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Co-operative Antitrust in Remedy Design – Note by the European Union

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1. Introduction

1. The European Commission ("Commission") agrees with the statement in the OECD's call for contributions that engaging with key stakeholders – including parties, third parties, sector regulators and other public bodies – can enhance agencies' understanding of market dynamics, provide valuable feedback when market-testing remedy proposals, and support the effective design of remedies.

2. In its enforcement practice, the Commission regularly engages with stakeholders to gather feedback for the assessment of remedies, in the context of both antitrust and merger proceedings. This contribution presents the Commission's experience in this respect. It will first discuss how cooperation takes place with the parties to an investigation and third parties (section 2); it will then present cooperation with sector regulators and other public bodies (section 3); finally, it will discuss cooperation with other competition agencies (section 4).

2. Cooperation with the parties and third parties

2.1. Antitrust

3. By way of background, under Regulation 1/2003,[1] remedial measures can be envisaged in two main types of decisions by the Commission: (i) decisions finding an infringement, pursuant to Article 7(1) of Regulation 1/2003, and (ii) decisions making commitments binding on undertakings, pursuant to Article 9(1) of Regulation 1/2003.[2]

4. Pursuant to Article 7(1) of Regulation 1/2003, the Commission is entitled, where it finds an infringement of Article 101 or 102 of the Treaty on the Functioning of the European Union ("TFEU"), to require the undertakings concerned "*[…] to bring such infringement to an end. For this purpose, it may impose on them any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end. Structural remedies can only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. […]*".

5. Pursuant to Article 9(1) of Regulation 1/2003, where the undertakings concerned by an investigation offer commitments to meet the Commission's preliminary concerns, "*[…] the Commission may by decision make those commitments binding on the undertakings. Such a decision […] shall conclude that there are no longer grounds for action by the Commission.*"

[1] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 04.01.2003, pp. 1-25 ("Regulation 1/2003").

[2] For more information on Article 7 remedies and Article 9 commitments and the respective procedures, see the Commission's contribution to the OECD session of 1-2 December 2022, "Remedies and Commitments in abuse cases", available at pdf.

6. Article 9(1) of Regulation 1/2003 provides the standard framework for cooperation on remedial measures under Regulation 1/2003 as it envisages that the parties under investigation offer commitments to the Commission, rather than the Commission unilaterally ordering remedies in an Article 7 decision. In an Article 7 case, the Commission usually discusses the remedy with the undertaking concerned only after the adoption of the infringement decision, when it orders the undertaking to take appropriate measures to bring the infringement to an end. Nonetheless, as will be further discussed, the Commission has also developed cooperative approaches under Article 7 of Regulation 1/2003.

7. Proposed commitments must, unlike remedies in a prohibition decision, be formally market tested. This market test takes place following a publication in the Official Journal of the European Union of a concise summary of the case and the main content of the commitments pursuant to Article 27(4) of Regulation 1/2003, thereby allowing interested third parties to submit observations.[3]

8. Feedback from the market test is used to ensure that commitments adequately address competition concerns. In particular, the Commission takes into account such feedback when assessing whether the proposed commitments are effective in removing its preliminary concerns as outlined in the Statement of Objections or Preliminary Assessment, as the case may be. On that basis, the Commission may conclude that the commitments are unable to effectively address its concerns. This may lead the investigated undertaking to modify or improve the proposed commitments.[4]

9. Market test input received can also prompt the Commission to revert to proceedings under Article 7(1) of Regulation 1/2003, if the proposed commitments are deemed insufficient to address its competition concerns (e.g. as in the Google Search (Shopping) investigation).[5]

10. The cooperative set-up of the commitment procedure under Article 9 of Regulation 1/2003 allows the Commission to engage with the investigated undertakings at an early stage of the case, and be involved in the design and shaping of the commitments. It enables an upfront discussion on whether the case is suitable for commitments and if so, what is the most appropriate solution to address the identified competition concerns. Moreover, the market testing of the proposed commitments enables the Commission to gather feedback from relevant market participants: these actors have direct market knowledge and can provide useful insights on the possible content, scope or impact on the market of a commitment proposal. This allows the Commission to assess the commitments with a better understanding and a more complete knowledge of the facts, thereby reducing the information asymmetry with the parties.

11. While the cooperative approach is formally enshrined in Article 9 of Regulation 1/2003, over the years the Commission has introduced similar

[3] Commitments can also be informally market tested before the formal market test pursuant to Article 27(4) of Regulation 1/2003.

