FOCUS REPORT ON THE DEDICATED SURVEY ON THEORIES OF HARM AND REMEDIES CONCERNING UNILATERAL CONDUCT IN DIGITAL MARKETS

Summary

- The survey was circulated among UCWG members in March 2024 with the aim of getting a deeper understanding of recent enforcement experience in digital markets across ICN jurisdictions in the period between November 2021 and March 2024, focusing on the theories of harm applied in the cases and the design of remedies. 28 different jurisdictions responded to the survey. A synthesis of the replies received is summarized in the following sections of this report.
- Some authorities replied that they are currently investigating their first ever cases in digital markets and therefore do not have accumulated experience in designing remedies to tackle unilateral conduct in this sector, while other agencies account for most of the reported cases and have gained more experience. However, for most of the respondents, digital markets seem to be a top enforcement priority. More details about specific figures are given throughout the report.
- Theories of harm applied to digital cases are further explored in the report classifying the different theories in the categories “traditional” and “novel”. Drawing on the survey responses, the report aims to illustrate how agencies have applied, adapted, or combined these theories to address the specific challenges of unilateral conduct in digital markets. Additionally, a list of cases is presented to serve as a thesaurus of the enforcement activity in digital markets in the reference period for easy consultation.
- Although fewer responses were received in the remedies section — as some cases were closed without finding infringement or did not require the imposition of remedies or due to lack of enforcement experience — the report outlines the most relevant remedies adopted, their connection to the theories of harm discussed, and key factors influencing their design and monitoring.
- The report concludes with a set of takeaways drawn from the analysis of survey responses, which may help guide the future work of UCWG. These insights also serve as a tool for knowledge-sharing among agencies, particularly those with less experience handling unilateral conduct cases in digital markets.

1. Introduction

Following up on the report "Analysis of Theories of Harm and Design of Remedies Concerning Unilateral Conduct with Dominance/Substantial Market Power in Digital Markets"[1] presented in the International Competition Network's (ICN) Unilateral Conduct Working Group (UCWG) Workshop 2023 hosted by the Japan Fair Trade Commission (JFTC) in Tokyo, the UCWG aims to respond to ICN members´ request expressed in the conclusions of that report for further ICN guidance – in the form of a separate and focused document – on the analysis of theories of harm and the design, implementation, and monitoring of remedies concerning unilateral conduct by companies with dominance/substantial market power in digital markets.

This project builds upon the valuable work previously conducted within the ICN UCWG thoroughly summarized in the abovementioned report "Analysis of Theories of Harm and Design of Remedies Concerning Unilateral Conduct with Dominance/Substantial Market Power in Digital Markets". Therefore, this project relies much on the previous work by the JFTC, which explored theories of harm and the design of remedies in cases of unilateral conduct by undertakings holding dominance or substantial market power in digital markets. As a follow-up, during the 2023/2024 ICN year, the UCWG developed and circulated a survey aimed at gathering updated insights on this topic. The survey was prepared by the Spanish National Markets and Competition Commission (CNMC) with the cooperation of the Administrative Council for Economic Defense (CADE) and the Turkish Competition Authority.

This UCWG questionnaire[2] on specific theories of harm and remedies connected to digital markets was distributed to more than one hundred competition authorities and non-governmental advisors (NGAs) and received a total of 29 responses — 28 from national competition authorities[3] (NCAs) and one from an NGA[4]. The survey was carried out in the ICN 2023/2024 year, specifically the survey was circulated among UCWG

[1] ICN UCWG (2023), "Report on the Results of the ICN Survey on the Analysis of Theories of Harm and the Design of Remedies Concerning Unilateral Conduct With Dominance/Substantial Market Power in Digital Markets", available at: https://www.internationalcompetitionnetwork.org/wp-content/uploads/2023/08/UCWG-Report-digital-theories-of-harm-remedies-2023.pdf.

[2] See annex I. 2nd Questionnaire on the analysis of theories of harm and design of remedies concerning unilateral conduct with dominance/substantial market power in digital markets.

[3] AdlC France, , INDECOPI Peru, BKartA Germany, DG COMP, CB/BC Canada, CCA Botswana, COFECE Mexico, Competition Commission of Mauritius, FNE Chile, CCI India, TCCT Thailand, COMCO Switzerland, AGCM Italy, JFTC Japan, Commission on Protection of Competition of Bulgaria, RK Türkiye, UOKiK Poland, GVH Hungary, GAC of the Kingdom of Saudi Arabia, KKV Sweden, CADE Brazil, SCE Ecuador, CPC Serbia, Antimonopoly Office of the Slovak Republic, Competition Council of Lithuania, Competition Council of Latvia and CNMC Spain.

[4] NGA from CCI India.

members on 25th March 2024 and responses were due on 17th April 2024. Although some of the replies were received after the deadline, all of them refer to the same period of time analyzed in the survey (1st November 2021 – March 2024).

The information collected offers a diverse overview of recent enforcement experiences and emerging trends in addressing unilateral conduct in digital markets.

The objectives of this report are threefold:

- **To provide updates** on recent enforcement cases and evolving practices concerning unilateral conduct in digital markets, creating a thesaurus of recent enforcement experiences across different ICN jurisdictions that can be easily consulted.
- **To contribute to a better understanding** of the analytical and procedural challenges faced by competition authorities within the ICN in such cases and identify how competition authorities have addressed or overcome these obstacles.
- **To provide practical insights and guidance** that may be particularly useful to younger authorities or those with less experience in this area, supporting capacity building and knowledge-sharing within the ICN community.

The report is structured as follows. Section 2 updates on recent enforcement experiences in the digital sector, including a summary of general trends of experiences in terms of substantive assessment and institutional frameworks. Section 3 provides a detailed assessment of theories of harm more specific to digital sectors. Section 4 describes the potential associated remedies that have been considered (analyzing also monitoring issues). Section 5 concludes with the main takeaways.

2. Recent enforcement experiences in the digital sector

2.1. Individual country experiences

The update on recent cases concluded by competition authorities in digital markets within the ICN framework is an exercise of transparency and knowledge-sharing that may serve the purpose of further disseminating lessons learned in the enforcement of unilateral conduct rules and help less experienced agencies to focus their enforcement practice in this area. In particular, given the amount of time passed since the publication of the ICN UCWG report on the Analysis of Theories of Harm and Design of Remedies Concerning Unilateral Conduct with Dominance/Substantial Market Power in Digital Markets, it is useful to gain a deeper understanding of the development and outcome of previous cases by obtaining from respondents updates on cases previously reported in the ICN UCWG report on the Analysis of Theories of Harm and Design of Remedies Concerning Unilateral Conduct with Dominance/Substantial Market Power in Digital Markets. It is especially interesting getting information on whether these cases have been subject to judicial review and whether the courts have upheld or overturned the authorities' reasoning.

Of the 28 jurisdictions that responded to the second ICN UCWG questionnaire, **17 authorities** (approximately 59%) reported having enforcement experience regarding unilateral conduct cases on digital markets during the reference period (from November 2021 to March 2024). The remaining **11 agencies** (41%) indicated that they had not analyzed any such cases in this time frame. This figure is broadly consistent with the results from previous ICN surveys and reflects the continued concentration of enforcement activity among a subset of competition authorities that have prioritized or developed specific capacity to address unilateral conduct in digital markets, which often entails unsurmountable challenges for not experienced agencies.

In total, **17 agencies reported enforcement activity during the reference period with unilateral conduct cases** in the digital sector. Cases ranged from complex investigations involving global platforms to narrower proceedings targeting domestic intermediaries. While some jurisdictions, such as India and the European Commission, reported multiple significant cases, most other agencies concluded a single case during the reference period. This figure underscores a growing, albeit still concentrated, global enforcement activity. The continued emergence of such cases reflects not only increasing scrutiny of dominant digital platforms but also a broader institutional shift toward adapting abuse of dominance tools to the evolving structure of digital markets.

AdIC France reports four different cases in the reference period on digital markets:

- **Decision 22-D-13** of June 21, 2022 regarding practices implemented by Google in the press sector[5]. In June 2022, the French Autorité de la concurrence accepted a series of commitments offered by Google to address concerns under Article 102 TFEU and Articles L.420-2 and L.464-2 of the French Commercial Code. The case focused on Google's conduct in the French market for generalist online search services, where it holds a market share of approximately 90%. The investigation stemmed from complaints by press agencies and publishers' unions regarding Google's refusal or delay in negotiating licensing agreements for the use of protected press content, as required under French law transposing the EU Copyright Directive. The AdIC raised concerns that this behavior could amount to an abuse of dominance. To settle the case, Google committed to negotiate in good faith with press publishers and agencies on the remuneration for the use of their protected content. These commitments were formalized and accepted as binding, leading to the closure of the investigation.
- **Decision 24-D-03**[6]. An investigation opened to determine whether Google had successfully complied with the commitments mentioned in the previous decision. The antitrust authority found that Google had failed to comply with the commitments imposed in the case of the press publishers and agencies. The decision noted that Google's lack of transparency in calculation methods, incomplete data sharing, and continued use of press material without proper opt-out options constituted breaches of its 2022 commitments.
- **Decision 22-D-12**[7]**.** An investigation into alleged anticompetitive conduct carried out by Meta in the French online non-search advertising market. The market share of Meta in this market was around 50% and between 75-90% in the narrower online advertising on social networks market.
- **Decision 23-MC-01**[8]**.** A decision on the request by the company Adloox for interim measures against Meta regarding practices in the online verification ad sector. In May 2023, France's Autorité de la concurrence issued interim measures against Meta, following a complaint by ad-verification firm Adloox, suspending Meta's opaque "viewability" and "brand safety" partnership criteria for online ads. The authority required Meta to publish objective, transparent, non-discriminatory,

[5] A press release in English about this case can be read here.
[6] Press release.
[7] Press release.
[8] Press release.

and proportionate access conditions within two months and to grant Adloox accelerated access if it met those criteria.

