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STRUCTURAL MEASURES EXPLAINED:

how to break up firms well

Background paper

November 2025, Aline Blankertz

Executive Summary

Competition authorities have been hesitant to use structural remedies in the recent past. This background paper documents that breakups are a perfectly feasible instrument of competition policy, with a track record of effectively tackling competition concerns. A selection of past cases demonstrates that competition authorities have successfully mandated divestments in various jurisdictions in various contexts: to end abuse of dominance, to change market structures detrimental to competition, to prevent and reverse harm from mergers as well as to ensure competition in network industries.

European and German competition laws provide different avenues for arriving at structural remedies, some of which have not been used so far. Abuse of dominance proceedings can result in structural remedies, even though they have rarely done so and some experts argue for lowering the threshold for doing so. Due to recent competition law reforms, competition authorities can impose breakups also following investigations into systematic non-compliance under the Digital Markets Act, German sector investigations and German proceedings into non-compliance by “companies with paramount significance across markets”.

Needless to say, structural remedies should only come into play when their use is appropriate and they need to be used with care. Effective breakup design requires finding faultlines that resolve the root cause of competition concerns and allow economically viable companies to emerge. These considerations suggest that it may be time for structural measures to be added (again) to the practical enforcement toolkit.

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1. (Re-)Introducing breakups

"While most companies resist break-ups, the corporate history is that most companies actually perform better after they've been split up," Mark Zuckerberg, CEO of Meta, wrote in an email.[1] And yet, breakups are often portrayed as an extreme measure that should be used with such caution that they appear almost impossible. But, as this background paper shows, breaking up companies is possible, it has been done in the past, it is legally feasible, and it needs to be designed well.

The rise of the digital sector and the digitisation across sectors have resulted in very few companies controlling huge networks of products and services across markets, with no meaningful competition and countless internal conflicts of interest. These firms stifle competition and innovation and create other societal harms. But interventions by competition authorities have so far failed to slow down, let alone reverse their accumulation of economic power. This dynamic has revived the discussion about the remedies necessary to address the competitive concerns effectively. Two cases in point are the proceedings against Meta in the USA over its acquisitions of WhatsApp and Instagram[2] and the proceedings against Google both in the USA and in the European Union (EU) over its role in advertising technology (adtech) markets.[3] As of November 2025, these proceedings are ongoing and could result in remedies involving breakups, or to use the more technical term, structural separations. In the following, breakups, structural separations and divestments are used interchangeably.

BOX 1 **GOOGLE ADTECH — A TRANSATLANTIC BREAKUP?**

As of November 2025, decisions are expected in two similar cases against Google's dominance and conflicts of interest in adtech markets. The European Commission began its proceedings into Google's adtech practices in June 2021 and announced its prohibition decision in September 2025, imposing a fine of €2.95bn on Google as well as ordering Google to "to bring these self-preferencing practices to an end; and (ii) to implement measures to cease its inherent conflicts of interest along the adtech supply chain."[4] Google submitted a compliance plan that is limited to behavioural changes stopping far short of a breakup.[5] The US case started in January 2023 with similar allegations and reached an interim conclusion in April 2025 when the judge found Google in violation of competition law "by willfully acquiring and maintaining monopoly power in the open-web display publisher ad server market and the open-web display ad exchange market, and has unlawfully tied its publisher ad server (DFP) and ad exchange (AdX)".[6] The subsequent hearings on remedies concluded in early October 2025 and revealed relevant facts. Among other things, Google had hired an investment bank to identify buyers for its ad exchange in 2020 and to assess the technical feasibility of separating the different elements of its adtech stack (which the bank affirmed).[7] The final judgement is still pending.

1 The Guardian (2025), "Zuckerberg feared monopoly scrutiny and mulled Instagram split, files show", April 16

2 FTC v. Meta Platforms, Inc., Case 1:20-cv-03590

3 European Commission, AT.40670 Google – Adtech and Data-related practices, and USA v. Google LLC, Case 1:23-cv-00108

4 European Commission (2025), "Commission fines Google €2.95 billion over abusive practices in online advertising technology", press release, September 5. Highlights in the original

5 Google (2025), "Our proposal in response to the European Commission's decision about our ad tech business fully addresses concerns and minimizes disruption for businesses", November 14, blog, https://blog.google/around-the-globe/google-europe/european-commission-ad-tech-response/

6 Memorandum Opinion filed on April 17, 2025, in USA v. Google LLC, Case 1:23-cv-00108

7 Arroyo, C., Nylen, L. (2025), "Google Hired Lazard for Potential Ad Exchange Sale in 2020", October 1, Bloomberg

The remainder of this section provides a definition of breakups and briefly discusses their broader political context. Section 2 gives an overview of past cases of breakups in a range of contexts, from abuse of dominance investigations to merger proceedings. Section 3 summarises currently available legal pathways for breakups under German and EU law. Section 4 explains key factors for making breakups effective from a combined competition and commercial perspective.

1.1 Definition and goals

Competition authorities can impose a range of remedies which are often categorised as behavioural or structural.[8] Structural remedies change the structure of companies (horizontally e.g by creating multiple competitors, vertically by reducing the extent of vertical integration, or by constraining the areas in which a company is active). Behavioural remedies, in contrast, target the conduct of companies by prohibiting or mandating certain behaviour. As with many dichotomies, it is more of a spectrum than binary because some interventions have characteristics of both categories. For example, access remedies limit a company's control over its assets without fully separating them.

