

Unclassified

English - Or. English

12 November 2025

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

Working Party No. 3 on Co-operation and Enforcement

Co-operative Antitrust in Remedy Design – Note by BIAC

3 December 2025

This document reproduces a written contribution from BIAC submitted for Item 3 of the 142nd meeting of Working Party 3 on 3 December 2025.

More documentation related to this discussion can be found at: oe.cd/card.

Ms Despina PACHNOU
Despina.Pachnou@oecd.org

JT03576612

BIAC

1. Introduction

1. *Business at OECD* (BIAC) appreciates the opportunity to provide its views to the OECD Competition Committee Working Party No. 3 Roundtable on Cooperative Antitrust in Remedy Design.

2. The design of effective remedies is a critical component of competition enforcement. Whether addressing mergers that may lessen competition or unilateral conduct that may distort markets, the remedies imposed by competition authorities must be not only proportionate and targeted, but also practical, effective, and enforceable. Increasingly, the question arises whether achieving these outcomes would benefit from or require cooperation between competition authorities and other regulatory bodies, especially in complex or highly regulated sectors.

3. The concept of cooperative antitrust in remedy design is based on the assumption that the effectiveness of remedies may depend on collaboration with sectoral regulators who possess specific technical expertise, market-specific knowledge, and ongoing oversight capabilities. From digital platforms to telecommunications, energy, and healthcare, regulatory frameworks may be informative in shaping how antitrust remedies are implemented and whether they achieve their intended effects.

4. From BIAC's perspective, enhanced cooperation in remedy design may be desirable – but only when structured carefully, while safeguarding procedural guarantees – i.e., due process rights, legal certainty, ensuring proportionality, and maintaining the independence of competition enforcement agencies. Cooperation should improve the effectiveness and precision of remedies, not dilute their focus or expand their scope beyond addressing the identified competition harm.

5. At the same time, in practical terms, cooperation among agencies is becoming increasingly important in cross-border contexts. Global mergers and conduct cases increasingly trigger enforcement actions in multiple jurisdictions, each with its own unique regulatory environment. Without coordination, remedies can become fragmented or conflicting, creating burdens for businesses and reducing overall effectiveness. BIAC sees an important role for the OECD in promoting greater convergence and good practices in this area.

6. In this respect, the topic of extraterritorial remedies is crucial for businesses as the extension of remedies beyond borders creates potential for conflict and inconsistent treatment under the competition laws. As BIAC already observed in 2017, no antitrust authority should impose remedies that dictate commercial outcomes in other jurisdictions absent a full consideration of the principles of jurisdiction, enforcement authority, domestic effect and comity.¹ Cooperation on remedies can minimize or resolve these hazards.

7. This paper explores the importance of cooperative approaches to remedy design and offers practical recommendations from the business community, informed by recent BIAC contributions to OECD policy discussions. In particular, it draws upon BIAC's submissions to two OECD roundtables held in 2022: one on *remedies and commitments in*

¹ OECD, Extraterritorial Reach of Competition Remedies - Note by BIAC, DAF/COMP/WP3/WD(2017)46, ¶ 3 (Nov. 17, 2027), [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2017\)46/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)46/en/pdf) [hereinafter BIAC 2017].

*abuse of dominance cases*² and one on the *interactions between competition authorities and sector regulators*.³

8. The remainder of this paper is structured as follows. Section II sets out why cooperation between competition authorities and sectoral regulators matters in remedy design, including both benefits and risks. Section III examines the challenges and opportunities in coordinating remedies in merger control, especially across different jurisdictions. Section IV highlights key lessons from sector-specific collaboration, including the importance of regulator expertise and implementation feasibility. Section V presents BIAC's overarching recommendations for improving cooperative remedy frameworks.

2. Why Cooperation Matters in Remedy Design

9. As markets grow more complex – particularly in digital and highly regulated sectors – remedy design may increasingly benefit from or even require input beyond the traditional scope of competition authorities. Sectoral regulators often possess deep technical, operational, and institutional knowledge that may be valuable in the design, implementation, and monitoring of antitrust and merger remedies.