Brazil´s CADE reports:

- Two commitment decisions in the period covered:
  (i) Administrative Investigation 08700.004136/2020-65 (Gympass). This case investigated whether Gympass, a gym aggregator platform, was abusing its dominant position through exclusivity and most favored nation clauses it imposed in its contracts with affiliated gyms.
  (ii) Administrative Investigation 08700.004588/2020-47 (Rappi X iFood). The General Superintendence investigated whether iFood abused its dominant position in the food delivery platform market by entering into exclusivity dealing arrangements with restaurants and supermarkets.
- A case which was closed in 2023: Administrative Proceeding 08700.004201/2018-38 (Guia Bolso) due to the full compliance with the commitments established in the Cease and Desist Agreement[9] (Agreement that took place prior to November 2021). The alleged conduct consisted in the imposition of a second random password by Bradesco for its clients to access their private data in internet banking. It was investigated whether such conduct could render GuiaBolso's and other emerging fintech competitors' activities unfeasible.
- A case which was dismissed in September 2022: Administrative Investigation 08700.003211/2016-94 (Google X Yelp). This case investigated potential self-preferencing practices by Google, following a complaint by Yelp. The complaint claimed that Google allegedly diverted traffic from rival local search services to Google by displaying a box with thematic local results (OneBox) in the first page of Google's search results.
- Seven ongoing investigations:
  (i) Administrative Investigation 08700.009531/2022-04 (Mercado Livre X Apple);
  (ii) Administrative Investigation 08700.002940/2019-76 (Google X Android);
  (iii) Administrative Investigation 08700.003498/2019-03 (Google News);
  (iv) Administrative Investigation 08700.006751/2022-78 (Jedi Blue);
  (v) Administrative Investigation 08700.001110/2020-65 (SafraPay X Ayden);
  (vi) Administrative Investigation 08700.003430/2023-01 (lottery games intermediation platforms);

[9] For further details and information on the nature and implications of cease and desist agreements in Brazil (TCC, for its acronym in Portuguese), please refer to the section 4.1. regarding the framework of remedies applied by CADE in unilateral conduct cases.

(vii)Administrative Investigation 08700.001797/2022-09 (ABBT X iFood).

Canada shares two new cases:

- The FBN case, closed without finding an infringement. FBN is an online retailer of crop inputs which allows growers to purchase crop inputs from a digital platform. The Bureau investigated allegations that a number of manufacturers and wholesalers of seeds and crop protection products refused to supply or restricted supply to FBN.
- On Turo, closed after Turo changed its policy. Turo runs a peer-to-peer (P2P) car sharing platform. The Bureau's investigation related to the potential impact of Turo's former exclusivity policy on competition in Canada, to the detriment of current or prospective hosts. This policy prohibited users who share their cars (known as hosts) from listing the same vehicles on competing platforms.

Chile's FNE provides in its update of cases the investigation on vertical restraints in the market for food delivery platforms (Rol 2653-21) which concluded with out-of-court agreements with the investigated companies to eliminate wide and narrow most favored nation clauses (MFN). The Chilean authority also detected that exclusivity and semi-exclusivity clauses were present to a limited extent in the terms and conditions of the food delivery platforms under investigation and resolved to monitor its evolution over time.

Ecuador's National Superintendence for Economic Competition (SCE) provides the updated case on Banred, which discriminated without justification prices between subnets that require a net connection managed by Banred in the ATM market (sanctioned by the First Instance Resolution Commission on 11th of May in 2022).

The **European Commission DG COMP** reports on the following four cases[10]:

- AT.40452 – Apple – Mobile payments, where a potential abuse of dominant position was investigated regarding the access to NFC[11] Input on iOS for the provision of NFC mobile wallets in iOS. Potential commitments were market tested in January 2024 and the final commitment decision was adopted on 11 July 2024.
- AT.40437 – Apple App Store Practices (music streaming), where an infringement was found in certain terms and conditions that Apple imposes regarding the distribution of music streaming apps to iOS users through its App Store.
- Amazon Marketplace (AT.40462) and Amazon BuyBox (AT.40703), where a commitment decision was made regarding Amazon's pactices in the marketplace

[10] There have been also relevant updates on the Google shopping case. The Court of Justice of the European Union upheld the Google Shopping decision on 10 September 2024.
[11] Near field communication.

regarding the use of information collected from third parties and favorable treatment of its own services.

- Online rail ticket distribution in Spain (AT. 40735), where a commitment decision was made regarding Renfe's (Spanish railway incumbent) access to content and data *vis-à-vis* third parties active in the distribution of train tickets.

Germany remarks that the jurisdiction introduced Section 19a of the German Competition Act (GWB) in January 2021 as part of a broader legislative reform aimed at strengthening the national competition authority's ability to address potential competition concerns in digital markets. This provision enables the Bundeskartellamt to designate companies with **paramount significance for competition across markets (PSCAM)** and, where appropriate, prohibit certain forms of conduct. Section 19a represents a procedural innovation within German competition law and has been actively applied by the authority in several cases involving large digital platforms during the reference period. Section 19a GWB allows the Bundeskartellamt to designate companies as holding 'paramount significance for competition across markets', enabling proactive intervention in cases where traditional abuse of dominance enforcement would be procedurally or conceptually limited. The tool uses a two-step approach: first, designating such companies; second, prohibiting specific types of potentially abusive behavior.

There are **four companies that have been designated[12] under Section 19a(1) GWB** (with an ongoing investigation on Microsoft[13]):

- Alphabet/Google[14]
- Meta/Facebook[15]
- Amazon[16]
- Apple[17].

[12] These designations are valid for five years from the date on which they become final.
[13] https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/28_03_2023_Microsoft.html;jsessionid=3913061AE13F15EAB7C63F56D62D5942.1_cid362?nn=3591568
Updates on this can be found at
https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2024/B6-26-23.pdf?__blob=publicationFile&v=4
[14] https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2022/B7-61-21.pdf?__blob=publicationFile&v=2
[15] https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2022/B6-27-21.pdf?__blob=publicationFile&v=1
[16] https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2022/B2-55-21.pdf?__blob=publicationFile&v=1
[17] https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2023/B9-67-21.pdf?__blob=publicationFile&v=4

Following these designations, the Bundeskartellamt has launched or expanded investigations.

- In some of them a final decision has been made on:
  - Google's Data Processing Conditions, where commitments give users better control over their personal data.
- In some cases, improvements have been achieved without the issuance of a formal decision:
  - Google News Showcase, including important improvements for publishers
  - Meta, where users can now use the Meta Quest VR headsets without a Facebook account.
- Some cases are ongoing:
  - Google Maps Platform and Google Automotive Services, for possibly imposing anti-competitive restrictions with its terms of use of the Google Maps Platform and its licensing practices of services for infotainment systems[18].
  - Apple's tracking rules for third-party apps and its App Tracking Transparency Framework (ATTF), also based on Article 102 of Treaty of the Functioning of the European Union. The authority is looking into the initial suspicion that these rules could favor Apple's own offers and/or impede other companies.
  - Amazon's ongoing proceedings on brand gating and possible price control by Amazon, which were expanded in November 2022 to include an assessment under Section 19a GWB. The brand gating proceeding examines whether Amazon puts marketplace sellers at a disadvantage by using certain instruments such as agreements between Amazon and (brand) manufacturers that may exclude third-party sellers from selling (brand) products on Amazon Marketplace. The price control proceeding examines whether Amazon possibly employs mechanisms to control the pricing of Amazon Marketplace sellers.

Hungary GVH provides two ongoing cases:

- In June 2021, the GVH initiated a proceeding against Google (Vj/24/2021) in order to investigate whether it is giving preferential treatment to its own services in a way that infringes competition law by displaying a so-called lyrics card when users search for song titles with the help of its search engine, promoting Google's own service (YouTube)[19].

[18] Updates on these cases can found at https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2025/04_09_2025_GAS_GMP.html

[19] https://gvh.hu/en/press_room/press_releases/press-releases-2021/another-big-tech-proceeding-the-gvh-is-investigating-whether-google-abused-its-dominant-position

- In December 2021, the GVH launched an investigation (Vj/35/2021[20]) against the operator Adevinta (a platform for classified advertisement of used cars) as its system of discounts (in exclusivity packages) and services designed for car dealers may be suitable for excluding competitors. The GVH carried out an on-site investigation.

The **Competition Commission of India** (CCI) provides these updates:

- Fines on Google (apart from issuing cease and desist order) for abusing its dominant position in licensing of this Android mobile operating system and various proprietary mobile applications of Google[21].
- Infringement decision on Google's Play Store policies, that require the app developers to exclusively and mandatorily use Google Play's Billing System.
- Monetary and behavioral sanctions on MMT-Go (MakeMyTrip and GoIbibo) for abusing its dominant position and also for having anticompetitive arrangement with OYO (Oravel Stays Limited), regarding their discounts and parity conditions in the online travel agencies (OTA) markets.

