



Remedies and commitments in A102 cases

*Some observations from the
perspective of economics*

Remedies in A102 cases

- In addition to fines (Article 23), the Commission may impose “any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end” (Article 7)
- In exclusionary conduct cases, merely stopping the infringement may not restore competition in the market to the condition it would have been in but for the exclusionary conduct
 - Implications for the design of remedies?
 - If the objective were simply to ensure no continuation or repeat of the conduct in question, wouldn't the prospect of a large future fine suffice?

Using commitments to resolve A102 cases

- The Commission's growing use of commitments to resolve A102 cases has been criticized on various grounds
- The option to settle provides DG Comp staff with a way to cut its losses – this option is especially valuable to the staff in complicated A102 cases
- If the staff did not have the option to settle, fewer A102 investigations would be initiated
- Whether the growing use of commitments to resolve A102 cases is a good thing or bad thing depends on whether one believes there are too many or too few A102 investigations
 - The answer to this question requires analysis of the incentives of the DG Competition staff, against the background of the manner in which cases are decided and reviewed

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