10. Cooperation between competition authorities and sectoral regulators in the design of antitrust or merger control remedies already occurs in practice. For example, in a number of merger cases in various jurisdictions involving telecom, remedies were informed by the telecom regulators' input on spectrum allocation and market impact.⁴ Similarly, in the merger context, cooperation between merger control authorities and financial market regulators occurred in the acquisition of HBOS by Lloyds TSB,⁵ as well as in Deutsche Börse/London Stock Exchange Group.⁶ In the U.S., in health care mergers, the antitrust agencies often consult with the Centers for Medicare & Medicaid Services or state insurance regulators.⁷ And in the European Union, the European Commission collaborated

² OECD, Remedies and Commitments in Abuse Cases – Contribution from Business at OECD (BIAC), DAF/COMP/GF/WD(2022)63 (Nov. 18, 2022), [https://one.oecd.org/document/DAF/COMP/GF/WD\(2022\)63/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2022)63/en/pdf).

³ OECD, Interactions between Competition Authorities and Sector Regulators – Contribution from Business at OECD (BIAC), DAF/COMP/GF/WD(2022)64 (Nov. 18, 2022), [https://one.oecd.org/document/DAF/COMP/GF/WD\(2022\)64/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2022)64/en/pdf).

⁴ See, e.g., CASE M.7612—Hutchison 3G UK/Telefonica UK, Comm'n Decision (May 11, 2016), https://ec.europa.eu/competition/mergers/cases/decisions/m7612_6555_3.pdf (European Commission and UK telecoms regulator Ofcom); Press Release, U.S. Dep't of Justice, Justice Department Settles with T-Mobile and Sprint in Their Proposed Merger by Requiring a Package of Divestitures to Dish (July 26, 2019), <https://www.justice.gov/archives/opa/pr/justice-department-settles-t-mobile-and-sprint-their-proposed-merger-requiring-package> (U.S. DOJ and Federal Communications Commission); and *Décision 14-DCC-160 du 30 octobre 2014 relative à la prise de contrôle exclusif de SFR par le groupe Altice*, AUTORITÉ DE LA CONCURRENCE, <https://www.autoritedelaconcurrence.fr/fr/decision-de-contrôle-des-concentrations/relative-la-prise-de-contrôle-exclusif-de-sfr-par-le-groupe> (French competition authority and French telecom regulator (ARCEP)).

⁵ *Lloyds TSB plc / HBOS plc*, Gov.UK, <https://www.gov.uk/cma-cases/lloyds-tsb-plc-hbos-plc>.

⁶ Case M.7995—Deutsche Börse/London Stock Exchange, Comm'n Decision (Mar. 29, 2017), https://ec.europa.eu/competition/mergers/cases/decisions/m7995_7544_3.pdf.

⁷ See *United States and Plaintiff States v. CVS Health Corp., and Aetna, Inc.*, DEP'T OF JUSTICE, <https://www.justice.gov/atr/case/united-states-and-plaintiff-states-v-cvs-health-corp-and-aetna-inc>.

with national and international environmental regulators, including the European Food Safety Authority, in the assessment of the Bayer/Monsanto acquisition.⁸

11. Cooperation between competition authorities and sectoral regulators in the design of remedies is not limited to mergers. For example, the European Commission and the Polish telecom regulator (UKE) coordinated the assessment of alleged abuse by Telekomunikacja Polska in the broadband market, as well as the remedies that were imposed.⁹ And in Germany, the German competition authority and the Federal Data Protection Commissioner collaborated in the Facebook Data Collection Case.¹⁰

2.1. Benefits of Cooperation

12. Cooperation between competition agencies and regulators can improve the effectiveness and credibility of remedies. Regulators can help ensure remedies are technically feasible, tailored to market realities, and aligned with existing regulatory requirements. This is especially important when remedies involve operational divestitures, access to infrastructure, or consumer-facing obligations.

13. However, while BIAC supports cooperative approaches, it also highlights the importance of identifying and mitigating the risks associated with inter-agency collaboration.