Italy AGCM provides these updates:

- A528 FBA/Amazon, where it was declared (30 of November 2021) that Amazon leveraged its market power in the online marketplace to gain an advantage over competitors in the logistics market and reinforce its dominance in the online market place. A fine of € 1,128 billion was imposed, apart from behavioral remedies: i) Amazon will have to grant sales benefits and visibility on Amazon.it to all third-party sellers able to comply with fair and non-discriminatory standards for the fulfilment of their orders and ii) refrain from negotiating - on behalf of sellers - rates and other contractual terms concerning the logistics of sellers' orders on Amazon.it with carriers and/or competing logistics operators
- A552 Google/Obstacles to data comparability, where there was a settlement decision (18 of July 2023). Hoda/Weople APP (a direct marketing platform) complained that Google was obstructing interoperability making its data portability offer extremely complicated and discouraging users from porting their data. Google offer commitments to improve data portability. Commitments would improve interoperability for data portability: i) easier for users to select and export their data; ii) detailed documentation available to third parties regarding data fields related to users' web browsing; iii) early access to an API in construction.

[20] https://www.gvh.hu/en/press_room/press_releases/press-releases-2021/the-gvh-is-investigating-abuse-of-dominant-position-in-the-online-classified-car-ad-market

[21] Mobile Application Distribution Agreement (MADA), Anti-fragmentation Agreement (AFA), Android Compatibility Commitment Agreement (ACC), Revenue Sharing Agreement (RSA).

- A561 - App Tracking Transparency Apple, where an investigation has been opened (2nd of May, 2023) over privacy rules Apple applies to third-party apps running on its mobile platform, which affect their ability to track iOS users in order to target them with advertising

The **JFTC (Japan)** informs that the agency has concluded several digital cases in the reference period. In total, they mention six different cases in which the JFTC has taken action against anticompetitive conduct on the digital markets.

- Closing (December 2, 2021) the investigation on the suspected violation of the Antimonopoly Act by Uniquest[22], which is a digital platform operating in the online funeral services market. The JFTC suspected that Uniquest engaged in exclusionary practices by restricting its contracted funeral operators from accepting requests or entering into agreements with competing online funeral platforms. Uniquest submitted a proposal to voluntarily implement measures aimed at eliminating the suspected anticompetitive conduct. The JFTC concluded that they would effectively address the competition concerns and decided to close the investigation.
- Closing the Investigation on the Suspected Violation of the Antimonopoly Act by Rakuten Group, Inc.[23] (December 6, 2021). Rakuten Group, Inc. ("Rakuten"), an online marketplace operator, was suspected of setting or changing the terms of the trade in which merchants could set certain conditions (e.g., free shipping), which are unjust in light of normal business practices and disadvantageous to the merchants by use of its superior bargaining position. Rakuten submitted a proposal to voluntarily implement measures aimed at eliminating the suspected anticompetitive conduct. The JFTC concluded that they would effectively address the competition concerns and decided to close the investigation.
- Approval of the commitment plan submitted by Booking.com B.V. following the launch of an investigation into the company's use of most-favored nation (MFN) clauses. The investigation was opened in response to concerns that Booking.com may have included contractual provisions requiring accommodation providers to offer on its platform the same or better conditions—particularly in terms of room rates and availability—than those offered on other sales channels. These clauses potentially limited competition by restricting the freedom of hotels to set their prices and conditions independently across different platforms.

[22] https://www.jftc.go.jp/en/pressreleases/yearly-2021/December/211202.html
[23] https://www.jftc.go.jp/en/pressreleases/yearly-2021/December/211206.html

- Approval of the commitment plan submitted by Expedia Lodging Partner Services Sàrl ("Expedia") following the launch of an investigation into the company's use of most-favored nation (MFN) clauses.
- Closing of an investigation on Scinex Corporation and Smartvalue Co., Ltd., which may have been urging contracting authorities (municipalities, etc.) to redesign websites to make it difficult for businesses providing content management system ("CMS") of open source software to enter the procurement process. The two companies were describing closed source software as "essential" for the purpose of information security (given that municipalities do not have sufficient capacity to set specification concerning the CMS by themselves). The companies submitted a proposal to voluntarily implement measures aimed at eliminating the suspected anticompetitive conduct. The JFTC concluded that they would effectively address the competition concerns and decided to close the investigation.
- Ongoing case on Google on entering into license agreements with Android mobile device manufacturers ("OEMs") under which
    - Google makes them install its applications, "Google Search", "Google Chrome" and "Google Play"
    - Google shares its revenue from its search advertising service with them on conditions including that they do not pre-install competitors' search application.

The Competition Commission of Mauritius reports on an ongoing enquiry on alleged conduct by vertically integrated company to foreclose new entrants into mobile payment systems.

Mexico's COFECE provides updates on ongoing investigations[24]:

- Digital advertising services and related markets (IO-003-2020). A Statement of Objections has been issued and the trial-like procedure is currently underway, where allegations can be submitted.
- Development, distribution and payment processing in mobile apps and digital content, as well as related services (IO-005-2022).
- Development, commercialization and sale of digital goods and/or services and related services (DE-023-2022).
- Potentially illicit merger[25] affecting the real estate ads and services (IO-001-2023).

[24] Since the first four are ongoing cases, no further information can be disclosed.
[25] Illicit mergers are those which have the object or effect to obstruct, diminish, harm, or restrain economic competition. Illicit mergers analysis fall under the scope of the Unilateral Conducts Unit (Relative Monopolistic Practices Unit) of COFECE.

- Investigation to Determine Essential Facilities or Barriers to Competition in Retail e-commerce in the national territory (IEBC-001-2022) where a Preliminary Investigative Opinion has been issued[26], obtaining:
    - High market concentration.
    - Existence of single-homing.
    - High entry barriers, mainly network effects and brand recognition .
    - Existence of barriers to competition that generate restrictions on the efficient functioning of the relevant markets: (i) artificial implementation of additional services as part of loyalty programs: free deliveries, streaming, video games, etc. (ii) lack of transparency about the variables included in the Buy Box[27], which selects "the best offer"; and (iii) preference and advantages to their own logistics solution.

Poland's UOKiK updates on:

- Allegro. An infringement decision (DOK-3/2022) was issued with the record fine of 206 million PLN (approx. 46 million EUR). Allegro has taken advantage of its dual role – both as a marketplace administrator and a retail seller on its own platform – making use of the non-publicly available information about the functioning of the platform and consumer behavior. It has also been established that Allegro reserved particular sales and promotional functions on its platform exclusively for its own retail unit.
- Apple ATT (DOK-7.400.1.2022, formerly: DOK-2.400.1.2021), investigation on rules Apple applies to third-party apps running on its mobile platform, which affect their ability to track iOS users in order to target them with advertising.
- Gaming (DOK-7.400.3.2023), investigation on Valve and Sony on digital distribution of video games.

Serbia's Commission for Protection of Competition (Serbia CPC) provides an update of an ongoing investigation (the first one initiated on digital markets) on the food delivery company Glovo on potentially exclusionary conducts:

- A prescribed fee that the partner is obliged to pay if it enters into similar partnerships with other.

[26] Although it is not a unilateral conduct investigation, the conclusions of this investigation to determine essential facilities or barriers to competition were novel and it was carried out in digital markets.

[27] The Buy Box is the prominently displayed box on an Amazon product page that allows customers to quickly add an item to their shopping cart. When multiple sellers offer the same product, only one offer is selected to appear in the Buy Box, significantly increasing the likelihood of a sale. Placement in the Buy Box is determined by Amazon's algorithm based on various performance and pricing criteria.

- High amounts that are offered in the form of investment for marketing, with the obligation to return the amount if cooperation with another platform is established.
- Different commissions to different partners, and depending on whether they cooperate only with Glovo or with competing platforms.

Slovakia provides the update of a case involving anticompetitive behavior of a provider of online intermediation services in the website called Zlavomat.sk, which offers various goods and services of the third parties for discounted prices or in advantageous bundles for the final consumers. The case involved analyzing MFNs and exclusivity clauses, ending with commitments

Sweden's competition authority (KKV Sweden) reports on three cases which were closed without a finding of an infringement (even if the last one involved interim measures):

- Storytel 817/2022. A company providing audiobooks as a streaming service complained that one of the largest publishers in Sweden, which is vertically integrated with the largest audiobook streaming service, was using its market dominance to force the company into unfair access conditions.
- Euroclear, dnr 668/2022. A company that produces financial analytical services complained that the central securities depository (Euroclear), which has unique access to Swedish shareholder registries, was, by changing the terms of access to the data, hindering the company from obtaining shareholder registries. These registries, the complaint argued, were crucial as an input in the complainant's products. The investigation looked into suspicions of refusal to supply, margin squeeze and/or unfair trading conditions.
- Nasdaq, dnr 366/2022. Nasdaq, who owns the leading growth market for small and medium-sized enterprises was planning to make available for trade shares issued by companies listed on a competing SME growth market, without the explicit consent from the issuer. An interim decision was imposed in the course of the investigation prohibiting Nasdaq from making the shares available for trade without the explicit consent of the issuer. The case was closed after Nasdaq announced that it would not offer shares in companies listed on the competing growth market without the issuers' explicit consent.

Spain's CNMC reports:

- Some investigations that have been closed without finding an infringement[28], the most relevant affecting food delivery platforms' exclusivity policies[29].
- Some ongoing investigations affecting Booking.com and Google[30].