The OECD proposes the following definition of structural remedies: "Structural remedies are one-off remedies that intend to restore the competitive structure of a market and refer to divestitures of either a stand-alone, ongoing business and its related assets, as well as physical assets or other rights. They typically include:

- the divestiture of an existing business or,
- the divestiture or licensing of intellectual property rights; but also
- the divestiture of a collection of assets or parts of existing businesses that are sufficient to allow the buyer to compete effectively."[9]

Structural remedies are usually understood to require relatively little monitoring or enforcement of compliance compared to behavioural remedies.[10] Breakups are a form of structural remedy that requires a firm to divest a part of its business by selling it to another company or spinning it off into a separate entity e.g. through a stock market listing. Structural and behavioural remedies are not mutually exclusive and can complement each other.[11]

From a policy perspective, structural remedies can serve a range of goals.[12] Some of these are core concerns of competition policy, especially a) eliminating conflicts of interest and b) preventing the leveraging of market power into new markets. When taking on a more institutional view that emphasises the influence of economic power on politics and regulation, the goals of c) limiting the concentration of power and d) prioritising administratibility come into focus. It is currently being debated whether

8 Unlike sometimes claimed, this distinction was used in EU competition law also before Regulation 1/2003 (regulation on the implementation of EU competition rules), for example in the 2001 Commission notice on remedies (2001 Commission notice on emedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98, March 2)

9 OECD (2022), Disentangling Consummated Mergers: Experiences and Challenges, OECD Competition Policy Roundtable Background Note

10 See e.g. Competition Commission (2009), "BAA airports market investigation", para 10.9, citing its guidance on market investigations

11 Ducci, F., Trebilcock, M. (2020), "Structural vs. behavioral remedies in big tech sectors", CPI Antitrust Chronicle, April

12 This is mostly based on the overview in Khan, L. (2019), "The Separation of Platforms and Commerce", Columbia Law Review, 119(4), 973–1098, listing as six primary goals: "1) eliminating conflicts of interest, (2) preventing dominant firms from using protected profits to enter new markets, (3) preserving system resiliency, (4) promoting diversity, (5) limiting the concentration of power, and (6) prioritizing administrability"

and how competition policy should incorporate goals like e) preserving resilience and f) promoting diversity, for example in the European Commission's consultation for its review of the merger guidelines.[13]

1.2 The current geopolitical context of competition law enforcement

Competition law enforcement is currently overlain by considerations of so-called competitiveness or geopolitical power. This paper abstracts away these considerations and does not discuss the potential repercussions that could follow from imposing structural measures on companies that are enjoying protection of an economically dominant country. Our view is that geopolitical analysis needs to take into consideration the vast power amassed by individual firms, especially when this power mergers with imperial national interests or could even supersede them.[14] That power is of huge concern independent of a firm's location. However, a more detailed discussion is beyond the scope of this paper.

2. Learning from past cases

This section provides a brief overview of breakups mostly from the EU and the United Kingdom (mostly before it left the EU) and very few cases from the USA (focusing on cases setting important precedent). It is challenging to clearly and consistently categorise the cases spanning many decades, jurisdictions and sectors; as a rough orientation, we collect cases relating to abuse of dominance and structural market concerns in the first subsection, the second subsection sums up cases focused on network industries. The third subsection focusses on structural remedies in relation to mergers.

2.1 Abuse of dominance and structural market concerns

Structural measures in the context of dominance or structural market concerns usually aim to strengthen competition by creating a competitor (unless a natural monopoly gives rise to structural concerns). This can be done by separating a new entity, by reducing symmetry between competitors to disrupt tacit collusion and/or by ensuring access to an important input.

The UK competition authorities (while part of the EU) have been most active at implementing structural remedies as part of their market investigation regime. Only in one case, to our knowledge, did the European Commission require a breakup to address an exclusionary abuse of dominance.

13 European Commission (2025), "Review of the Merger Guidelines", available at https://competition-policy.ec.europa.eu/mergers/review-merger-guidelines_en. All links were last visited on November 12, 2025

14 Blankertz, A., Rock, B., Shaxson, N. (2025), "Google's Hidden Empire", https://arxiv.org/abs/2511.02931

In the following, we briefly summarise key cases.

Foreclosure in household waste collection, European Commission 2016:[15] The Austrian waste processing company Altstoff Recycling Austria (ARA) was fined for foreclosure between 2008 and 2012. In order to alleviate future concerns, it committed to to divesting part of its household collection infrastructure to one or more independent buyers. This divestment did not require buyer approval because "the circle of possible buyers is limited to the municipalities and the collectors active in the specific regions where the containers are placed. It is thereby ensured that the buyers are suitable."[16]