2.2. Risks of Poorly Managed Cooperation

14. Without clear frameworks and mutual understanding, cooperation can introduce new challenges that risk undermining the objectives and integrity of competition enforcement.

- **Regulatory Overreach or Misalignment.** In some cases, regulators may pursue broader policy goals (e.g., industrial policy, public service obligations, sustainability) that conflict with competition objectives. This can lead to remedies that are disproportionate, politicized, or unrelated to the identified competition harm.
- **Legal and Procedural Uncertainty.** Businesses may face uncertainty when different agencies provide conflicting guidance, have overlapping jurisdiction, or apply inconsistent timelines or standards. This uncertainty can delay remedy implementation or create compliance challenges, particularly in fast-moving markets.
- **Inefficient or Redundant Remedies.** Without proper coordination, agencies may impose duplicative or conflicting remedies, e.g., a regulator may require access remedies that contradict or go beyond what the competition authority intends. This can result in excessive burdens on businesses and diminish the effectiveness of remedies.
- **Dilution of Accountability.** When multiple agencies are involved without clear lines of responsibility, monitoring and enforcement can suffer. It may be unclear

⁸ Case M.8084—Bayer/Monsanto, Comm’n Decision (May 29, 2018), https://ec.europa.eu/competition/mergers/cases1/202150/M_8084_8063669_13738_3.pdf.

⁹ COMP/39.525—Telekomunikacja Polska, Comm’n Decision (June 22, 2011), https://ec.europa.eu/competition/antitrust/cases/dec_docs/39525/39525_1916_7.pdf.

¹⁰ *Proceedings against Meta/Facebook*, BUNDESKARTELLAMT, https://www.bundeskartellamt.de/EN/Digital_economy/proceedings_against_large_digital_companies/Meta_Facebook/Meta_Facebook.html.

which agency is responsible for overseeing remedy compliance, especially when a remedy fails to deliver the intended market outcome. If remedies are imposed to address anti-competitive conduct, the competition authority should remain fully responsible.

- ***Confidentiality and Information Sharing Barriers.*** Legal restrictions may prevent effective exchange of sensitive business information between competition agencies and regulators, limiting the depth and timing of cooperation.

2.3. BIAC Perspective

15. BIAC emphasizes that inter-agency cooperation should be well-structured, transparent, guided by clear mandates, and involve robust due process protections. Remedies must be proportionate to the identified harm, grounded in competition principles, and implementable without undue complexity or risk. Furthermore, authorities should consider comity and tailor their enforcement actions to minimize extraterritorial conflicts. When cooperation is necessary or appropriate, BIAC supports formal coordination frameworks, such as memoranda of understanding, joint working groups, or parallel consultation procedures, to ensure that collaboration enhances – rather than complicates – remedy design.

3. Challenges and Opportunities in Coordinating Remedies in Merger Control, Particularly Across Jurisdictions

16. Mergers with cross-border dimensions increasingly trigger parallel reviews by multiple competition authorities. In such cases, the design and implementation of remedies can be particularly complex, as agencies may arrive at different conclusions regarding competitive harm or propose divergent remedies to address similar concerns. This creates a strong imperative for **cooperation and coordination** between authorities – not only among competition enforcers, but also increasingly with relevant sectoral regulators whose mandates may intersect with merger-related issues.

17. From the business community’s perspective, the lack of alignment in cross-border merger remedies can introduce legal uncertainty, increase transaction costs, and delay implementation. Companies may face multiple – and sometimes conflicting – remedy obligations, including divestitures, access commitments, or behavioral conditions. This can lead to outcomes that are inefficient, duplicative, commercially unworkable or that can otherwise interfere with business certainty and have a chilling effect on legitimate business activity and investment.¹¹

3.1. Lessons from Cross-Border Merger Cases

18. Drawing on the insights from BIAC’s 2024 paper on *cross-border mergers*, several patterns emerge:¹²

- Divergent market definitions and theories of harm often result in inconsistent remedies, even in cases involving similar facts.