The **Swiss Competition Commission (COMCO)** provided updates on two cases where the Federal Administrative Court (FAC) upheld COMCO's decision, even if the case is pending before Federal Court (FC):

- Sports in Pay-TV (Date agency decision: May 9, 2016).
- Ice Hockey in Pay-TV (Date agency decision: September 7, 2020).

Thailand's competition authority reports five cases (the first four not constituting an offense):

- Business operators providing food pickup and delivery platforms set trade conditions that unfairly limit the rights of restaurants.
- E-commerce business operators blocking a seller own fleet.
- E-commerce business removing the shower cream product from the system.
- E-commerce business operators unfairly increasing service fees.
- E-commerce business operators forcing to return products in violation of the refund and return policy. The claimant was allowed to conduct business on the platform as usual and received compensation. This case was finally terminated.

The **Turkish Competition Authority (TCA)** reports having concluded seven different cases on digital platforms in the reference period. Also, at the time of the survey they had six ongoing investigations[31].

- In its decision of 7 April 2022 in **case 22-16/273-122**, the TCA fined **Nadirkitap** for abusing its dominant position to exclude competitors. The practice sanctioned was linked to the data collected by the platform from sellers. The company claimed they could not share this data to competing platforms at the customer's request, but the TCA stated that the data Nadirkitap held could not benefit from copyright protection owing to the lack of originality in its creation. Nadirkitap is a leading Turkish e-

[28] Spain also reports some cases applying unfair competition
https://www.cnmc.es/expedientes/s004319
https://www.cnmc.es/expedientes/s005319
[29] https://www.cnmc.es/expedientes/s002620
[30] https://www.cnmc.es/expedientes/s001322
https://www.cnmc.es/expedientes/s000521
[31] Google Widgets Case, Google AdTech Case, Threads Case, e-Commerce Platforms Algorithm Case, Çiçeksepeti Case and Yemek Sepeti Case.

commerce platform focused on antiquarian and collectible books for bibliophiles and independent booksellers. The TCA stated that the company was creating barriers to data transfer from clients to other rival platforms, thus obstructing sellers from working with competitors.

- **WhatsApp case 22-48/706-299**[32]
- **Case 23-11/177-54 Trendyol Dolap**: the investigation focused on whether Trendyol abused its dominant position in e-commerce platform services to favor goods sold under the brand "Dolap", a subsidiary of Trendyol, thereby potentially hindering competition in the online second-hand goods market. Trendyol proposed a series of commitments, which the TCA accepted, thereby concluding the investigation without imposing fines.
- **Case 23-33/633-213 Trendyol (2):** the TCA found that Trendyol had abused its dominant position in the multi-category e-marketplace sector by manipulating its algorithms to favor its own private label products and by misusing data from third-party sellers to gain a competitive advantage. These practices limited competition and harmed rival sellers. The TCA imposed an administrative fine and ordered Trendyol to cease algorithmic self-preferencing, stop using third-party data for its retail operations, implement internal data barriers, and keep records of algorithm changes and data access.
- **Case 23-39/754-263 Sabihinden.com:** the company abused its dominant position in real estate and vehicle sales/rental platform services by impeding the portability and transfer of data from business users to alternative and competing platforms. Through this conduct, the company effectively imposed a de facto exclusivity relationship on its users, which was further reinforced by the inclusion of non-compete clauses in its contracts.
- **Case 23-31/604-204 Sabihinden.com (2):** an analysis of alleged abuse of dominant position through excessive pricing was also conducted regarding this company, but after carrying out the Economic Evaluation Test and making a survey to different user groups of the platform, it was considered that there was not an infringement and the case was closed.
- **Case 23-55/1076-380 Storytel:** the TCA launched an investigation to determine whether Storytel had abused its dominant position on the audiobook market entering into exclusivity agreements with suppliers of its platform (publishers/ right holders).

[32] The full text of the decision issued by the TCA Competition Board in this case is available in English at the following link:
https://www.rekabet.gov.tr/Dosya/meta-gerekceli-karar-en-20240325112837997.pdf

The case was terminated after acceptance of commitments proposed by the undertaking to solve the concerns identified.

The **General Authority for Competition of the Kingdom of Saudi Arabia** reports not having concluded yet any case on the digital sector but the authority states that it is currently investigating potential anticompetitive conduct in relation to the digital sector, although no further details can be disclosed at this stage.

2.2. General trends

While a growing number of jurisdictions have gained experience in assessing potentially abusive behavior by digital platforms, a notable group of agencies — particularly among younger or smaller authorities — reported that they have never concluded a unilateral conduct case involving digital markets, even beyond the current reference period. In most cases, these agencies cited structural or institutional reasons, including limited market activity by global digital platforms in their jurisdictions, lack of internal capacity (especially technical and economic expertise), or procedural and legal limitations in pursuing abuse of dominance cases. Some agencies also noted that while they have not concluded cases, they are monitoring digital markets or have opened preliminary investigations or market studies, which may lead to future enforcement action.

Among the agencies that have conducted enforcement, the intensity and focus of the cases vary considerably. The most active agencies among the respondents to the survey — such as those in India, the European Union, Brazil, and Japan — reported multiple decisions or proceedings during the period. Several of these cases have targeted some of the most prominent global digital platforms, including Google, Apple, and Meta, and have addressed conduct in app stores, search advertising, online travel and accommodation services, and mobile operating systems. These cases are typically high-profile, complex, and often result in significant sanctions or forward-looking remedies.

Other agencies reported more targeted or narrower enforcement activity, involving regional or national digital intermediaries, such as online discount platforms and local marketplaces, focusing on contractual exclusivity, self-preferencing, or restrictions on multihoming. While these cases may not involve dominant global players, they demonstrate the increasing relevance of digital platform behavior even in mid-sized or emerging digital economies.

Importantly, several agencies reported having ongoing investigations or sectoral inquiries into digital markets, even if no final decision had been made by the time of the

survey. This includes authorities in **Mexico, Switzerland**, **Thailand**, **France**[33] and **Chile**, among others. These efforts reflect a growing global consensus that competition issues in digital markets deserve priority and attention. **France** also points out that the challenges of the digital economy is one of their main priorities according to its Roadmap for 2024-2025. The French authority emphasizes that big platforms are usually players that have a significant market power that can be leveraged to abuse their dominant position, although they do not have a particular focus on any specific type of unilateral conduct[34].

Across jurisdictions, certain sectors consistently appear as enforcement priorities. App store ecosystems, online travel agencies (OTAs), digital advertising platforms, and general e-commerce marketplaces were among the most cited areas of concern. These sectors tend to combine characteristics such as strong indirect network effects, control over access or visibility, vertical integration, and gatekeeper power, making them ripe for unilateral conduct scrutiny. At the same time, a number of agencies flagged payments, food delivery, and logistics as emerging areas where platform conduct is beginning to raise competitive concerns.

Overall, the survey results suggest that while enforcement activity in digital markets is becoming more widespread, it is still highly uneven, with a few authorities leading efforts and others in the early stages of engagement. However, even among less experienced jurisdictions, there is a growing awareness of the risks posed by unilateral conduct in digital sectors and a clear willingness to learn from compared case law, best practices, and peer experiences.

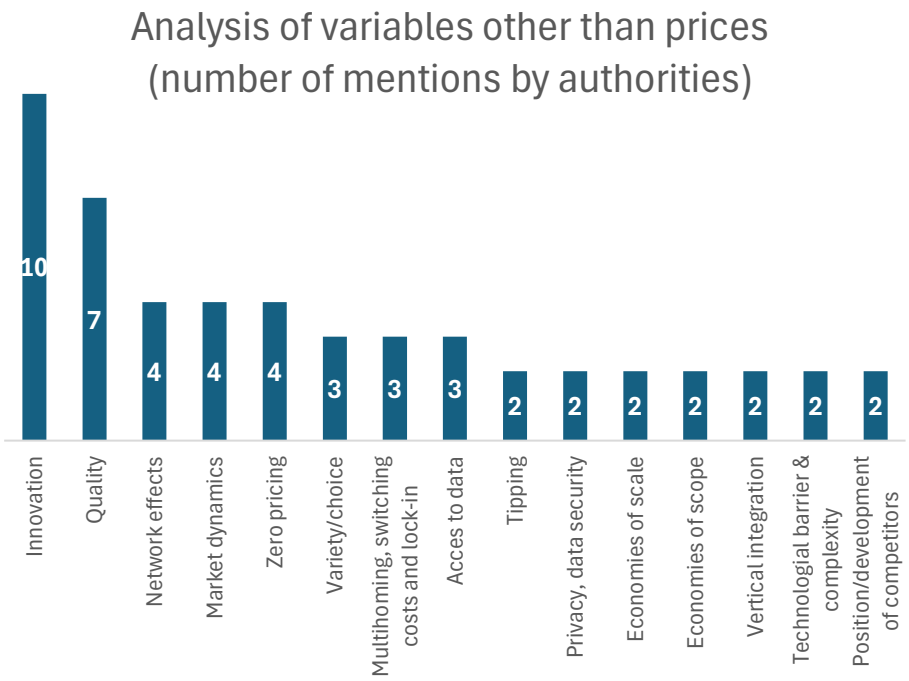
2.3. Relevant factors for the competitive assessment

This report is focused on theories of harm and remedies, following the mandate of the previous report where some ICN members requested a dedicated report. Before moving to the analysis of the specific theories of harm it is advisable to reflect on some specificities of the competitive assessment.