[4] See for a latest example the Commission Decision of 12 September 2025 in cases AT.40721 (Microsoft Teams) and AT.40873 (Microsoft Teams II). In light of the market test, Microsoft amended its initial commitment proposal. For instance, Microsoft further committed to increase by 50% the price difference between some Microsoft 365 and Office 365 suites without Teams and the corresponding suites with Teams, including the suites targeted at businesses, see https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2048.

[5] Commission Decision of 27 June 2017 in case AT.39740 (Google Search (Shopping)), paras 71, 73 and 129.

cooperative elements also in the context of infringement proceedings under Article 7 of Regulation 1/2003, both by introducing new procedures, and by adapting its working methods. This concerns in particular the so-called "cooperation procedure" and the practice of carrying out a market investigation to assess Article 7 remedies.

12. Since 2016, the Commission has put in place a cooperation procedure under Article 7 of Regulation 1/2003, to reward through fine reductions parties that cooperate with its investigations beyond their legal obligations.[6] The applicable procedural steps are inspired by the cartels settlement notice,[7] and require parties to indicate their willingness to engage in cooperation, and to provide a written settlement submission.

13. Through this submission the parties should acknowledge the facts, their legal qualification as an infringement and their liability,[8] indicate the maximum fine the parties would accept, and contain certain confirmations such as that the parties have been sufficiently informed of the objections and have been given sufficient opportunities to make their views known, and, where a remedy is offered, that it is necessary and proportionate to effectively bring the infringement to an end.

14. The Commission has used the cooperation procedure in several cases. In the ARA[9] and AB InBev[10] cases, the parties formally submitted offers to cooperate after the adoption of a Statement of Objections by the Commission, and their submissions amongst other included proposed remedies and an acknowledgment of their suitability and proportionality. The Commission imposed a structural remedy in the ARA decision and a behavioural one in the AB InBev decision.[11] In return for its cooperation, ARA was awarded a 30% fine reduction, whilst AB InBev was awarded a 15% fine reduction.

15. The Commission has also made use of its powers of investigation under Regulation 1/2003 to informally gather feedback on remedies in the context of Article 7 proceedings. The rationale for this approach is the same as for the formal market test of commitments in the context of Article 9 proceedings: the Commission carries out such market investigations to better assess whether the remedy is indeed suitable to bring the infringement effectively to an end.

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[6] These fine reductions are based on point 37 of the Guidelines on Fines, which allows the Commission to depart from the methodology set out in those Guidelines if the particularities of a case justify it.

[7] Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases.

[8] Cooperation without acknowledgment is not covered by this procedure but by the regular procedure, nonetheless even in this context cooperation on evidence or remedies can still be taken into account when setting the fine.

[9] Commission Decision of 20 September 2016 in case AT.39759 – ARA foreclosure.

[10] Commission Decision of 13 May 2019 in case AT.40134 – AB InBev.

[11] ARA was required to "divest the part of the household collection infrastructure" which ARA owned to one or several independent purchasers, whilst InBev was required to provide, for a period of 5 years, mandatory food information in both French and Dutch languages on the labels of all products of its 19 beer brands sold to off-trade customers in the Netherlands, France and Belgium.

16. This investigation on remedies was for instance carried out in the *Google Android* case. The Commission's prohibition decision ordered Google to cease two forms of abusive tying. More specifically, the decision required Google to refrain from licensing the Play Store to hardware manufacturers only on condition that they pre-install the Google Search app; and to refrain from licensing the Play Store and/or the Google Search app to hardware manufacturers only on condition that they pre-install Google Chrome.[12] Google first implemented the cease and desist order by offering OEMs the Google Play app without Chrome and Google Search, charging a price for Google Play. OEMs could obtain in addition each of Google Search and Chrome for free. This meant that the price for Google Play with or without the previously tied products would be the same. In addition, OEMs that licenced (for free) Chrome and Google Play and that in addition accepted to give a prominent placement to those on their devices, received from Google a payment that cancelled out the price paid for Google Play.

17. To assess the remedy proposed by Google, the Commission sent requests for information to market players. Based on the feedback gathered, the Commission took the view that this mechanism was not an effective remedy, as it resulted in an economic incentive for the status quo, even if the services were un-tied in a formalistic manner. This led to Google making substantial changes to its remedy, ultimately leading to a choice screen solution on mobile devices. In practice, the choice screen designed by Google gave the users of mobile devices the final choice of which search engine to instal, allowing them to override any pre-installation by OEMs of Google's apps.

18. Finally, it should be noted that the Commission is carrying out reflections on its antitrust procedural framework within the ongoing review of Regulation 1/2003, which includes considerations on the cooperative elements of remedies and commitments procedures.

