

Lessons Learned on the Effectiveness of Antitrust Remedies Under Regulation 1/2003: A 20-Year Retrospective Evaluation

Thomas Hoehn, Antitrust & TradeRx GmbH, published in Competition Law Insight, 9 May 2025.

1 Introduction

On 20 February 2025, the European Commission published its first-ever ex post evaluation of antitrust remedies under Regulation 1/2003 («the Regulation»). Commissioned in the context of the twentieth anniversary of the Regulation, the study set out to assess the design, implementation, and effectiveness of non-cartel antitrust remedies over the past two decades.¹ As a comprehensive retrospective the analysis represents a milestone in EU competition policy, reinforcing broader commitments to more evidence-based and transparent enforcement.

This article synthesises the key findings and lessons learned from the study, outlines challenges in the design and enforcement of antitrust remedies and presents targeted recommendations to strengthen the legal and institutional framework of EU competition enforcement going forward. Drawing on legal, economic, and institutional insights, it situates the findings within ongoing debates about the role of remedies in protecting undistorted competition in the internal market.

2 Study Scope and Methodology

The evaluation was undertaken by a consortium led by Grimaldi and NERA Economic Consulting, with contributions from legal and economic scholars, monitoring trustees, and experts from other jurisdictions. Its multifaceted methodology combined four core elements:

1. A systematic literature review of over 120 scholarly sources.
2. Interviews with stakeholders, including DG COMP staff, officials from national authorities in France, Germany, and the United States, as well as practitioners and scholars.
3. Statistical analysis of 108 non-cartel decisions adopted by the Commission under Articles 7 and 9 of Regulation 1/2003 between January 2003 and December 2022.
4. In-depth ex post evaluations of 12 significant cases selected based on objective criteria.

¹ The contract for the study was awarded in May 2023 to a consortium led by the law firm Grimaldi and the economic consultancy Nera. The team led by the consortium also included monitoring trustee Thomas Hoehn and competition law professor Peter Whelan. The final report can be found on: https://competition-policy.ec.europa.eu/publications/ex-post-economic-evaluations_en

5. The study differentiated between “implementation”—compliance with the imposed remedy—and “effectiveness”—the extent to which the remedy achieved the intended competition outcome. This distinction allowed for a deeper understanding of both procedural and substantive success.

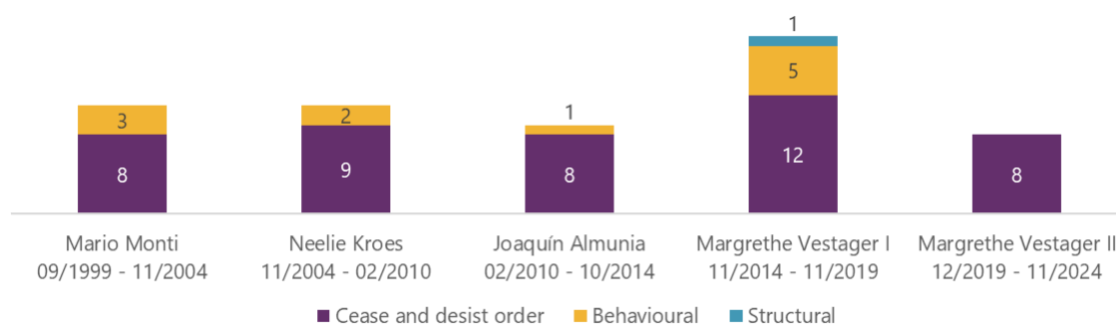
3. Trends

Trends by Legal Instrument: Article 7 vs. Article 9

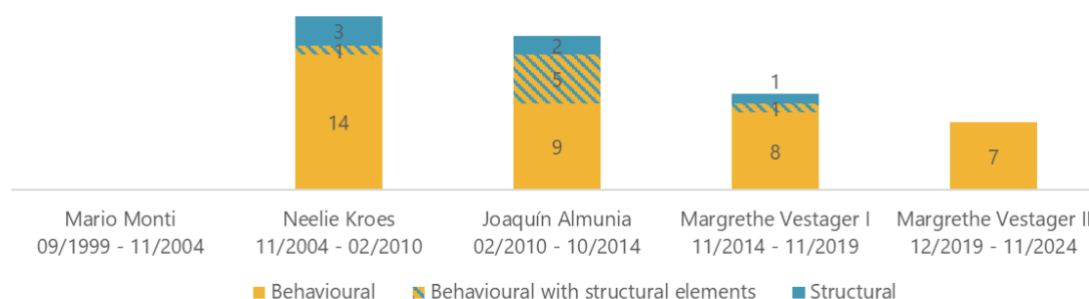
The statistical analysis of the novel dataset of all non-cartel antitrust decisions adopted since entry into force of Regulation 1/2003 until December 2022 reveals a number of long-term trends in the Commission’s decision practice such as trends by legal instrument, main competition concerns, types of remedy adopted and remedy modalities and monitoring mechanisms. For example, as illustrated in Figure 1 below,