Digital markets may be inherently more complex than other markets. According to most ICN authorities active in enforcement in digital markets (at least among the subset that responded to the questionnaire), the competitive assessment implies analyzing variables

[33] Specifically, they refer to a recent study on Generative AI of June 2024. A press release with further details can be accessed here.
[34] The French authority's recent decisional practice is tilted towards analyzing more exploitative conduct on digital markets which the French authority also regards as worrying.

other than price. Especially, innovation and quality[35] but also other factors[36] related to network effects, market dynamics and zero pricing in general[37].



This complexity of business models also implies that the competitive assessment may be based on metrics other than revenue/prices. Authorities mention especially that they factor in the number of users[38], the number of visits[39] (and website traffic and its sources), visits or transactions, among others[40].

[35] Quality can be measured differently depending on the sector (e.g., the European Commission emphasizes convenience and speed in payments).

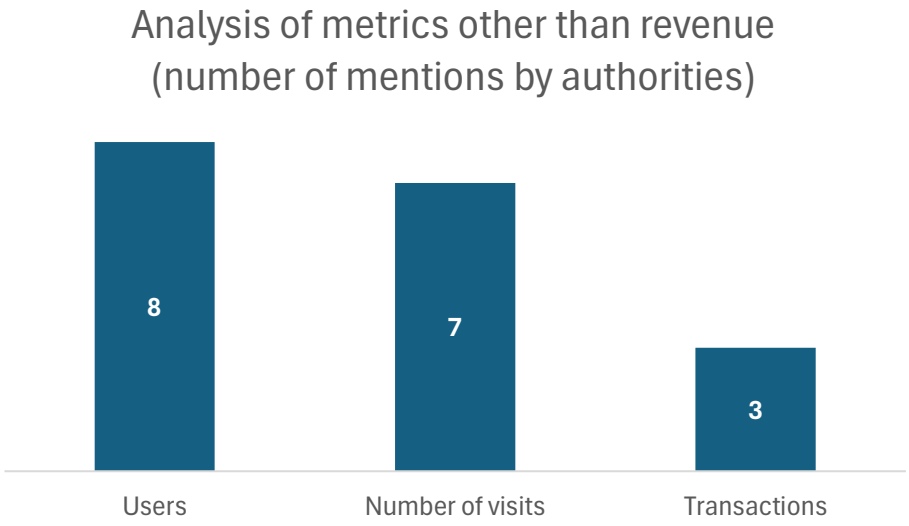
[36] Factors have been grouped in consistent categories. For instance, tipping also reflects concerns with first-mover advantages, winner-takes-most and critical mass of users. Variety/choice also reflect the degree of development of competitors.

[37] Other factors (mentioned by fewer than 2 authorities) include brand perception, business models, payment systems, information for consumers, dominant position in more than one market, financial strength, relevance of its activities for third party access, extent of market position and consumer bias.

[38] Users can be final users (consumers) or business users (e.g., retailers or partnered restaurants or even delivery staff in online food delivery). Users may be refined, and differentiate the total userbase or registered users from active users.

[39] Visits may be refined and may take only unique visitors into account.

[40] Other factors (mentioned by fewer than 2 authorities) include devices, multi-homing, apps, number of products on sale, click-through rates, heat maps, visibility rates, and the breadth of the delivery area.



Some authorities[41] emphasize that the focus on these variables/metrics is anyway a case-by-case issue. And only a few[42] point out that they are paying more and more attention to these variables the more experience they accumulate.

2.4. Institutional settings

Other issues may affect enforcement in digital markets, for instance, to what extent there is a competition framework specific for the digital sector. In this regard all competition authorities that responded to the questionnaire confirm that the application of competition law is horizontal. Sweden and Spain that digital sector is a priority of the authority, but the application of competition law as such is horizontal.

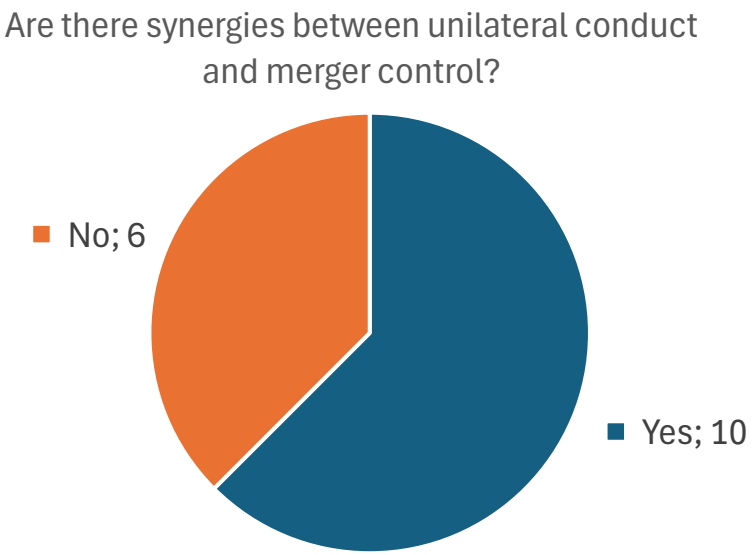
The Swedish Competition Authority acknowledges that digitalization also entails new market structures and new competition problems that require enforcement, including the emergence of dominant digital platform companies. However, there is no sector-specific tool in national competition legislation addressing unilateral conduct by undertakings operating in digital markets

Germany refers to Section 19a (see section 2.1 above), that has enabled the authority to engage with complex digital conduct more holistically, reducing reliance on market definitions in the dynamic area of digital ecosystems and shifting the burden of proof to the norm addressee to justify its practices. Judicial review is centralized at Germany's highest court, further enhancing legal clarity and enforcement speed.

[41] Brazil, Canada, Ecuador, European Commission, India, Italy, Mexico.
[42] Brazil, European Commission, India, Turkey.

Germany's use of Section 19a GWB demonstrates an institutional innovation in digital competition policy, combining early intervention with a structural understanding of ecosystem power. It represents a leading example of modern abuse control tailored to the realities of digital economy.

Another issue which may be relevant from the institutional setting point of view is the potential synergies between merger control and unilateral conduct enforcement. The opinions on these are mixed. Most authorities consider that there are synergies between merger control[43].



Finally, cooperation with regulators may be also relevant in digital cases. However, most authorities have stated that they have not had any specific cooperation with regulators. Among the ones that have cooperated with regulators, the data protection authority is the regulator with which the contact is more frequent[44] given the scope of the cases.

France AdIC specifically refers to data protection and competition issues as two areas intrinsically linked. As an example, in the Apple «ATT» case[45], the Autorité within the context of its investigations solicited the observations of the French data protection

[43] Brazil, Spain and Serbia are very vocal in this regard, quoting specific cases where takeaways from merger control have been used in a unilateral conduct case.
Some authorities mention that the synergies between merger control and unilateral conduct only affect market definition, but not the definition of theories of harm. Since the questionnaire and this report are devoted to theories of harm (and remedies), these responses have been counted on the side of the "no".

[44] Mentioned by Brazil, Germany, Poland, Sweden, France and Turkey. Sweden and the European Commission also mentioned the cooperation with financial regulators in a specific case. Finally, Germany mentions cooperation with the European Commission as the sole enforcer of the DMA (digital regulation).

[45] https://www.autoritedelaconcurrence.fr/en/communiques-de-presse/targeted-advertising-apples-implementation-att-framework-autorite-does-not

agency (the CNIL) on the issues likely to be raised by the practices reported in the complaint in terms of personal data protection, in order to be able to appropriately assess the practices at stake while taking into account the legitimate objectives of privacy protection.

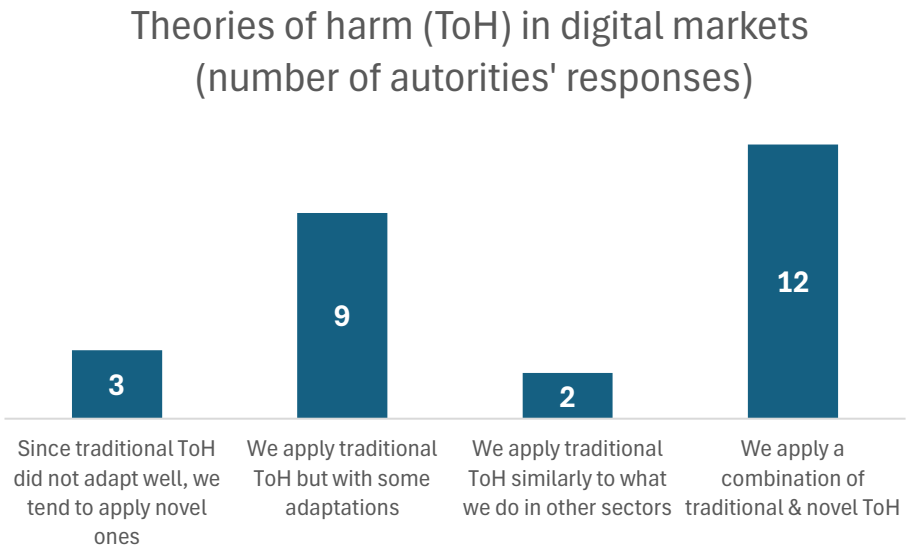
3. Theories of harm

In the survey the agencies were requested to provide detailed information about cases that have been concluded in their jurisdiction concerning unilateral conduct practices on the digital markets between November 2021 to the date of circulation of the questionnaire (25th March 2024). For the UCWG it is particularly interesting delving into the theories of harm that have been applied to each of these cases. It must be noted that several jurisdictions that responded to the survey stated that they did not register an enforcement activity in this domain in the reference period. Meanwhile, other authorities have been very active and strive to intensify their enforcement efforts targeting unilateral conduct practices on the digital markets, and notably they included the fight against unilateral conduct practices in this sector as an enforcement priority in their recent action plans.