Lack of competition between UK airports, Competition Commission 2009:[17] The Competition Competition (the predecessor of the Competition and Markets Authority) undertook a market investigation in which it found features that gave rise to an adverse effect on competition. To counteract these, it imposed a combination of divestments and behavioural remedies: It ended common ownership of airports in the South of England by requiring BAA to sell Gatwick (completed in 2009) and Stansted (in 2013) airports, and it did the same in Scotland, requiring BAA to divest one of Edinburgh and Glasgow airports, leading to the sale of the former (in 2012). A 2016 review of the remedies concluded that, "[i]t is reasonable to conclude that quantified changes in the market that coincided with the CC's remedies have already delivered passenger benefits that outweigh the costs of divestment associated with the remedies. If these trends continue, they will go on to deliver even greater benefits over time. While not possible to specifically attribute these benefits to the CC's investigation, the qualitative evidence evaluated in this study supports that conclusion."[18]

Tacit collusion in cement, Competition Commission 2014:[19] In a market investigation into aggregates, cement and ready-mix concrete, the Competition Commission found market characteristics conducive to tacit collusion and mal-functioning competition between the producers of cement. To address this, the CC required the largest producer to divest one of two specific cement plants (one of which was combined with additional requirements in downstream markets) to a competitor not currently present in the British market. In addition, it imposed various behavioural remedies to reduce market transparency. It undertook detailed analysis to identify a suitable plant and the characteristics required of a suitable buyer.[20]

High concentration in ground granulated blast furnace slag (GGBS), Competition Commission 2014: In the same market investigation, the CC also found anti-competitive market characteristics at other levels of the supply chain. Specifically, Hanson had secured exclusive supply of granulated blast furnace slag (GBS) from Lafarge and was the sole British firm producing GGBS from GBS. To create competition, the CC required Hanson to sell one of its three active GGBS plants to another firm that did not produce cement in GB.[21] It provided a recommendation on which plant to divest and imposed additional requirements for the divestiture of one of the other plants.

15European Commission (2016), AT.39759 – ARA foreclosure

16 Ibid.

17 Competition Commission (2009), op. cit.

18 ICF Consulting Services (2016), "Evaluation of the 2009 Competition Commission's BAA airports market investigation remedies. Final Report for the Competition and Markets Authority (CMA)"

19 Competition Commission (2014), "Aggregates, cement and ready-mix concrete market investigation. Final report"

20 See Appendix 13.2 to ibid.

21 Ibid., para 13.210

In addition, it obliged Lafarge Tarmac to provide the new plant owner with GBS on a secure and cost-effective basis.

TSB spin-off from Lloyds TSB, European Commission/Competition and Markets Authority 2014: Because Lloyds TSB had merged with another bank, HBOS, during the financial crisis and required UK state aid, the European Commission required steps to be taken to later separate assets again from the merged entity.[22] It required the bank to set up a ring-fenced entity that contained a range of assets that were intended to create a viable competitor when sold or spun off, including the brand, employees, and a set of at least 600 branches. After a merger was abandoned in 2013, Lloyds TSB proceeded to spin off the entity into a new entrant.[23] This was acquired by Sabadell Group in 2015.

2.2 Network industries

Separations in network industry often involve vertical concerns and consideration of a (regulated) natural monopoly that is separated from one or more other layers in which competition is intended to occur. Historically, many of these breakups took place in close temporal proximity to privatisations of national utilities in network industries such as electricity and telecommunications.

Telephony infrastructure Bell System/AT&T, US Department of Justice 1984:[24] AT&T built a track record of competition proceedings already before its breakup in 1984. For example, it agreed to seek government approval before acquiring more companies as early as 1913, and it committed to not entering into the computer business in exchange for keeping its equipment manufacturing business Western Electric in 1956. This restriction was lifted when AT&T eventually spun off its local communications infrastructure. The DOJ had asked AT&T to vertically separate Western Electric, but accepted AT&T's alternative proposal which was to keep its long-distance business, its research and development function Bell Labs and Western Electric within the same parent company. The local operating companies were broken up along geographical lines and AT&T lost around 70% of its book value. Subsequently, AT&T's plan to enter the computer business failed and Western Electric turned out not to be profitable without the secure demand of the previously integrated downstream companies. In 1996, the US Telecommunications Act removed restrictions for the "Baby Bells". That allowed them to consolidate their businesses by re-merging, leading to a landscape with fewer competitors today than in 1984, as illustrated in figure 1. Research suggests that the innovation in the US telecommunications sector increased considerably after the breakup.[25]

22 European Commission (2009), "State aid No. N 428/2009 – United Kingdom. Restructuring of Lloyds Banking Group", November 18, https://ec.europa.eu/competition/state_aid/cases/232373/232373_1069315_136_2.pdf

23 Competition and Markets Authority (2015), "Retail banking market investigation. TSB case study", May 21

24 Based on L.A. Times Archives (1995), "AT&T; BREAKUP II : Highlights in the History of a Telecommunications Giant", September 21, https://www.latimes.com/archives/la-xpm-1995-09-21-fi-48462-story.html; Celtnet Telecos, "History of AT&T/Bell – The end of AT&T", accessed 2014 version through the Internet Wayback Machine, https://web.archive.org/web/20141006093659/http://www.celtnet.org.uk/telecos/AT%26T-Bell-4.php; Gianforti, A. (2022), "This Month in Business History: AT&T Monopoly & Breakup of the Bell System", History Factory, https://www.historyfactory.com/insights/this-month-in-business-history-bell-system/