Figure 1: Trends by Legal Instrument: Article 7 vs. Article 9

Art. 7 remedies over time



Art. 9 remedies over time



Source: Study on the effectiveness of EU antitrust remedies, Grimaldi Alliance, NERA et al, February 2025

Article 7 decisions mostly consist solely of cease-and-desist orders. Out of 57 decisions, just 12 included additional remedies. In contrast, Article 9 decisions based on commitments offered by undertakings featured a greater diversity of remedies, including behavioural and structural measures, many with flanking mechanisms and monitoring tools such as trustee oversight.

These differences are grounded in both legal and procedural considerations. The application of Article 7 is constrained by the proportionality principle and the lack of a legal basis to impose monitoring costs on undertakings. Article 9, by contrast, allows for more flexibility and cooperation, facilitating more complex remedy packages.

Trends in Monitoring and Enforcement

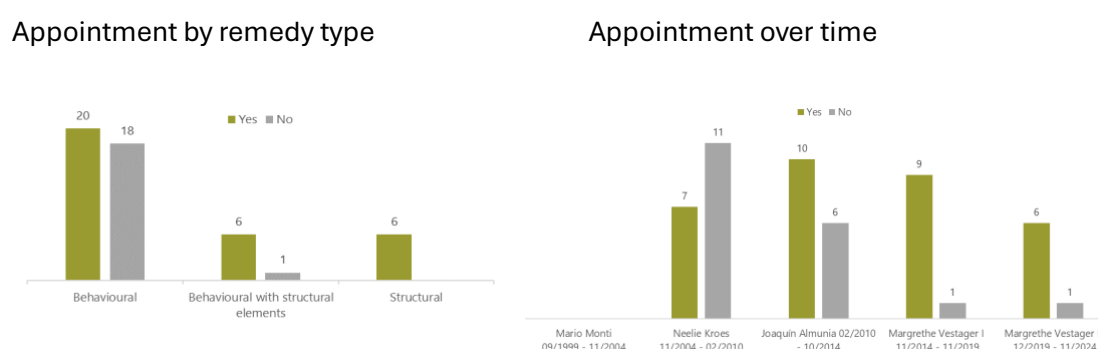
Monitoring emerged as a central theme of the study. Antitrust remedies are only effective if they are implemented properly. So, when designing remedies, it is crucial to make implementation verifiable, with clear monitoring mechanisms and flanking measures in place.

Remedies, particularly those involving ongoing behavioural obligations, require robust enforcement to be effective. Yet, the study found major deficiencies in the Commission's ability to ensure compliance in Article 7 cases:

- Since Microsoft I (2004), no monitoring trustee have been appointed under Article 7, largely due to the General Court's ruling that the Commission cannot delegate powers it does not itself possess.
- Moreover, under current rules, the Commission cannot require undertakings to bear the cost of monitoring in Article 7 decisions, further disincentivising robust oversight.

By contrast, trustees are frequently appointed under Article 9—particularly in the last 10 years and in cases involving complex behavioural remedies or structural elements. This disparity highlights the institutional limitations of Article 7 and the need for reform.

Figure 2: Statistics on appointment of monitoring trustees in Article 9 cases



Source: Study on the effectiveness of EU antitrust remedies, Grimaldi Alliance, NERA et al, February 2025

4. Implementation and Effectiveness: Findings from the literature and expert interviews

Clarifying Remedy Objectives

Antitrust remedies may pursue several objectives:

1. Stopping illegal conduct (injunctive).
2. Preventing recurrence or circumvention (preventative).
3. Restoring competitive conditions (restorative).

While the first two objectives are widely accepted, the restorative aim is more controversial. Critics argue it risks overreach or strays into regulatory territory, while supporters believe it is necessary to correct market distortions and deter repeat offences. The study stresses the need for remedy design to align closely with the intended objective, as misalignment often leads to underperformance.

Flanking Measures and Monitoring Mechanisms

Interviews with expert confirmed the value of Monitoring Trustees , especially in complex cases. Monitoring trustees act as the Commission’s “eyes and ears,” enhancing compliance and offering an initial point of contact for third parties. This boosts both efficiency and transparency.