19. In this respect, the Commission's Staff Working Document for the Evaluation of Regulation 1/2003 noted that "*certain respondents to the public consultation pointed out that third parties/consumer representatives should have greater involvement in designing effective remedies*" and that "*workshop participants also explained that remedies could be more effective if the procedure under Article 7 of Regulation 1/2003 were aligned with the procedure under Article 9 of Regulation 1/2003 (commitments), namely involving a systematic consultation with third parties, including consumer associations or sectoral regulators*".[13] The Commission is therefore considering how interested third parties could play a role in the design of remedies imposed in decisions adopted under Article 7 of Regulation 1/2003.[14]

[12] Commission Decision of 18 July 2018 in case AT.40099 – Google Android, paras 1394 - 1397.

[13] Commission Staff Working Document on the evaluation of Regulation 1/2003, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13431-EU-antitrust-procedural-rules-evaluation_en, page 200.

[14] Ibid., page 204.

20. Similarly, the ex-post evaluation study on the effectiveness of antitrust remedies, published on 20 February 2025,[15] makes non-binding recommendations to the Commission to improve its remedies and commitments practice, including in relation to cooperation in remedy design. These include making a more systematic use of the market testing of remedies under Article 7(1) Regulation 1/2003, as this allows for a better design of remedies, in particular in complex cases. The study argues that remedies that are not market tested may subsequently reveal design flaws, as was the case in the Microsoft I (tying) decision.[16] Another argument is that more publicity around remedies increases the likelihood that deviations are detected. The study also recommends formalising the cooperation procedure under Article 7.

2.2. Mergers

21. Under the EU Merger Regulation, the Commission may clear a notified transaction subject to remedies (or commitments) if they effectively remedy the concerns linked to the anti-competitive effects to which the transaction would otherwise have given rise absent such remedies.

22. In merger control policy, only the parties to the transaction can submit a remedy proposal. The Commission cannot unilaterally impose remedies when it believes a concentration may be incompatible with the internal market.

23. In practice, the notifying parties sign and submit to the Commission a form relating to the information concerning commitments (or "Form RM"),[17] as well as a legally binding commitments text. A template for divestiture commitments is available from the Commission's website.[18] The template may also be used for non-divestiture commitments. The formal submission of the commitments and Form RM is typically preceded by exchanges with the parties based on drafts of these documents, and follow-up requests for information by the Commission to better understand the scope, practicalities or implementation modalities of the relevant commitments and their suitability to remove the competition concerns identified by the Commission.

24. Parties that would provide inaccurate information in their commitments, Form RM, or in response to related requests for information by the Commission, expose themselves

[15] European Commission, Directorate-General for Competition, Grimaldi Alliance, and NERA, *Ex post evaluation of the implementation and effectiveness of EU antitrust remedies – Final report*, 2025. The study, drafted by an external contractor, assesses the effectiveness of antitrust remedies imposed or accepted by the European Commission over the past 20 years under Articles 7 and 9 of Regulation 1/2003. The study draws on (1) an ex post evaluation of a carefully selected sample of twelve significant antitrust remedy cases (2) a statistical analysis of a comprehensive dataset of non-cartel antitrust decisions (2003-2022), (3) interviews with experts and (4) an in-depth literature review. The study makes recommendations to the Commission to improve its remedies practice, which are not binding on the Commission.

[16] Commission Decision of 24 March 2004 in case AT.37792 – Microsoft I (tying).

[17] See Annex IV of Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004.

[18] See https://competition-policy.ec.europa.eu/document/download/19ce6606-5e8f-4f2a-9145-518e922602ce_en?filename=template_commitments_en.pdf

to the possibility of receiving significant fines, up to 1% of their worldwide revenues.[19] Such prospect aims at ensuring the truthfulness of the information gathered by the Commission to assess the suitability of the commitments.

25. Remedy proposals which appear *prima facie* suitable to solve the identified competition concerns and which are submitted in time will normally be market-tested with third parties. This will be the case where the proposal appears to meet the criteria laid out in the Commission's guidance on acceptable remedies.[20] This implies in particular that the proposal eliminates the competition concerns entirely, is comprehensive and effective from all points of view and capable of being implemented effectively within a short period of time.

26. Timing-wise, given the applicable time constraints in merger proceedings, the market test normally takes place immediately after the submission of the commitments by the parties, in particular in the case of remedies submitted during the initial investigation phase of the Commission's merger review ("Phase I").