¹¹ BIAC 2017, *supra* note 1.

¹² OECD, Cross-Border Mergers – Contribution from BIAC, DAF/COMP/GF/WD(2024)55 (Nov. 20, 2024), [https://one.oecd.org/document/DAF/COMP/GF/WD\(2024\)55/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2024)55/en/pdf).

- Remedy timing and procedural differences (e.g., review deadlines, consultation phases) can complicate negotiations and disrupt deal timelines.
- A lack of structured engagement between agencies and regulators can lead to mismatches between remedy commitments and regulatory requirements, such as licensing obligations or infrastructure access terms.

19. In addition, BIAC's 2023 contribution on the *ex-post assessment of merger remedies* emphasizes that the effectiveness of remedies is closely tied to their design and execution.¹³ When agencies cooperate effectively – not only with each other but also with relevant regulators – remedies tend to be more targeted, proportionate, and durable. For example, coordinated divestiture remedies can ensure asset packages are viable and that buyers are appropriately vetted across jurisdictions. Similarly, cooperation with regulators can improve the enforceability of access or interoperability commitments by ensuring consistency with broader sectoral policies.

3.2. The Importance of Remedy Convergence

20. BIAC strongly supports efforts to promote remedy convergence in multijurisdictional merger reviews. While legal and institutional differences among competition authorities are unavoidable, BIAC believes that greater alignment in remedy objectives, design principles, and implementation strategies can provide significant benefits. These include:

- Reduced compliance burdens for merging parties and third parties;
- Improved enforceability through clearer and more consistent obligations;
- Enhanced legal certainty and transaction predictability; and
- Better market outcomes due to coherent competitive conditions post-transaction.

21. BIAC also supports the use of international cooperation tools, such as waivers of confidentiality, joint remedy discussions, and the development of informal best practices through fora like the OECD. These can help close institutional gaps and support a more coordinated global approach to merger remedies.

3.3. BIAC Recommendations

22. To enhance cooperation in merger remedy design, BIAC recommends that competition agencies:

- Engage in early and regular dialogue with their counterparts in parallel jurisdictions, especially during the remedy formulation stage, while respecting appropriate confidentiality rules and the parties' due process rights.
- Where appropriate, coordinate with sector regulators to ensure remedies are aligned with regulatory frameworks and feasible in practice.
- Work toward remedy convergence in cross-border cases, particularly in terms of scope, timing, and implementation mechanics.

¹³ OECD, *Ex-Post Assessment of Merger Remedies – Contribution from BIAC*, DAF/COMP/GF/WD(2023)45 (Nov. 30, 2023), [https://one.oecd.org/document/DAF/COMP/GF/WD\(2023\)45/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2023)45/en/pdf).

- Share lessons learned through ex-post evaluations to improve future remedy design and coordination approaches.

4. Sector-Specific Collaboration: Key Learnings

23. In many industries – such as telecommunications, digital platforms, energy, financial services, and pharmaceuticals – competition issues cannot be fully understood or addressed without considering the broader regulatory environment. Sector regulators often have mandates that extend beyond promoting competition, including ensuring universal service, consumer protection, data security, financial stability, or infrastructure reliability. As such, their involvement in the design and implementation of competition remedies may be helpful in ensuring that those remedies are both feasible and effective.

24. From BIAC’s perspective, experience across jurisdictions has shown that collaboration with sector regulators can potentially enhance the impact and sustainability of competition remedies. However, it must be well-structured, transparent, and respectful of both mandates. Competition authorities must remain focused on addressing competition concerns, while sector regulators may contribute valuable operational and technical insight to ensure remedies are workable in real-world conditions.