Despite their importance monitoring isn’t yet standard in antitrust cases, except more recently under Article 9. In contrast, merger remedies have included such mechanisms since the 2004 Merger Remedies Notice.

The study identifies a range of flanking measures that can improve remedy implementation:

- Regular reporting obligations
- Internal compliance systems
- Market testing
- Dispute resolution mechanisms
- Appointment of technical experts
- Sunset, review, and revision clauses

Effective implementation also requires coordination between case teams and remedy monitors. The study recommends the creation of a dedicated "remedies unit" within DG COMP to support implementation across antitrust, merger, and digital regulation cases.

Role of Independent Advisers

Expert interviews also highlighted the value of independent technical advisers during the remedy design stage —especially in fast-changing tech and digital sectors.

Examples include Case M.8084 – Bayer/Monsanto— where an independent adviser assessed both the adequacy of the commitments and the suitability of the proposed purchaser. Similarly, in Google Shopping, the Commission stated it may use external experts to assess compliance measures.

Comparative and International Perspectives

Comparisons with merger control, sector-specific regulation, and U.S. practices yielded additional lessons:

- The EU's merger control benefits from standardised documentation and clearer monitoring and oversight structures.
- In several antitrust cases, remedies led to permanent sectoral reforms, including legislative changes (e.g., the Interchange Fee Regulation following MasterCard I).
- In the U.S., courts have appointed technical committees in complex digital cases (e.g., Microsoft, Google v. Epic), offering an alternative model for independent compliance review.

5. Case Study Findings

The ex-post evaluation covered a sample of 12 significant antitrust remedies decisions. These cases were selected on the basis of objective criteria and as required by the tender specifications excluded cases which were subject to litigation.

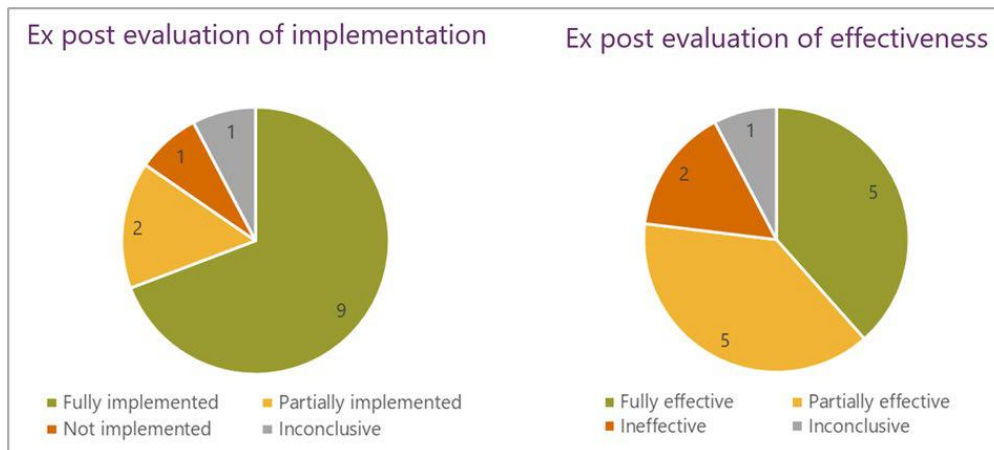
The retrospective evaluation was based on mainly qualitative evidence from interviews with decision addressees, market participants and case teams combined with desk and OSINT research.

As emphasized by the Commission in its useful summary Factsheet published alongside the full report report, *“while the sample of the evaluation was limited to 12 cases, the ex post evaluation of those cases performed by the contractor nevertheless is likely informative of more general trends in the remedies practice of the Commission.”*²

The results of the twelve case study evaluations offer valuable insights. As shown in Figure 3 below 9 out of 13 remedies were fully implemented and only 5 remedies were found to have fully achieved their objective.

Figure 3: Effectiveness of remedies

² Factsheet Study ‘Ex post evaluation of the implementation and effectiveness of EU antitrust remedies’, published by the European Commission on 20 February 2025. https://competition-policy.ec.europa.eu/publications/ex-post-economic-evaluations_en



Source: Factsheet Study ‘Ex post evaluation of the implementation and effectiveness of EU antitrust remedies’, published by the European Commission on 20 February 2025

Four examples from the 12 in-depth case studies highlight key dynamics:

- **AT.40394 – Aspen:** Price caps successfully restored competitive conditions in a case of exploitative pricing.
- **AT.37792 – Microsoft I:** Delays and poor remedy design led to ineffectiveness despite eventual implementation.
- **AT.39315 – ENI:** Structural remedy partially failed due to concerns over the suitability of the buyer.
- **AT.39596 – BA/AA/IB:** A hybrid remedy showed moderate success but required intensive monitoring.