25 Watzinger, M., Schnitzer, M. (2022), "The Breakup of the Bell System and its Impact on US Innovation", Collaborative Research Center Transregio 190, Discussion Paper No. 341

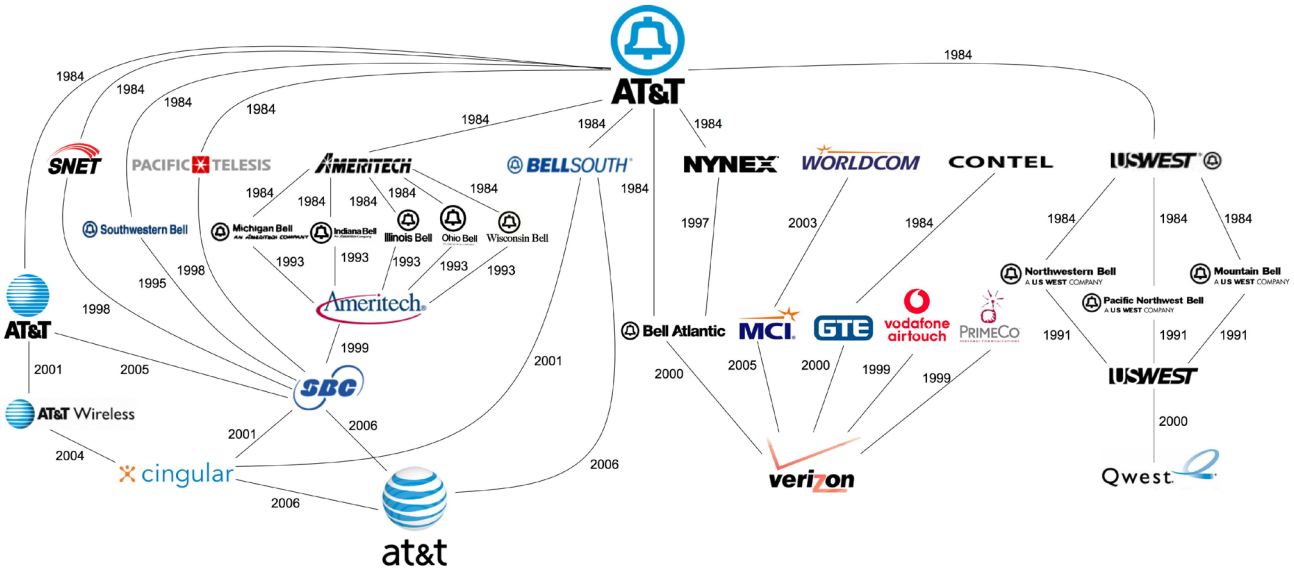

Figure 1 AT&T between 1984 and 2007

Source: Apparently first published on http://www.freepress.net/content/atthistory in 2007, but no longer available; reproduced e.g. at https://longorshortcapital.com/wp-content/att_history_chart.jpg

German gas transmission network, European Commission 2009:[26] The German energy company RWE was preliminarily found to have abused its dominance in gas transmission by refusing to supply access to its network and to have squeezed its downstream competitors (in gas supply). Instead of a reaching a conclusive finding, the Commission accepted RWE's offer to divest its high-pressure gas transmission network. Along with the network, it committed to also selling the necessary auxiliary equipment and intangible assets including software, contracts and licenses. The breakup was completed in 2011 when RWE sold 74.9% of Amprion, its transmission network subsidiary, to a consortium of mainly German institutional investors.[27]

Czech electricity markets, European Commission 2013:[28] The Czech electricity incumbent CEZ was preliminarily found to have abused its dominant position and hindered entry into the Czech market for the generation and wholesale supply of electricity. CEZ offered to divest one of three plants for electricity generation and the sale was completed in the same year.[29]

Several similar cases have demonstrated the feasibility of vertical breakups in the energy sector in the EU, but for which we do not provide summaries to avoid repetition. They include *ENI* (Case COMP.39315 in 2010), *E.ON Gas* (Case COMP.39317 in 2010), *Gaz De France* (Case COMP.39316 in 2009), *German Electricity Wholesale Market and German Electricity Balancing Market* (Cases COMP.39388 and COMP39.389 in 2008).

26 European Commission (2009), AT.39402 RWE gas foreclosure

27 Enerdata (2011), "RWE sells majority stake in German grid operator Amprion", July 18, https://www.enerdata.net/publications/daily-energy-news/rwe-sells-majority-stake-german-grid-operator-amprion.html

28 European Commission (2013), AT.39727 CEZ

29 CEZ Group (2013), "CEZ Group: The leader in power markets of central and southeastern Europe. Investment story", investor presentation, May, https://www.cez.cz/edee/content/file/investors/investment-stories/equity-investors_may_2013.pdf

2.3 Merger proceedings

Companies are often required to divest parts of their business as part of a merger approval process or in post-merger reviews. Globally, different national rules determine which mergers are subject to approval ex ante and which can be reviewed ex post.[30] In general, ex-ante divestments are more common because they are part of commitments to address competition concerns created through the merger.[31] However, the following overrepresents ex-post structural merger interventions because they can inform how to overcome and reverse concentration created by a merger (i.e. in the harder cases).