4.1. Benefits of Sector-Specific Collaboration

25. Drawing on BIAC’s 2022 contribution to the OECD on *interactions between competition authorities and sector regulators*, several benefits of cross-agency collaboration in remedy design emerge:¹⁴

- **Technical Expertise and Market Understanding.** Regulators can offer in-depth knowledge of market structure, pricing models, technological standards, and operational constraints. This insight can enhance remedy design, especially when commitments involve access to infrastructure, interoperability, or data portability.
- **Feasibility and Implementation Support.** Regulators are often better positioned to assess whether a remedy can be realistically implemented and maintained over time. Their ongoing supervisory role can also support monitoring and compliance, with the understanding that the competition authority should remain accountable and responsible for designing, implementing and supervising the remedy at issue.
- **Consumer-Facing Effectiveness.** As discussed in the BIAC WP3 2018 paper, *consumer-facing remedies* (e.g., choice screens, pricing transparency, or contract portability) require a detailed understanding of consumer behavior, interface design, and engagement mechanisms.¹⁵ Sector regulators often have this expertise and may play a role in assisting competition authorities in designing remedies that are both usable and impactful.
- **Legal and Policy Alignment.** Remedies that comply with regulatory requirements and broader policy goals are less likely to encounter implementation delays or legal challenges. Coordination can help prevent unintended interference with sectoral objectives, such as data protection.

¹⁴ OECD, *supra* note 3.

¹⁵ OECD, Roundtable on designing and testing effective consumer-facing remedies – Note by BIAC, DAF/COMP/WP3/WD(2018)36 (May 25, 2018), [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2018\)36/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2018)36/en/pdf).

4.2. Risks and Challenges

26. Despite the benefits, BIAC cautions that collaboration must be carefully managed to avoid the risks of regulatory overreach, disrespect of due process rights, conflicting mandates, or dilution of competition objectives. If cooperation is ad hoc or unstructured, it may lead to remedies that are overly complex, poorly targeted, or subject to inconsistent enforcement.

27. Further, BIAC emphasizes the importance of maintaining clear accountability. While regulators may provide input and assistance, competition authorities must retain responsibility for remedy design as it relates to competitive harm. Remedies should remain proportionate to the infringement and grounded in competition law principles.

4.3. BIAC's Position

28. BIAC supports structured cooperation mechanisms between competition agencies and sector regulators, including:

- Memoranda of Understanding (MOUs) or formal cooperation agreements;
- Joint working groups on remedy design and implementation in complex cases;
- Parallel consultations with affected stakeholders, including businesses and consumers; and
- Cross-agency training and secondments to foster mutual understanding of roles and constraints.

29. Ultimately, sector-specific cooperation should focus on ensuring that remedies are technically sound, legally coherent, and practically implementable – while maintaining the integrity of the competition law framework.

4.4. BIAC Recommendations

30. The increasing complexity of markets, the global nature of competition issues, and the growing intersection between competition law and sector regulation all call for a more structured and strategic approach to cooperation in remedy design. BIAC supports greater collaboration when it results in **more** effective, proportionate, and workable remedies – while maintaining the core principles of competition enforcement and respect for procedural guarantees.

5. Recommendations for Improving Cooperative Remedy Frameworks

31. Based on lessons drawn from recent BIAC contributions to the OECD, BIAC proposes the following principles and institutional recommendations to guide cooperative antitrust in remedy design.

5.1. Core Principles for Cooperative Remedy Design

32. The following core principles are intended to provide a framework that strikes a balance between the flexibility required for tailored solutions and the rigor essential to safeguard competition. They are designed to guide competition authorities in the development, negotiation, and oversight of cooperative remedies.

- **Proportionality.** Remedies should be narrowly tailored to address the specific competition harm identified by the authority. Cooperation with regulators must not lead to remedies that pursue broader policy goals beyond the scope of competition law, such as industrial policy or environmental objectives. Remedies must remain legally justified and proportionate in both scope and duration.
- **Transparency and Procedural Clarity.** When multiple agencies are involved – across jurisdictions or within a domestic regulatory system – businesses and stakeholders need clear information on processes, responsibilities, and timelines. BIAC supports increased transparency in how competition authorities coordinate with sector regulators, including disclosure of roles, consultation mechanisms, and points of contact.
- **Feasibility and Workability.** Cooperation should ensure that remedies are practical, commercially viable, and implementable in real-world conditions. Sector regulators may be well-positioned to advise on operational feasibility and technical design, particularly in regulated or technologically complex markets. Their involvement should enhance, not hinder, the execution of remedies.
- **Accountability and Role Clarity.** Competition authorities must retain ultimate responsibility for the design and enforcement of remedies that address competitive harm. Regulatory input should be advisory and technically supportive, not determinative. Clear accountability mechanisms are essential to avoid gaps or overlaps in implementation and enforcement.
- **Stakeholder Engagement.** Effective remedy design benefits from dialogue with the business community and other market participants. BIAC encourages authorities to provide opportunities for meaningful stakeholder input, especially in cases involving consumer-facing or behavioral remedies.