These cases show that effectiveness hinges not only on legal design but also on market conditions, monitoring capabilities, and the credibility of enforcement. Notably, it appears that purely behavioral remedies were the least likely to be fully implemented and fully effective.

Timeliness and Procedural Delays

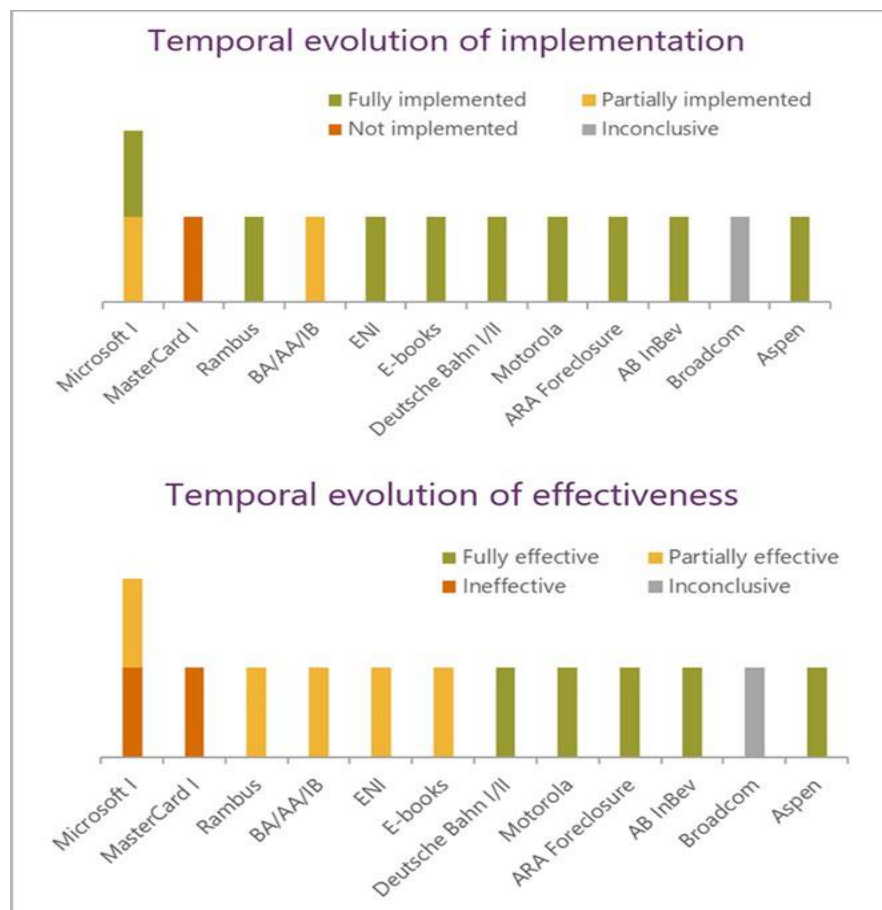
Timeliness is critical. Some of the least effective cases, such as AT.34579 (MasterCard I) and AT.37792 (Microsoft I), suffered from prolonged investigations and late-stage remedy implementation. In rapidly evolving sectors like tech and digital platforms, such delays can render even well-designed remedies obsolete. The study recommends procedural reforms to accelerate decision-making, especially where restorative remedies are needed to counter market distortions. Separating infringement and remedy decisions in complex cases is one proposal aimed at addressing this issue.

Generally, implementation and effectiveness seem to have improved over time, as can be seen in Figure 4 below.

Overall, these findings point to a key lesson: implementation does not automatically translate into effectiveness. Some remedies were diligently implemented but failed to

produce the desired competitive outcomes. Conversely, delays or inadequate design sometimes hampered even well-intentioned implementation efforts.

Figure 4: Remedy effectiveness over time



Source: Factsheet Study 'Ex post evaluation of the implementation and effectiveness of EU antitrust remedies', published by the European Commission on 20 February 2025

6. Recommendations for Policy Reform

Our study comes up with 18 recommendations 17 of which are summarised in Figure 5 (Reporting obligations as a flanking measure to be include as standard practice):

- three general recommendations,
- five recommendations specific to Art 7,
- two recommendations specific to Art 9,
- one specific recommendation for the application of Art 8, and
- seven further recommendations regarding modalities, flanking measures and other best practice measures.

