic. The experiences discussed in this paper show that the quality of co-operation might determine whether remedies succeed in restoring competition.

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Endnotes

¹ While remedies may also be imposed in the context of *ex ante* regulation, this paper will not cover those cases.

² In 2022, the OECD published a report monitoring the progress in implementing the Recommendation confirming its continued relevance (OECD, 2022^[36]).

³ For a detailed discussion on extraterritorial reach of competition remedies, see (OECD, 2017^[7]).

⁴ The OECD Working Party 2 on Competition and Regulation is holding a roundtable in December 2025 on experiences with market studies and other market analysis to discuss the use of market investigations.

⁵ One jurisdiction that has provisions allowing the competition authority to impose remedies in the three scenarios is the United Kingdom. The CMA has published individual guidance on each procedure. In 2013, it published the [Guidelines for market investigations: Their role, procedures, assessment and remedies](#). In 2018, it issued [Guidance on Merger Remedies](#). More recently, in 2021, with an amendment in 2023, the CMA published its [Merger and Market remedies – guidance on reporting, investigation and enforcement of potential breaches](#). These latter aim to consolidate the CMA's approach to orders and undertakings in all scenarios: mergers, monopoly investigations and market investigations.

⁶ The OECD discussed differences between remedies and commitments in abuse cases in 2022. For a detailed description of terminology see the OECD background note for the discussion (OECD, 2022^[3]).

⁷ When it comes to re-establishing competition, it is important to note that this objective relates to the competitive process itself, rather than to the outcomes for individual competitors. In other words, competition authorities cannot guarantee a specific market result following the implementation of a remedy. Instead, effectiveness is assessed by whether the remedy creates realistic new opportunities for more competition in the market.

⁸ For example, in the EU, courts have stated that when commitments are offered by companies, the Commission only needs to verify that they address the concerns expressed to them and that they have not offered less onerous commitments that could also address those concerns adequately. By contrast, when remedies are imposed by the Commission, the Commission must seek the least onerous remedy that will effectively bring the infringement to an end. In practice, this means that commitments offered by the parties could go beyond what the Commission could have imposed under the remedies provision, without this being automatically regarded as disproportionate (OECD, 2022^[33]).

⁹ Considered under Articles 7 and 9 of Regulation 1/2003.

¹⁰ Competition authorities have the choice of completing an enforcement investigation, a market investigation or a merger review in different ways. Accepting commitments or imposing remedies are at the discretion of the authority and involves a balancing exercise on advantages and disadvantages of each option. Willingness to co-operate by the investigated/merging parties may impact this decision. This section

leaves aside situations in which authorities rule out remedies, as other instruments such as simple cease-and-desist orders or merger prohibitions are deemed more appropriate.

¹¹ In June 2025, the Competition Committee discussed issues on corporate influence in competition policymaking, differentiating it from legitimate corporate engagement (OECD, 2025^[35]).

¹² See, for example, the collaboration between the French Competition Authority (Autorité de la Concurrence) and the National Commission for Information Technology and Civil Liberties in France (Commission Nationale de l'Informatique et des Libertés – CNIL) for the design of interim measures against GDF Suez (now Engie) in 2014 (decision 14-MC-02 of September 9, 2014, relating to a request for interim measures filed by Direct Energie in the gas and electricity sectors). See also the Apple ATT decision (decision 21-D-07 of March 17, 2021), relating to a request for interim measures (rejected).

¹³ As an example, Article 41 of the Spanish Competition Act (Ley 15/2007) provides the CNMC the possibility to request co-operation of Competition authorities of Spain's autonomous communities and sectoral regulators in monitoring the fulfilling of remedies, commitments and decisions. In practice, the CNMC has signed MoUs with different bodies to operationalise the co-operation mechanisms. It is important to note that the CNMC is also the regulator in multiple sectors (telecommunications, energy, transport, post and audio-visual), which means that this Article has helped mostly when co-ordination with other competition bodies and ministries is required.