Cement joint venture, Competition Commission 2012:[32] Preceding the two structural remedies imposed by the CC in 2014 summarised in section 2.1, it had already required a set of divestments to resolve competition concerns stemming from a joint venture between the UK construction materials businesses of Anglo American and Lafarge in 2012. This led to the sale of various operations in early 2013 (to Mittal Investments Sarl, thereby creating Hope Construction Materials). The joint venture was allowed to form on the condition of a set of divestments. The companies had to sell areas of overlap to address the non-coordinated effects stemming from an increase in market power; and they had to sell of another package to address coordinated effects (a higher risk of collusive behaviour).

BOX 2 **META PROCEEDINGS IN THE USA — A MERGER REVERSAL?**

The Federal Trade Commission (FTC) initiated a case against Meta, the parent company of Facebook, WhatsApp, Instagram and others, in 2020 (under Trump's first administration). After the case was first rejected, the FTC refiled it in 2021. The FTC alleges that Meta engaged in anti-competitive behaviour by engaging in a "buy or bury" strategy. The trial phase ended in September 2025 and a judgement is pending. One outcome of the case could be for Meta to divest subsidiaries it acquired in the past, in particular WhatsApp (acquired in 2014 for USD21.8bn) and Instagram (acquired in 2012 for USD1bn).

Voting systems merger, US Department of Justice 2010:[33] Voting equipment system provider ES&S's acquisition of Premier in 2009 was reviewed because it had joined the two closest competitors. This had the effect of expected higher prices for their products as well as lower quality and innovation. The DOJ reached a settlement stipulating that "ES&S will sell Premier's intellectual property for all past, present and in-development voting equipment systems to another competitor. The buyer will have the ability to compete for contracts to install new voting systems using the Premier product. ES&S is prohibited for 10 years from competing for new installations using a Premier product. The buyer will also receive copies of all existing Premier service contracts so that it can compete for contracts that are up for renewals."[34]

30 For an overview, see OECD (2022), op. cit.

31 Maier-Rigaud, F., Loertscher, B. (2020), "Structural vs. behavioral remedies", CPI Antitrust Chronicle, April, find that 212 out of 254 conditional merger decisions betweeen 2004 and 2018 reviewed included structural remedies

32 Competition Commission (2012), "Anglo American PLC and Lafarge S.A. A report on the anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A."

33 U.S., et al. v. Election Systems & Software, Inc. (2010), Case 1:10-cv-00380

34 Case description for Case 1:10-cv-00380 at https://www.naag.org/multistate-case/united-states-and-plaintiff-states-v-election-systems-and-software-inc-no-10-cv-00380-d-d-c-2010/

Merger in magnesium plate manufacturing, US Federal Trade Commission 2012: 35 Five years after its completion, the FTC reversed the acquisition of Revere Graphics Worldwide by Magnesium Elektron North America. The competition authority considered that a merger-to-monopoly situation with unlikely market entry had occurred. Specifically, Magnesium Elektron was ordered to sell the intellectual property and technical know-how required to manufacture magnesium plates for photoengraving applications. The buyer, Universal Engraving, did not produce magnesium plates at the time, but was considered to be well-placed to enter the market as an effective competitor.

Facebook/Giphy, Competition and Markets Authority 2023:[36] Facebook (later Meta) acquired Giphy, an online database and search engine for animated GIF files, in 2021 for USD315m. It did not await formal approval and the CMA ultimately prohibited the transaction, ordering Facebook to sell Giphy again. The decision was upheld after Facebook appealed. Shutterstock, a stock media platform and search engine, bought Giphy from Facebook in 2023 for USD53m.[37]

3. Putting into the legal context

Competition authorities can impose structural remedies relying on various legal bases. The following provides a brief overview of key provisions for mandating breakups mainly at the EU level and in Germany.

3.1 EU: Abuse of dominance/Article 102 TFEU

Article 102 TFEU prohibits the abuse of dominance and Regulation 1/2003 sets the framework within which the European Commission determines remedies. Article 7 comes into play when there is a finding of an infringement and the Commission imposes remedies on the dominant firm, while Article 9 is relevant when the Commission is close to reaching an infringement finding and can decide to accept commitments from the firm provided that these allow the Commission's concerns to be eliminated.

Under Article 7 of Regulation 1/2003, the Commission can require companies to end the abuse, possibly using remedies. Article 7(1) stipulates that "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." Recital 12 adds that "[c]hanges to the structure of an undertaking as it existed before the infringement was committed would only be proportionate where there is a substantial risk of a lasting or repeated infringement that derives from the very structure of the undertaking."

35 FTC (2012), Magnesium Elektron North America, Inc., File No. 0910094

36 Various documents on the Competition and Markets Authority website at https://www.gov.uk/cma-cases/facebook-inc-giphy-inc-merger-inquiry

37 Hern, A. (2023), "Facebook owner Meta sells Giphy at a loss of more than $260m", The Guardian, May 23

This means:

- Remedies must be proportionate, i.e. not go beyond what is strictly necessary to end the competitive harm, and they must be effective, i.e. they must be sufficient to actually do so.
- Behavioural remedies are given preference over structural remedies if they are equally effective except for if the structural remedy is less burdensome for the company.
- Structural remedies are only permissible when the competitive concern is linked to a structural characteristic of the dominant firm. This more likely to be the case if the abuse involves multiple markets (e.g. tying) than when it is confined to a single market (e.g. excessive prices).