Figure 5 Overview of study recommendations

General (Art. 7 and 9)	Article 7	Article 9	Modalities and flanking measures	Additional
1. Remedies objective: should also seek to (i) prevent repetition and (ii) remove effects 2. Principle of effectiveness should govern the design of antitrust remedies 3. Streamline AT proceedings to ensure timely intervention	4. Remove textual hierarchy between structural and behavioural 5. Legally allow appointment of monitoring trustees 6. Separate infringement and remedy decision , where appropriate 7. Systematic market testing of remedies 8. Formalize cooperation procedure	9. Encourage use of Article 9 commitments in appropriate cases 10. Simplify formalities around market testing (e.g., remedies in O.J.)	11. Increased use of Article 8 interim measures in cases of urgency 12. Monitoring Trustee default practice 13. Technical experts and independent advisors before the decision is taken to help with remedy design in appropriate cases	15. Publish guidance + templates on AT Remedies 16. Strengthen ex post evaluation 17. Continue to create synergies with regulation 18. Dedicated cross-instrument "remedy unit" for remedy design, implementation and effectiveness

Source: Factsheet Study 'Ex post evaluation of the implementation and effectiveness of EU antitrust remedies', published by the European Commission on 20 February 2025

Here, I would like to single out what in my view are the eight most important recommendations: the first set relates to the potential legal reform of Art 7 of Reg 1/2003 which limits the effectiveness of the Commission's remedies practice in Article 7 cases; the second set relates to the scope for improving soft law through publishing guidance on substantive as well as procedural aspect of the design and implementation of antitrust remedies incorporating best practice recommendations identified in the study.

Key legal reform proposals (*De Lege Ferenda*):

1. In line with Article 10 of the ECN+ Directive, the subordination of structural remedies to behavioural remedies should be removed from the text of Article 7 of Regulation 1/2003, leaving it to the principles of effectiveness and proportionality to inform the choice of the best remedy type, depending on the facts of a case.
2. Overcoming the lack of legal basis in Regulation 1/2003, as the *Microsoft* judgment has held, the Commission should be enabled to require an addressee of an infringement decision to bear the costs of monitoring the implementation of remedies, making the appointment of a monitoring trustee practically easier also in Article 7 cases.

Soft Law and best practice recommendations (*De Lege Lata*):

3. Consider the publication of guidance on antitrust remedies, similar to the Merger Remedies Notice (2008) and the Commission's model text for the trustee mandate under EU merger control (2013), which may provide significant benefits to all parties, enhance remedy implementation and effectiveness, and speed up the remedy design process. This guidance should include best practice recommendations
4. The implementation of remedies needs to be verified. Reporting obligations should be included in Commission decisions as standard practice, including in simple cease-and-desist orders.

5. The appointment of a monitoring trustee should be the default practice in antitrust remedy decisions, unless there are compelling reasons against it. And this role should be strengthened. For example, the Commission could (i) request multiple candidates, (ii) have the final say in appointments, (iii) replace a monitoring trustee if issues arise, (iv) set clear boundaries on the monitoring trustee's powers, (v) appoint technical experts as needed, and (vi) establish suitable governance systems for complex cases.
6. In complex Article 7 cases, the Commission should consider separating the infringement decision from the remedy decision, allowing for dedicated efforts to design remedies, market test the remedies under consideration and achieve more transparency on the remedies ultimately imposed. This does not require a change in the regulation itself but would benefit from guidelines such as the recommended antitrust remedies notice.
7. In cases of urgency, more systematically explore the adoption of Article 8 interim measures, in particular in cases where there may be strong substantive and procedural synergies between the interim measures and the possible subsequent remedies.
8. Finally, the Commission should consider setting up a dedicated unit to support the case teams on remedy design, implementation and effectiveness across all relevant EU competition policy areas (antitrust, merger control, State aid, DMA and Foreign Subsidies Regulation). At the very least, a knowledge repository on remedies should be put in place.

6. Conclusion

The 2025 ex post evaluation of antitrust remedies under Regulation 1/2003 delivers a nuanced and evidence-based picture of the past two decades of EU enforcement. While the Regulation has enabled significant interventions, the effectiveness of remedies has been inconsistent, particularly in the earlier . This inconsistency stems not only from design flaws inherent in the Regulation but also from institutional constraints, procedural delays, and gaps in monitoring and enforcement.

Addressing these shortcomings requires a multi-pronged strategy: revising the legal framework, expanding enforcement tools, and investing in monitoring capabilities. As the EU adapts its competition toolkit to meet the challenges of digitalisation, globalisation, and rapid innovation, strengthening the remedy framework will be crucial to ensuring that enforcement actions yield tangible, lasting benefits for competition and consumers alike.

Ultimately, remedies are not just the endpoint of enforcement—they are its operational core. Getting them right is essential to the credibility, deterrence, and effectiveness of EU antitrust policy in the decades to come.