27. Proposals that are manifestly insufficient to address the Commission's concerns can be rejected by the Commission without being market tested. One exception concerns remedies submitted during an in-depth investigation (or "Phase II"), which will typically be market-tested in any event (if they are submitted in line with the deadlines set out in the EU Merger Regulation and its Implementing Regulation), before the Commission can decide to adopt a decision prohibiting the transaction.

28. The market testing of remedies is typically carried out through a questionnaire accompanied by a non-confidential version of the remedies' proposal. Such questionnaire is in principle addressed to customers and competitors, as well as other third parties (such as potential purchasers where divestiture remedies are offered) where relevant. These questionnaires are sent under Article 11 of the EU Merger Regulation. As a result, answers that may be misleading or incorrect are subject to fines under Article 14 of the EU Merger Regulation, which ensures third parties have the same obligation as notifying parties to provide accurate answers to the Commission. Where necessary, the Commission may follow-up with respondents to the market test to clarify their answer, including by ways of interviews or additional requests for information.

29. The Commission critically reviews the input provided by notifying parties and third parties before reverting to the notifying parties with the feedback from the market test and the Commission's own assessment. Notifying parties regularly revise their initial remedies proposal based on the feedback of market participants.

30. Where a transaction would significantly impede effective competition and no or no adequate remedies have been offered by the merging parties, the Commission has no discretion and must prohibit the transaction.

[19] EU Merger Regulation, Article 14(1).

[20] Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

3. Cooperation with sector regulators and other public bodies

31. As outlined in previous contributions to the OECD, the Commission regularly consults sector regulators during its investigations in regulated sectors, on a case-by-case, informal basis.[21]

32. The Commission (specifically its Directorate General for Competition) does not have any formal, over-arching agreement with sector regulators establishing specific cooperation protocols in the field of competition, nor any specific legal obligation to consult sector regulators when it intends to carry out competition investigations against undertakings operating in regulated sectors.

33. Nevertheless, the Commission coordinates and exchanges information with sectoral regulators in the course of its investigations as part of the general duty to cooperate in good faith with national authorities (see Article 4(3) of the Treaty on the European Union). Such cooperation is also required to comply with the *ne bis in idem* principle[22] in cases where the same facts are assessed by a competition authority under competition law and by a sector regulator under sector-specific regulation. In the case of two parallel sets of proceedings (antitrust proceedings and regulatory proceedings) concerning the same facts, a limitation to this principle can be justified where the involvement of both authorities is provided for by law under different sets of legislation pursuing distinct legitimate objectives (e.g. the liberalisation of postal services and rules seeking to ensure competition is not distorted), the duplication of proceedings and penalties complies with the principle of proportionality, and such duplication is strictly necessary and predictable. In relation to this last condition, the questions of whether proceedings were conducted "in a manner that is sufficiently coordinated" and "within a proximate timeframe" are of particular relevance.[23] Article 11(6) of the EU Merger Regulation explicitly grants the Commission the power to address formal requests for information to "*the governments and competent authorities of the Member States*", which has also resulted in the Commission reaching out to sector regulators under this provision.

34. Such cooperation may also touch upon the assessment and design of remedies, in an antitrust or merger context. Indeed, when considering remedies or commitments concerning a market subject to sector-specific regulation, the Commission may have an

[21] See https://one.oecd.org/document/DAF/COMP/GF/WD(2022)13/en/pdf .

[22] The principle of *ne bis in idem* is a fundamental principle of EU law laid down in Article 50 of the Charter of Fundamental Rights of the European Union ("Charter") prohibiting a duplication both of proceedings and of penalties of a criminal nature for the same acts and against the same person. The application of the principle is subject to a two-fold condition, namely, first, that there must be a prior final decision (the '*bis*' condition) and, secondly, that the prior decision and the subsequent proceedings or decisions must concern the same facts (the '*idem*' condition). In such event, carrying out parallel proceedings would constitute a limitation of the fundamental right guaranteed by Article 50 of the Charter. Nonetheless, a limitation of this fundamental right may be justified on the basis of Article 52(1) of the Charter, which establishes when individual rights can be limited.

[23] See Case C-117/20, bpost SA v Autorité belge de la concurrence, ECLI:EU:C:2022:202, request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium), paragraph 51. This case concerned a dispute relating to the existence of two separate proceedings against Bpost, Belgium's postal operator, with respect to its new pricing model. The proceedings led to the imposition of two administrative penalties, one by the national regulatory authority for postal services in Belgium ("IBPT") for breach of the non-discrimination obligation laid down in Belgian legislation, and a second by the Belgian competition authority for abuse of dominant position under Article 102 TFEU.

interest to reach out to the relevant sectoral regulator to request the latter's views on a certain remedy or commitment.