Unlike in the market investigation framework employed by the UK CMA (see section 2.1), the Commission does not conduct market testing when designing remedies.

Article 9 of Regulation 1/2003 employs a less strict interpretation of proportionality than Article 7(1). The Commission only needs to verify that the commitment proposed by the company is effective and that no other effective, but less onerous remedies have been offered. It is not obliged to verify the non-existence less onerous commitments.[38] The effectiveness of commitments is tested by consulting market participants in a market test.

Some legal experts argue that the hurdles for imposing structural remedies are too high. Various reasons substantiate their argument, for example, there is only one case under Article 102 with structural remedies (see ARA in section 2.1). Besides, behavioural remedies often seem unfit for purpose,[39] e.g. in the Google Shopping case a case can be made that only a breakup would have terminated the incentive to infringe.[40] This is in line with a recent evaluation of antitrust remedies for the European Commission that found purely behavioural remedies to be least effective.[41] Some experts consider Regulation 1/2003 (or its application) too narrow because it is only intended to end the infringement, but does not allow for any remedial action against the additional market power created by the abuse ("restorative remedies").[42] One way to change this would be to revise Article 7 of Regulation 1/2003, for example, by adding something like "to protect competition going forward, and to restore the lost competition that occurred as a consequence or during the period in which the undertaking was engaged in the prohibited conduct"[43] and by removing the dichotomy and hierarchy of behavioural and structural remedies altogether.[44] Another argument made in favour of removing the preference for behavioural remedies is that the monitoring costs and the scarcity of regulatory resources should be factored into remedy selection.[45]

38 OECD (2022), "Remedies and Commitments in Abuse Cases. Contribution from the European Union", para 19

39 Kwoka, J., Valletti, T. (2021), "Unscrambling the eggs: breaking up consummated mergers and dominant firms", *Industrial and Corporate Change*, 30(5), 1286-1306

40 Marsden, P. (2020), "Google shopping for the empress's new clothes–when a remedy isn't a remedy (and how to fix it)", Journal of European Competition Law & Practice, 11(10), 553-560.

41 European Commission, Directorate-General for Competition, Grimaldi Alliance, NERA (2025),"Ex post evaluation of the implementation and effectiveness of EU antitrust remedies", Publications Office of the European Union

42 van den Boom, J., Scott Morton, F. (2025), "Recalibrating Regulation 1/2003: How to Restore Proportionality in EU Remedy Design", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5189659

43 Ibid.

44 Ibid.

45 Voges, P. (2025), "Zum gesetzlichen Vorrang verhaltensbezogener Abhilfemaßnahmen", Wirtschaft und Wettbewerb, 10, 513-514.

The lack of a restorative element in remedies is particularly relevant in digital markets because of the long-term harm to competition that comes from e.g. tying (where market power is leveraged across markets) and tipping (where a market 'tips' into a quasi-monopolistic structure).[46] Already in the Microsoft case in 2007, the court acknowledged that reversing anti-competitive effects in the presence of network effects is difficult.[47] These are strong arguments suggesting that breakups may be the only effective remedy in cases that involve tipping and tying.[48] Procedural ways to lower the hurdles for structural remedies could involve behavioural interim measures that, if ineffective, could support a case for structural measures at a later stage.[49]

The Commission recently consulted on changes to Regulation 1/2003.[50] In this context, the German Monopolies Commission, for example, has expressed support for removing the hierarchy between structural and behavioural remedies and for clarifying that restoration of competition is within the scope of the remedies.[51] The recommendations based on the Commission's remedy evaluation also emphasise that the subordination of structural remedies should be removed in line with the ECN+ Directive (of the European Competition Network).[52]

3.2 EU: Digital Markets Act

Article 18 of the Digital Markets Act stipulates that the European Commission can initiate a market investigation into systemic non-compliance by a gatekeeper, i.e. at least three non-compliance decisions for repeated infringements within eight years. Regarding remedies, Article 18(1) states that "the Commission may adopt an implementing act imposing on such gatekeeper any behavioural or structural remedies which are proportionate and necessary to ensure effective compliance with this Regulation." In addition, Article 25 allows the Commission to consider commitments offered by gatekeepers during proceedings under Article 18 and to make them binding through an implementing act. So far, the German head of the Federal Competition Authority warned gatekeepers about the risks of breakups for DMA non-compliance[53] and the Commission has arrived at two DMA non-compliance decisions, for Apple and Meta,[54] while other investigations are still ongoing.