¹⁴ The Korean Air/Asiana case described above is an example. Parties had to inform a monitoring committee, composed by the KFTC and the Ministry of Land, Infrastructure and Transport, who would supervise compliance. Moreover, some duties for the collection of data and periodic analysis were also delegated to the Korea Fair Trade Mediation Organisation (Gu, 2024^[27]).

¹⁵ Similarly, the European Commission is bounded to effects in the European Economic Area to take action.

¹⁶ For example, in the responses to the OECD/ICN survey in 2021, several authorities highlighted the 2018 Praxair/Linde merger as a clear example of the benefits of substantive co-operation between authorities for the definition of relevant markets and theories of harm. As noted in the report, authorities in the Americas and Asia (e.g. Colombia, Chile and Korea) benefited from their co-operation with other authorities to define relevant geographic markets and understand theories of harm that accurately reflected the global nature of the companies and their innovative technologies. The Korean Competition Authority (KFTC) specifically highlighted that this co-operation was “*very useful to ensure the credibility and acceptability of remedies*” (OECD/ICN, 2021, p. 122^[22]).

¹⁷ For example, the US Antitrust Guidelines for International Enforcement and Cooperation issued in 2017 by the DOJ and FTC include principles on comity. They acknowledge the relevance of international comity to reach effective remedies and suggest that both agencies would aim to co-operate on remedy design with foreign competition authorities to the extent possible. See <https://www.justice.gov/atr/internationalguidelines/dl>

¹⁸ This was the case, for example, in the 2015 Holcim/Lafarge merger, reviewed by multiple authorities including in Canada and the United States. In both jurisdictions, competition authorities announced their consent decrees on the same day and referred to one another. See press releases: <https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/news-releases/holcimlafarge-merger-sale-all-holcims-operations-canada> and <https://www.ftc.gov/news-events/news/press-releases/2015/05/ftc-requires-cement-manufacturers-holcim-lafarge-divest-assets-condition-merger>

¹⁹ In Europe, the Commission adopted an infringement decision in 2016 against the company ARA for abusing its dominant position in the market for the exemption of household packaging waste by preventing the entry of competitors. ARA initially proposed commitments. However, the Commission considered that

a commitment was not suitable given changes in the conditions in the market. ARA kept co-operating with the Commission, including by acknowledging its liability, and suggested structural remedies that the company considered appropriate and proportionate. This set of remedies were imposed by the Commission together with a fine, reduced by 30% as a reward for co-operation. See Case No. COMP D3/35470.

²⁰ For example, while market testing is explicitly considered in Article 9 Regulation 1/2003 for commitments, it is not considered for remedies under Article 7.

²¹ For example, in Bulgaria, legal provisions mandate the competition authority to start a second consultation process and inform the relevant parties in case the initial remedy proposal has been substantially modified by the results of the market testing. Article 75(3) of the Law on Protection of Competition.

²² This is a regular practice followed by the CMA. In one of its most recent decision accepting commitments, in its investigation on the Atlantic Joint Business Agreement between five airlines, the CMA consulted twice on proposed commitments. Following feedback on the first consultation, the companies offered modified measures, which were tested by the CMA in a second public consultation. After further feedback received, the CMA decided to accept the modified commitments in August 2025. See case page: <https://www.gov.uk/cma-cases/investigation-of-the-atlantic-joint-business-agreement#case-information>

²³ For instance, through public hearings or seminars that are not case-related but are specific enough to gather relevant input from stakeholders.

²⁴ In 2025, the OECD Working Party 2 on Competition and Regulation discussed methodologies for assessing the impact of competition authorities' activities (OECD, 2025^[31]). More specifically, in 2022, the Competition Committee held a roundtable on the Ex-post Assessment of Merger Remedies (OECD, 2023^[2]). During both sessions, authorities shared experiences and main findings of their work evaluating interventions, including when imposing remedies.

²⁵ The Uber/Grab merger in the Philippines, presented in Box 11 in the OECD background note on Challenges and Sources of Divergence in Cross-border Merger Review illustrate with a case the consequences that the lack of co-operation between competition authorities and sector regulations may have (OECD, 2024^[6]).