This second UCWG questionnaire on unilateral conduct cases in digital markets, especially devoted to theories of harm and remedies, revealed a diverse set of enforcement experiences. While traditional theories such as tying and refusal to deal remain relevant, many authorities have adopted these frameworks — or developed new ones — to address the complex, ever-changing, and dynamic nature of digital markets.

This section provides an analysis of how responding agencies have applied these theories of harm in practice to cases concluded during the relevant study period. It highlights common patterns (without paying scant attention to individual country experiences to get best practices) and the evolving toolkit used to tackle conduct in digital markets.

The questionnaire (see Annex) included a question on to what extent the authorities apply traditional or novel theories of harm, including in adaptation or in combination. The responses are mixed but mostly reflect the need to combine traditional and novel theories of harm, or at least the need to adapt traditional ones.



This table reports a potential taxonomy between novel and traditional theories of harm, although countries' views[46] on to what extent a theory is novel or traditional is not homogenous and may rather be a semantic issue with no relevant impact[47].

	Novel	Traditional
Self-preferencing	Brazil, Hungary, India, México, Poland, Türkiye	Italy[48]

[46] Japan's JFTC reminds that when the investigation is closed with commitments, the theory of harm described does not necessarily represent the JFTC's definitive position on the case.

[47] Germany does not provide an individual explanation for the theory of harm on each case but considers examples of new theories of harm: self-preferencing, envelopment and denial of interoperability (even if admitting that these theories of harm could possibly have been addressed solely via traditional abuse control, too). It adds that with Section 19a GWB it is possible to take into account the dynamics of digital ecosystems.
Spain does not provide explanation for the theory of harm on cases which are ongoing or on cases related to unfair competition (since this is a domestic law, which may not necessarily adapt to the common wording of unilateral conduct).

[48] Italy considers that its cases on Amazon and Apple rely on traditional theories of harm but with some adaptations, self-preferencing viewed as tying and discrimination to leveraging market power.

	Novel	Traditional
General exclusionary strategies (foreclosure, exclusivity, refusal to supply, predatory pricing, margin squeeze, barriers to switching etc.), including data related theories (access to data or data combination)	Brazil, Canada[49], Mexico, Sweden[50], Türkiye[51]	Canada[52], European Commission, Hungary, Italy[53], Slovakia, Serbia, Spain Sweden[54], Türkiye[55]
MFN	Chile[56]	Chile[57], Brazil, Slovakia, Japan
Leveraging	Türkiye	Hungary, Poland
Unfair access conditions	Sweden, France	
Exploitative conduct related to data	Brazil	
Circumvention of the law	France	

[49] Canada considers that its case on Turo (where it assessed exclusivity clauses) reflect a novel theory of harm because it was a two-sided platform where the conduct heightened barriers to entry in a nascent digital market.

[50] Sweden considers the theory of margin squeeze in its Euroclear case to be novel since due to regulatory rules it was the customer, and not the seller, who bought the upstream input product that the seller needed to produce the downstream end product. The customer made the input product available to the seller. The case was closed without a finding of an infringement.

[51] Turkey has considered a novel theory of harm when denying the access to data (Nadirkitap case), carrying out data combination (Meta cases on Facebook-whatsapp and Threads), denying data interoperability (Sahibinden).

[52] Canada considers that its case on FBN (where it assessed a potential refusal to supply to a digital platform) was mostly related to traditional theories of harm (FBN was a vigorous competitor, increasing competition, innovation and choice).

[53] Italy considers that its case on relies on traditional theories of harm but with some adaptations, limitation to interoperability deem essential data portability and to compete in other markets.

[54] Sweden considers the theory of refusal to supply in its case Euroclear as traditional, but stresses that this part of the case was closed early and never fully investigated.

[55] Turkey considers a traditional theory of harm in it is Storytel case regarding exclusivities.

[56] Chile considers that MFNs are partially traditional theories of harm (reduction in price competition and in inter and intra-brand competition) but also novel ones (discouraging the entry of new platform rivals, since a low-cost strategy is not profitable).

[57] Chile considers that MFNs are partially traditional theories of harm (reduction in price competition and in inter and intra-brand competition) but also novel ones (discouraging the entry of new platform rivals, since a low-cost strategy is not profitable).

	Novel	Traditional
Other exploitative conduct (imposing unfair trading conditions)	European Commission[58], France	European Commission[59], Japan, Poland

3.1. Self-preferencing

One of the most prominent enforcement themes emerging from the responses is the concern over dominant firms leveraging power in one market to benefit another within their ecosystem. This has often taken the form of **self-preferencing** — where platforms give preferential treatment to their own downstream services — or through strategic tying and restrictions on interoperability.

Brazil's CADE puts a lot of emphasis on self-preferencing mentioning that:

- It has applied this theory of harm to an investigation on Google, following a complaint by Yelp. The complaint claimed that Google allegedly deviated users of rival local search services by displaying a box with thematic local results (OneBox) in the first page of Google's search results. The case was finally dismissed[60].
- There is an on-going case where this theory of harm of self-preferencing is being considered: Administrative Investigation 08700.001797/2022-09 (ABBT X iFood),
- There was a case where this theory of harm of self-preferencing was considered, even if the case was closed before November 2021: Administrative Proceeding 08012.010483/2011-94 (Google Shopping).

Similarly, the **European Commission's** Google Shopping case was founded on self-preferencing as a theory of harm. In that case, Google was found to favor its own comparison-shopping service in general search results while demoting competitors, using its dominance in general search to foreclose access to visibility — a critical input in digital markets. The case underscored the importance of visibility, default positioning,

[58] The European Commission considers that the imposition of unfair conditions by Apple on music streaming developers was both novel and traditional AT.40437 – Apple App Store Practices (music streaming.

[59] The European Commission considers that the imposition of unfair conditions by Apple on music streaming developers was both novel and traditional AT.40437 – Apple App Store Practices (music streaming.

[60] https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?HJ7F4wnIPj2Y8B7Bj80h1lskjh7ohC8yMfhLoDBLddbW31lCUsV_mVgW4AgoUx-ZYPaneVQjL6RM9RwAykRSyzcUPimSirQndly8MpFjK0O1kBGFQjf3FhhRpEUqp1Ju

and interface design as tools for exclusion, with substantial consequences for traffic and revenue of rivals. The Court of Justice of the European Union upheld the Google Shopping decision on 10 September 2024.

Regarding the investigation into Amazon (AT.40703), the Commission was concerned that Amazon's selection mechanism for the Buy Box as well as for Prime eligibility and label, favored offers of Amazon Retail and/or of seller's using Amazon's fulfilment services (FBA) to the detriment of (other) third-party sellers.

Hungary, in its case Vj/24/2021, is analyzing if Google is prioritizing its own lyrics display service over competing providers.

The **Competition Commission of India (CCI)** investigated Google in several landmark cases involving its Android mobile ecosystem and app store billing practices. In a combined proceeding concerning the mandatory use of the Google Play Billing System (GPBS), the CCI found that Google imposed unfair and discriminatory conditions on app developers. The authority concluded that the requirement to use GPBS — while allowing its own apps (e.g., YouTube) to bypass this — amounted to both discriminatory treatment and leveraging of dominance in the market for licensable mobile operating systems to gain an unfair advantage in payment processing services. The practice was also considered to limit technical development, a theory of harm that rarely appears outside digital markets but becomes crucial when innovation and feature diversity are at stake.

Italy considers its cases on Amazon (A528 FBA/Amazon, closed with infringement) and on Apple (A561 - App Tracking Transparency Apple, ongoing) cases on self-preferencing, applying a traditional theory of harm with some adaptations.

Mexico (in a framework of investigative opinion) explores three theories on harm regarding marketplaces (Amazon and Mercado Libre): loyalty programs, lack of transparency (the first two analyzed below) and self-preferencing to their own logistics solution, not giving full freedom to sellers to select the logistics company that best suits them by not allowing the interconnection of their API ("Application Programming Interface"). Furthermore, these platforms favor seller users who also hire the storage, packaging and shipping services by offering them labels such as "Prime", or "Full", which gives them greater visibility, greater possibilities to win the Buy Box and the possibility to participate in exclusive promotions (self-preferencing promotion). This generates a concentration of sellers by generating single-homing, increasing switching costs and entry costs for new market participants.

Poland, in it is investigation of the marketplace Allegro considers a theory of harm where the fact that Allegro takes advantage of its position as a marketplace to boost its sales

as retailer is some form of self-preferencing, similar to the EC's amazon marketplace case.

Türkiye has a case on Trendyol (a multi-category online marketplace platform in which Alibaba is the majority shareholder), where it determined that:

- It utilized consumer data it possesses on the marketplace to favor the Dolap service in the online second-hand product sales market.
- It gained a competitive advantage for the Dolap service against its competitors by featuring it in the Trendyol mobile application.
- It employed a customization of results tailored to individual user preferences which was found to have been unjustly manipulated by Trendyol, with the intent of gaining an advantage in its retail endeavors.
- It was observed that data sourced from third-party sellers within the market was utilized, resulting in actions deemed damaging to its competitors.