The DMA does not stipulate a hierarchy of behavioural over structural remedies and there are various arguments to assume that structural remedies may be suitable to address systemic non-compliance under the DMA.[55] First, the DMA itself is a collection of behavioural obligations combined with some access obligations (which do not fit into the behavioural/structural dichotomy). Hence, systemic non-compliance can be

46 Mandrescu, D. (2025), "Designing (restorative) remedies for abuses of dominance by online platforms", *Journal of Antitrust Enforcement*, 13(2), 353-389

47 *Judgment of the Court of First Instance (2007), Microsoft v Commission*, Case T-201/04, para 562

48 Mandrescu, D. (2025), op. cit.

49 Ibid.

50 European Commission (2025), "Commission seeks feedback for the revision of EU antitrust enforcement framework", press release, July 10

51 Monopolkommission (2025), "EU-Wettbewerbsrecht: Mehr Tempo, mehr Durchschlagskraft!", Policy Brief 14, October

52 European Commission, Directorate-General for Competition, Grimaldi Alliance, NERA (2025), op.cit.

53 Aranze, J. (2024), "Gatekeepers risk breakup for DMA non-compliance, Mundt warns", Global Competition Review, February 29

54 European Commission (2025), "Commission finds Apple and Meta in breach of the Digital Markets Act", press release, April 23

55 Knapstad, T. (2023), "Breakups of Digital Gatekeepers under the Digital Markets Act: Three Strikes and You're Out?", *Journal of European Competition Law & Practice*, 14(7), 394-409

interpreted as a failure of these types of remedies, possibly making it easier to justify breakups. Second, many of the obligations are intended to constrain conflicts of interest that arise from structural features of companies, such as the prohibition on self-preferencing, tying or cross-use of data. Especially in such cases, breakups seem suitable to eliminate the incentive to infringe.

3.3 Germany: sector investigations and "companies with paramount significance across markets" in GWB

The rules for imposing remedies are described in Article 32(2) of the German GWB (the German competition act). They follow a reasoning similar to that in Regulation 1/2003, expressing a preference for behavioural remedies when they are as effective as structural remedies. Following recent competition law reforms, the scope of remedies is no longer limited to abuse of dominance cases, but also extends to two other contexts: Firstly, to violations of Article 19a GWB that can be understood as an extended control of abuse of dominance in the form of obligations for designated "companies with paramount significance across markets", and secondly, to sector investigations based on Article 32e GWB. These sector investigations do not require the finding of an abuse of dominance by an individual company, but can identify structural market features that are detrimental to competition (similar to the UK market investigation regime).

Article 32f contains specific provisions on remedy design in the context of a sector investigation or a violation of 19a. It names various remedies that are explicitly in scope, namely access to data, to APIs and networks, obligations regarding firm interactions, the use of norms and standards or contracting requirements and a prohibition on information sharing that could facilitate tacit collusion. The final option is the accounting or organisational separation of business lines, which is one step short of a full divestment. Article 32f(4) specifies that a divestment remedy is only lawful if an organisational separation is not possible, less effective or would impose a higher burden on the relevant company. Besides, the price obtained in such a breakup has to amount to at least 50% of the market value of the entity in question, and the selling firm is entitled to additional compensation amounting to half of the difference between the price obtained and the market value. Hence, it is assured to receive 75% of the pre-breakup market value. Besides, the breakup must not reverse a merger approval if that took place within 10 years before the investigation, and companies may not buy back a part for five years.

As of November 2025, it is too early to assess the use of remedies according to the GWB. So far, most investigations into companies with paramount significance across markets have resulted in commitment decisions and only one sector investigation has been initiated.

3.4 EU: merger commitments

The 2008 merger remedies notice provides guidance on the design of remedies in merger proceedings.[56] It expresses a clear preference for divestments as the most suitable way to address competition concerns arising from mergers. Article 16 states that "[d]ivestiture commitments are the best way to eliminate competition concerns resulting from horizontal overlaps, and may also be the best means of resolving

56 2008 Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, October 22

problems resulting from vertical or conglomerate concerns (24). Other structural commitments may be suitable to resolve all types of concerns if those remedies are equivalent to divestitures in their effects..."[57] Behavioural commitments "can only exceptionally be accepted if their workability is fully ensured by effective implementation and monitoring"[58].

The notice sets out detailed guidance for the scope and characteristics of a divestments, a suitable buyer and other aspects that we turn to in the following section.

4. Making breakups effective

This section discusses basic criteria for designing breakups in order to promote competition in the long term. Specifically, a key question is how to identify sensible faultlines. In addition, further parameters require consideration, many of which are already part of the assessment of merger remedies.

4.1 How to identify faultlines

The first consideration when identifying faultlines is the effectiveness of the intervention, i.e. the new entities must no longer produce competitive harm because their incentives are different.[59] Usually, more than one option is conceivable to achieve this objective. Another key consideration for identifying faultlines is the economic viability of the resulting parts. This is a function of a) whether the parts have sufficient resources and b) whether these resources can be separated within a reasonable timeframe and with reasonable effort.

For breakups to serve the purpose of addressing competitive concerns, it is usually desirable for all remaining companies to stay in business. Research into past US breakups shows that around half of them ceased to exist within a few years after being divested, indicating that the breakups were not successful at creating viable companies.[60] For the avoidance of doubt, the economic viability of broken-up companies does not require fully preserving their pre-breakup market value. Some of that value is likely to be derived from the structural concerns causing the anti-competitive harms that the breakups are intended to address.

One challenge for the design of faultlines is that companies have more in-depth knowledge about their organisational structure than outsiders. Competition authorities can tap into this knowledge by setting a firm objectives that the breakup needs to meet, but without being fully prescriptive about how to do so. For example, in some breakup

57 Ibid., Article 16; footnote 24 reads "See divestiture of storage facilities in Case COMP/M.3868 — DONG/Elsam/Energi E2 of 14 March 2006, paragraphs 170 et seq.; Case COMP/M.3696 — E.ON/MOL of 21 December 2005, paragraphs 735 et seq., for an example of 'ownership unbundling' to eliminate structural links between the parties in the gas storage sector; further Case COMP/M.4314 — Johnson&Johnson/Pfizer of 11 December 2006, Case COMP/M.4494 — Evraz/Highveld of 20 February 2007."