35. Requesting feedback or views from sectoral regulators may benefit remedy design in two ways. First, given its sector-specific knowledge, a regulatory authority may be able to give insights on how a certain remedy or commitment would function, and to identify to the Commission potential shortcomings or areas of improvement. Second, the regulator can assess how the remedy or commitment would relate to or interact with the relevant sector-specific regulation, or whether the latter may affect in any way the implementation of the remedy or commitment.

36. Depending on the specifics of the case and the geographical scope of the investigation, the Commission may choose to consult an authority that operates at the EU level or one that is active only in a single Member State. The details and results of the interactions with the regulator(s) are generally reported in the final decision.

37. Examples of the Commission cooperating with sector regulators in relation to remedies or commitments include the following.

- Telecommunications. In merger case M.8864, Vodafone / Certain Liberty Global Assets, the German telecommunications regulator was consulted by the Commission on the draft commitments proposed by the merging parties, as these commitments included a series of behavioural measures regarding wholesale access to cable. The regulator was also assigned an advisory role with regard to certain aspects of the commitment: in particular, the monitoring trustee can seek the expert advisory opinion of the national regulator concerning the German regulatory framework for telecommunications. In case M.7758 Hutchison 3G Italy / Wind / JV, the Commission included the Italian telecommunications regulator (AGCOM) in its market test of the commitments proposed by the merging parties, aimed at maintaining a fourth mobile operator in the Italian telecommunications market. More recently, in case M.10896, Orange / Masmovil, the commitments foresee the possibility for the appointed trustee to seek the expert opinion of the Spanish regulator for fixed telecommunications.
- Transport. In merger case M.9779, Alstom / Bombardier Transportation, during the investigation the Commission contacted the regulator for United Kingdom's rail networks, which provided relevant information on the market conditions and the parties' position in the United Kingdom. The regulator further sent observations on the commitments proposed by the parties to the transaction. In merger case M.8677 Siemens/Alstom, the Commission consulted a series of national rail regulators on the text of the commitments proposed by the parties to address the competition concerns that had emerged during the investigation.
- Digital. In case M.9660 Google/Fitbit, concerning Google's acquisition of the manufacturer of wearable devices Fitbit, the Commission investigated possible competition issues related to the data collected via Fitbit's wearable devices and the interoperability of wearable devices with Google's Android operating system for smartphones. Throughout its investigation, the Commission had contacts with both the EDPS (which provides the EDPB's secretariat) and the EDPB itself, to understand the regulatory framework applicable to the processing of personal data by Google and Fitbit. The EDPB also provided feedback, on behalf of its members, to the market investigation and to the market test of the commitments.

4. Cooperation with other competition agencies

38. The Commission and other competition authorities typically share the same goals and are often aligned including on substance. Where waivers are granted by the investigated undertaking(s) in an antitrust investigation or by the merging parties (and potentially third parties) to exchange information with other competition authorities, the Commission will engage on every relevant aspect of the case, including discussions on remedies. Where a case raises similar concerns across jurisdictions, in particular when markets under investigation may be global in scope, alignment may be particularly important.

39. Close cooperation and alignment across competition authorities reviewing the same transaction or conduct is generally preferable in these cases, including for the undertakings concerned. This also applies to remedies.

40. In merger investigations, coordination between authorities is particularly important where remedies involve the divestment of a business, which can only be acquired by a single purchaser. In this case, diverging views between competition authorities concerning for instance the profile of a suitable purchaser, may complicate the design of remedies for the undertakings concerned.

41. Merger cases like Ali Group / Welbilt (2022) or Sika/MBCC (2023) are examples of international alignment benefitting the parties. Global remedy packages were secured in each case, addressing concerns in various jurisdictions including the EU.

42. The Commission may even refer to its collaboration with other such authorities in the underlying public communication. For instance, in its press release announcing the conditional clearance of Sika / MBCC, the Commission stressed that "*[d]uring its investigation, the Commission cooperated closely with its counterparts in Australia, Canada, New Zealand, the UK and US. It will continue liaising with these counterparts during the assessment of a suitable purchaser for the divestment business*".[24]

43. Ultimately, alignment, including on remedies, be it on design, timing or implementation, is not an end in itself. There can be reasons to why different competition authorities end up reaching different conclusions. Such divergent outcomes can be explained including by the different legal frameworks, market circumstances or market feedback received by the agencies

[24] See Mergers: Commission clears the acquisition of MBCC by Sika