5.2. Institutional and Procedural Recommendations

33. To give effect to these principles, BIAC recommends that competition authorities and regulators adopt the following practical measures.

- **Formalize Cooperation Mechanisms.** In sectors where regular interaction is expected (e.g., regulated sectors), agencies should adopt MOUs or inter-agency protocols to guide cooperation. These should establish expectations around information sharing, timing, and roles in remedy development and monitoring.
- **Establish Joint Working Groups for Complex Cases.** In cases involving technically complex or regulated markets, competition authorities and sector regulators should consider forming joint working teams during the remedy design phase. This can improve the accuracy, feasibility, and enforceability of remedies.
- **Promote International Dialogue and Coordination.** For cross-border merger cases or global antitrust investigations, BIAC supports the use of confidentiality waivers, joint discussions, and other tools to foster convergence in remedy objectives and implementation. OECD and ICN can support this through best practice exchanges and guidance materials.
- **Build Internal Capacity and Mutual Understanding.** In cases involving technically complex or regulated markets, competition authorities and sector regulators should consider forming joint working teams during the remedy design phase. This can improve the accuracy, feasibility, and enforceability of remedies.

- ***Use Ex-Post Evaluation to Inform Future Design.*** Although ex-post evaluation is not the focus of this paper, BIAC emphasizes that coordinated monitoring and feedback loops – particularly involving regulators – can enhance remedy design in future cases. This is especially relevant for consumer-facing remedies or remedies with long-term behavioral commitments.

34. BIAC believes that strengthening cooperative frameworks in remedy design is beneficial. With structured processes, clear principles, and a commitment to proportionality and feasibility, cooperation between competition agencies and regulators can yield remedies that are both effective in preserving competition and workable in practice.

6. Conclusion

35. Effective remedy design is crucial for ensuring that competition enforcement delivers tangible, lasting benefits for markets and consumers. In an increasingly complex economic and regulatory environment, it is increasingly challenging for competition authorities to operate in isolation. Whether addressing mergers with global reach or antitrust issues in regulated or fast-moving sectors, cooperation between competition agencies and sectoral regulators can help design remedies that are not only legally sound but also operationally viable and proportionate to the identified harm.

36. From the business community's perspective, remedy design must be guided by the principles of respect for due process, clarity, feasibility, proportionality, comity, and accountability. When well-structured, cooperation can enhance these goals. However, without proper safeguards, it also carries risks, including regulatory overreach, legal uncertainty, or implementation challenges. It is therefore essential that cooperation is conducted transparently, with clearly defined roles and responsibilities, and with competition authorities retaining ultimate responsibility for addressing competitive concerns.

37. BIAC supports efforts by OECD jurisdictions to strengthen institutional cooperation in remedy design through formal mechanisms, joint working arrangements, and cross-agency dialogue. Such cooperation should not weaken competition enforcement, but rather strengthen its effectiveness by ensuring that remedies are practically implementable, aligned with regulatory environments, and capable of restoring or protecting competition in the relevant markets.

38. As remedies increasingly overlap with broader regulatory and policy issues, cooperation will only become more important. BIAC encourages the OECD to continue its work on this topic by facilitating the sharing of best practices, comparative analysis, and guidance on cooperative frameworks for remedy design. The business community stands ready to contribute to this effort by offering practical insights, case experience, and recommendations to improve the predictability and effectiveness of competition remedies worldwide.