58 Ibid., Article 17

59 Schinkel, M., van Oosten, R. (2025), "Breaking up Big Tech: scissor-line suggestions for smart cuts", *Journal of Antitrust Enforcement*, 13(2), 237-264

60 Kwoka, J., Valetti, T. (2025), "Confronting Consummated Mergers: An Inquiry into Policy and Practice", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5331487

cases in section 2, the competition authority set a minimum of production capacity that needed to be divested and allowed firms to choose which entities to sell. Similarly, some experts have recommended the Commission to let Google specify which entities it sells to resolve its conflicts of interest in the adtech case.[61] This is in line with the current approach of the Commission which requires Google to come up with a proposal (even though it is not explicitly limited to structural remedies), see box 1.

Once a company proposes a structural remedy, competition authorities can test whether it addresses the competitive harm and whether the proposed divestment can exist on its own on a sustained basis. This was standard procedure in various of the breakups ordered by the CC in section 2.1 and it frequently led to the inclusion of additional related assets. Divesting standalone businesses in the context of mergers is advocated for also by current officials at competition authorities; for example, Daniel Guarnera, director of the FTC's Bureau of Competition, argues in favour of divesting actual standalone businesses to ensure stand-alone viability in the context of mergers: "For the large majority of cases, the best way for us to mitigate risk is for parties to divest a standalone business unit with all of the assets that make that business operational — that includes employees, equipment, IP, customers, facilities, contracts, and anything else that the business uses to compete."[62]

A close look at the organisational structure of a company (using e.g. databases like Moody's Orbis) can inform this assessment in two ways: Firstly, the more separate the entities are, the more information they might disclose about their individual commercial performance. This can help to inform a judgement about their separate economic viability. Secondly, the actual cost of a breakup might be higher if it requires separating more deeply integrated entities. This can be an argument in favour of enlarging the planned divestment because the increase in intrusiveness can be offset by a reduced loss of operational efficiency.

That breakups create costs is generally acknowledged, but they can be small and temporary. In a review of 40 voluntary breakups (in the US between 2001 and 2010), consulting firm Bain found an average increase in general and administrative costs of a modest 5% in the first year after the separation, but that could be more than fully offset within one to two years.[63] Removing conflicts of interest is cited as one specific way of generating new opportunities. In line with Mark Zuckerberg's statement at the beginning of section 1, market observers have argued that breakups should be used more often to unlock commercial value for example in banks,[64] telecoms[65] or in 1960's car manufacturing.[66]

61 Voges (2025), op. cit.

62 Fortes, F. (2025), "Standalone divestiture best for reducing remedy failure risk, US FTC official says", MLex, September 19

63 Bain (2014), "Mastering the Good Breakup", https://www.bain.com/insights/mastering-the-good-breakup/

64 McKinsey (2022), "The future of banks: A $20 trillion breakup opportunity", https://www.mckinsey.com/industries/financial-services/our-insights/the-future-of-banks-a-20-trillion-dollar-breakup-opportunity

65 McKinsey (2020), "Can telcos create more value by breaking up?", https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/can-telcos-create-more-value-by-breaking-up. It is worth noting that consultancies have an interest in promoting breakups because they are likely to be associated with consultancy contracts

66 First, H., Carstensen, P. (2009), "Too Big and Failing: The Missed Chance to Break Up GM", Bloomberg, June 19

4.2 Designing everything else

Various other parameters need to be considered. While it is difficult to be exhaustive, sufficiently concrete but also sufficiently general at once, a good starting point for successful breakups is the merger remedies notice that stipulates specific criteria and requirements. In addition to ensuring long-term commercial viability discussed in section 4.1, it lists the following requirements:

- “Non-reacquisition clause”: A breakup should be irreversible for a certain period.
- “Alternative divestiture commitments: Crown Jewels”: crown jewels serve as a backup divestment if the preferred divestment option turns out not to be feasible.
- “Transfer to a suitable purchaser”: A purchaser needs to be suitable, i.e. independent of the company that is to be broken up and a potential competitor that through the acquisition does not raise new competition concerns. There also needs to be a time limit within which the purchase needs to be completed.

An alternative to selling a part of a company to another company is to spin it off into an independent entity, for example through a stock market listing (IPO).

Besides, a competition authority might install a monitoring trustee to oversee the process, and it might need to design accompanying access or behavioural remedies to address any remaining concerns (as in the GGBS market in section 2.1 in which access to an input was ensured).

Lastly, some authorities might decide to impose (implicit or explicit) minimum prices such as is done in the German GWB which ties the price to the pre-breakup market value (see section 3.3).

There is no doubt that designing effective structural interventions always requires competition authorities to develop substantial sector and technical knowledge. The same is true, however, for behavioural remedies. Hence, further market- and company-specific characteristics need to be accounted for to ensure that remedies are effective, do not allow for circumvention and do not create new concerns.

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