These cases on self-preferencing share a unifying economic rationale: the use of non-price advantages (search ranking, pre-installation, integration) by a dominant firm to distort competition in vertically related markets. This form of conduct challenges traditional abuse frameworks, which often focus on price effects or input foreclosure, and aligns more closely with recent OECD and academic work on ecosystem-based exclusion.

Anti-steering practices, where dominant platforms restrict the ability of business users to inform consumers about alternative purchasing options can, in certain cases, amount to self-preferencing conducts. These practices are particularly relevant in app store environments, where users interact primarily through controlled interfaces.

In its extensive investigation into Google, the CCI identified anti-steering as a distinct theory of harm, closely linked to consumer behavior and information asymmetry. Developers were prevented from advertising lower-priced or alternative payment options within their apps. This conduct was found to obstruct price transparency, raise user switching costs, and deepen the dependence of developers on the dominant gatekeeper. The anti-steering restriction was analyzed as both standalone abuse and as a practice reinforcing Google's dominance across multiple digital markets.

This approach aligns with growing recognition that control over communication channels can itself become a form of exclusion.

3.2. Exclusivities and foreclosure

Brazil mentions the relevance of foreclosure in

- Administrative Investigation 08700.004136/2020-65 (Gympass), where it was analyzed whether Gympass, a gym aggregator platform, was abusing its dominant position through exclusivity clauses it imposed in its contracts with affiliated gyms (most favored nation clauses are analyzed below). This could elevate barriers to entry, increasing rivals costs.
- Administrative Investigation 08700.004588/2020-47 (Rappi X iFood) where it was analyzed whether iFood was abusing its dominant position in the food delivery platform market by entering into exclusivity dealing arrangements with restaurants and supermarkets. This prevented restaurants and supermarkets from registering with competing food delivery providers, thereby allegedly restricting competition through market foreclosure and increased barriers to entry and rivals costs.
- Administrative Proceeding 08700.004201/2018-38 (GuiaBolso) where it was analyzed whether Bradesco was abusing its dominant position as the bank refused to give GuiaBolso access to data and posed obstacles to data portability and interoperability. Brazil's CADE emphasizes that the theory of harm of foreclosure is "traditional", but that in this case the analysis of specificities of digital markets (multi-sided platforms, network effects, discrimination in data access, interoperability, innovation, etc.) provide some novelty to a "traditional" theory of harm (as analyzed above). In this case it was also analyzed whether Bradesco was abusing its dominant position as the bank refused to give GuiaBolso (a fintech company) access to data and posed obstacles to data portability and interoperability. Brazil's CADE emphasizes that the theory of harm of foreclosure is "traditional", but that in this case the analysis of specificities of digital markets (multi-sided platforms, network effects, discrimination in data access, interoperability, innovation, etc.) provide some novelty to a "traditional" theory of harm (as analyzed below).

Canada considers:

- Its analysis of exclusivity clauses in its case on the Turo P2P car-sharing platform a novel theory of harm.
- More traditional theories of harm in its FBN crop online platform case, where the impact on the platform on price competition, price transparency, choice and innovation was analyzed.

The European Commission has explored traditional theories of harm in the following cases:

- AT.40452 Apple – Mobile payments. While the qualification of the theory of harm was left open, the Commission preliminarily concluded that Apple's refusal to grant access to the NFC Input on iPhones to competing providers of NFC wallets could constitute an abusive refusal to deal on the NFC input market or the market for NFC wallets on iPhones. This input is indispensable for NFC payment applications on iPhones and the refusal did not appear objectively justified. In the alternative, the Commission preliminarily concluded that regardless of the existence of a separate NFC input market, Apple engaged in an abusive practice of refusing to deal by reserving the after-market for NFC (in-store) mobile wallets on iPhones to itself.
- AT.40735 – Online rail ticket distribution in Spain. Even if the qualification of the theory of harm was left open, the evidence gathered showed that Renfe had either refused to make available to Third-party Ticketing Platforms all the Content and real time data that Renfe displays on Renfe's own digital channels or unduly delayed access following the Third-party Ticketing Platforms' request.
- Moreover in AT.40462 – Amazon Marketplace, the Commission preliminarily found that the use by Amazon of non-public third-party seller data led to a systematic relative advantage for Amazon Retail compared to third-party sellers in terms of decisions related to entry, pricing, inventory management and selection of suppliers. This, led to an increased risk of loss of transactions and revenue for third-party sellers.

Hungary, in its case Vj/35/2021, is analyzing if Adevinta is offering discounted packages with exclusivity requirements and degrading interoperability.

Italy considers its case on Google (A552 Google/Obstacles to data comparability closed with commitments) a degradation of interoperability, applying a traditional theory of harm with some adaptations.

Mexico (in a framework of investigative opinion) explores three theories on harm regarding marketplaces (Amazon and Mercado Libre): self-preferencing (analyzed above) and:

- Artificial implementation of additional services as part of loyalty programs in a bundle that includes free deliveries or other related services, but also includes other unrelated services such as streaming, video games, among others. These loyalty programs cause rigidity or loyalty in users (sellers and buyers), creating higher costs for new entrants to increase their userbase.
- Lack of transparency, e.g., not publishing information about the variables included in the Buy Box, which selects "the best offer" available for a certain good and is the main spot to generate sales on the platforms. It hinders competition between sellers since

information asymmetries prevent them from adjusting commercial strategies to win the Buy Box. Also, it creates uncertainty for them, since the lack of transparency does not allow them to know if there is any advantage for the platform's own sales.

In **Slovakia** the authority investigated a digital platform that imposed exclusivity on retailers participating in a discount scheme. The core concern was that exclusivity limited multihoming, a typical behavior in digital commerce that fosters competition across platforms. The AMO applied a classical theory of input foreclosure, adapted to a digital context where user access and participation become the essential input, rather than raw materials or traditional goods.

Spain applied the theory of harm of exclusivities to its closed investigation on food delivery platforms.

In **Sweden**, there were two cases dealing with these theories of harm:

- In the case Euroclear, a company that produces financial analytical services complained that the central securities depository, which has unique access to Swedish shareholder registries, was, by changing the terms of access to the data, hindering the company from obtaining shareholder registries. These registries, the complaint argued, were crucial as an input in the complainant's products. The investigation looked into suspicions of refusal to supply, margin squeeze and/or unfair trading conditions. During the investigation, the central securities depository made certain changes to its access conditions and pricing, leading to the SCA closing its investigation without a finding of an infringement in December 2023. The SCA subsequently wrote to the government proposing that a change in the regulatory framework should be considered to oblige central securities depositories to provide public registers of shareholders digitally, since this would make it easier for market actors who wish to use the data.
- The SCA investigated conduct by the main stock exchange in Sweden, Nasdaq, which had announced it would offer trading of shares in undertakings listed on a competing SME growth market without the explicit consent of the issuer. The theory of harm explored during the investigation was whether trades in the shares concerned would, due to Nasdaq's size and scale, move to Nasdaq, which, due to indirect network effects, would weaken and foreclose the competitor. Further, the SCA investigated whether, by making the shares available for trade without issuer consent, Nasdaq could ultimately circumvent competition for the issuers. The SCA preliminary considered that the conduct was in conflict with the purpose of EU sectoral regulation. The SCA adopted an interim decision in June 2022, ordering the undertaking not to

offer trading of shares in undertakings listed on the competing growth market if the undertakings had not consented thereto. The investigation against the stock exchange was closed in October 2022, after it had announced that it would not offer shares in companies listed on the competing growth market without the issuers' explicit consent.

Türkiye has been very active in this front:

- In the Nadirkitap case it was found that the online platform for selling second-hand books Nadirkitap was refusing to provide the data of sellers who wanted to market their products through competing intermediary service providers, thereby hindering the activities of competitors in the second-hand book sales sector. It was alleged that Nadirkitap's rejection of its sellers' requests for access to and portability of the book data they uploaded to Nadirkitap was not justifiable, and that sellers who transferred data on Nadirkitap's platform to competing platforms without Nadirkitap's approval through other means had their Nadirkitap memberships suspended, and their memberships were not reactivated until the data was removed from competitor platforms[61].
- A similar practice was sanctioned in the Sahibinden.com case, where the Turkish Competition Authority found that the platform restricted the ability of its corporate members—such as real estate agencies and vehicle dealers—to access and transfer their own listing data. Sahibinden hindered data portability by preventing the automated extraction of data uploaded by these users, thereby limiting their ability to simultaneously use competing platforms. This conduct was found to raise switching costs and reinforce user dependency, ultimately reducing multi-homing and weakening competitive pressure in the relevant markets for online real estate and vehicle listings. In both cases, the authority identified a theory of harm based on the restriction of data portability and interoperability, which in turn limited user autonomy and excluded competitors, reinforcing the dominant position of the platform and leading to market foreclosure effects. These decisions highlight the increasing focus on data access as a critical dimension in abuse of dominance assessments in digital markets.
- The **Turkish Competition Authority** concluded the first case of its kind concerning a data combining strategy in digital markets in the Whatsapp case. The authority sanctioned Meta Platforms Inc. (formerly Facebook), including its subsidiaries WhatsApp LLC and Meta Platforms Ireland Ltd., for abusing its dominant position in

[61] https://globalcompetitionreview.com/guide/data-antitrust-guide/second-edition/article/turkiye-data-commoditisation-warrants-updated-regulatory-framework

the markets for personal social networking services, consumer communication services, and online display advertising. The authority found that Meta engaged in unlawful data combination practices by systematically merging user data across its core services – Facebook, Instagram, WhatsApp, and Messenger – since at least 2016. This extensive integration allowed Meta to construct highly granular user profiles, significantly strengthening its position in digital advertising by making its platforms more attractive to advertisers. The practice not only distorted competition by hindering activities of rivals and increasing barriers to entry but also forced WhatsApp users in Türkiye to accept data sharing with Facebook companies as a condition for continued service. Extracting data from a large user base in all of its applications and pooling them to create profiles with large datasets that can be processed is enhancing Meta's data advantage and therefore it is exacerbating the barriers to entry in the market, making it an indispensable partner for advertisers.

- There was also an investigation into data combination that may occur between Threads and META, which may have resulted in the creation/increase of barriers to entry. In addition, this conduct may raise exclusionary competition law concerns such as the leverage/tying effect, as well as concerns such as preventing consumers from making free choices.
- Finally, while the previous cases conducted by the Turkish Competition Authority were considered to perform novel theories of harm in the assessment of the practice, the Turkish Competition Authority also reported the Storytel case in which they applied a traditional theory of harm of exclusivity. The investigation focused on whether the contracts concluded with publishers and right holders in the online audiobook streaming services market included exclusivity clauses that effectively tied them to the platform, thereby preventing the entry and expansion of rival operators. The case concluded with the acceptance of commitments by the company which undertook to modify its contracts in order to eliminate such exclusivity.

Due to the focus of the report, it is worth noting that access to data is a relevant aspect of digital markets, since data is a critical input for the development of digital platforms and for making revenue by optimizing the content generated on the platform and through targeted-advertising. Some of the authorities refer to Apple's ATT as a self-preferencing issue, hence it has been analyzed above. And in this subsection we have seen cases by Brazil (GuiaBolso-Bradesco), the European Commission (AT.40735 – Online rail ticket distribution in Spain) and Türkiye (access to data in the Nadirkitap case, data combination in Meta cases on Facebook-whatsapp and Threads, and denying data interoperability on the Sahibinden case).

3.3. MFNs

Several agencies also reported enforcement against contractual restrictions — such as **most-favored-nation (MFN) clauses**, exclusive dealing, and price parity agreements — that were found to limit the ability of rivals to compete or scale effectively.

Brazil's CADE (in the abovementioned Administrative Investigation 08700.004136/2020-65 on the exclusivity clauses and MFNs imposed by the gym aggregator platform Gympass on gyms) and other agencies similarly assessed the anticompetitive impact of MFNs and platform parity clauses. While such clauses may promote price consistency, agencies emphasized their potential to limit inter-platform competition — particularly when adopted by platforms with strong network effects or large user bases. Theories of harm in these cases typically referred to soft foreclosure, raising rivals' costs, and inhibiting price competition, even where market shares were not overwhelming.

In Slovakia, the authority investigated a digital platform that, apart from the abovementioned exclusivity, also imposed MFNs on retailers.

In **Japan**, **the JFTC** analyzed MFNs in cases affecting Booking and Expedia but also Uniquest (an online funeral service platform).

Chile's FNE (in its Food delivery Platform case, 2653-24) analyzes MFNs, regarding not only traditional theories of harm (reduction in price competition and in inter and intra-brand competition) but also novel ones (discouraging the entry of new platform rivals, since a low-cost strategy is not profitable).

In each of these cases, the novelty lies not in the legal doctrine applied, but in its target and economic rationale: these are restrictions that limit the platform's partners' ability to participate in rival ecosystems — a particularly damaging strategy in multisided markets.

3.4. Leveraging

Hungary, in its case Vj/24/2021, is analysing if Google is Leveraging market power from the general online search market to the online lyrics display market.

Poland, in it is investigation of the marketplace Allegro considers that it leverages its dominant position on the downstream market, on which its own retail unit competes with other undertakings, which make use of Allegro's marketplace services.

Türkiye has a case on Trendyol (a multi-category online marketplace platform in which Alibaba is the majority shareholder), where it determined that it leveraged its financial power in the multi-category e-commerce marketplace to exclude competitors through

cross-subsidization in the platform service market for online second-hand product sales[62].

3.5. Unfair access conditions

The **Swedish Competition Authority** investigated Storytel for an alleged possible abuse of dominant position that was ultimately closed without a finding of an infringement. When the authority closed its investigation, it noted that Storytel had adjusted its behavior and initiated negotiations with the claimant company (a competitor in the audiobook streaming services market). The investigation centered on allegations that Storytel imposed unfair contractual terms, especially a minimum guarantee payment for access to its catalog that was deemed to be unreasonable by the claimant. The investigation revealed that while minimum guarantees are not necessarily inherently problematic, they may risk have anticompetitive effects depending on factors such as the importance of the catalog, the size of the guarantee relative to the competitor's revenues, and other contractual terms.

France AdIC issued interim measures targeting Meta's activity in the market for independent ad verification since the authority considered that Meta has not defined transparent, objective and non-discriminatory criteria for accessing the viewability and brand safety partnerships and admitted its current partners to the partnerships following an opaque procedure which it initiated itself.

In the case in the online advertising sector brought before **France AdIC** by the online advertising company Criteo, the core allegations concerned Meta's treatment of advertising intermediaries and, in particular, the abrupt withdrawal of key technical functionalities and business partnerships. The complainant argued that Meta had abused its dominant position in the online advertising ecosystem by engaging in exclusionary conduct that undermined Criteo's ability to compete effectively.

Two main theories of harm were identified in the preliminary assessment. First, concerns were raised over the objectivity, transparency, and consistency of Meta's partnership program criteria. Criteo was removed in 2018 from the Facebook Marketing Partner program (now Meta Business Partner), which offers advertising intermediaries benefits such as privileged access to APIs, technical support, and reputational advantages. The authority questioned whether the removal was based on clear, non-discriminatory standards or whether it reflected arbitrary or discriminatory treatment.

[62] The Threads case by the Turkish Competition Authority (see above) may have as well a tying and leveraging angle.

Second, the authority focused on the withdrawal of access to a key API — the “User Level Bidding” interface — which Criteo had used to enhance the effectiveness of its advertising technologies. Meta’s decision to revoke this access, while continuing to provide it selectively to others, raised concerns about unequal treatment and potential foreclosure effects. The lack of clarity surrounding the access criteria for this API suggested the possibility of exclusionary behavior that disadvantaged independent players in favor of Meta’s own advertising services or preferred partners.

Additionally, the authority noted that Meta’s internal sales teams may have engaged in disparaging practices that hindered Criteo’s ability to regain partner status. These behaviors, if confirmed, could further reinforce the exclusionary nature of Meta’s overall strategy.

3.6. Exploitative conducts on the use of data

Brazil´s CADE mentions also investigations related to exploitative use of data as novel theories of harm:

- Administrative Investigation 08700.003498/2019-03 (Google News, ongoing).
- Administrative Proceeding 08700.009082/2013-03 (Google Shopping scraping case, closed before November 2021).

3.7. Other exploitative conducts

The **European Commission** applied an exploitative theory of harm in its case AT.40437 – Apple App Store Practices (music streaming). The Commission concluded that Apple’s anti-steering provisions constituted unfair trading conditions, as Apple imposed these provisions on its trading partners (i.e., music streaming app developers distributing their apps in the App Store), to the detriment of consumers and these conditions were not necessary nor proportionate to the achievement of a legitimate objective

France considers a theory of harm of unfair trading conditions in the case of Google negotiating the remuneration for the use of protected content published by news agencies and publishers. Google would have refused to negotiate and pay for the display of protected press content on Google’s existing services under related rights.

In the case of Google, **France AdIC** also applied a novel theory of harm of circumvention of the law. According to this theory, Google may have abused its dominant position to circumvent the Law on Related Rights, in particular by using the possibility for news agencies and publishers to grant free licenses to systematically impose a principle of non-remuneration for the display of protected content on its services, without any

possibility of negotiation, and by refusing to communicate the necessary information for determining the remuneration.

Japan's JFTC analyzed Rakuten's imposition of some commercial conditions on merchants (resulting from an imbalance in bargaining power), affecting their ability to set freely their policies (e.g., regarding free shipping).

Poland's Apple ATT case may be preliminarily (according to the authority) a case of unfair trading conditions, since the Polish NCA attempts to establish: 1) unilateral character of the rules; 2) the harm created by them; 3) their unnecessary and disproportionate character.

3.8. Other theories of harm

Ecuador's Superintendence of Economic Competition considers in the case of Banred price discrimination in interbank ATM subnetworks, an issue that places some competitors at a disadvantage compared with others.

Japan also considers a case where Scinex Corporation and Smartvalue Co., Ltd. were potentially manipulating contracting public authorities (municipalities, etc.) to use closed source software by distributing draft procurement specifications which excluded providers of open source software.

4. Remedies

4.1. Individual country experiences

This section focuses on the authorities that have referred to specific remedies being implemented beyond a cease-and-desist order/commitment.

The **Turkish Competition Authority** applied behavioral remedies to the cases described in the sections above. The authority argues that while behavioral remedies are harder to monitor and often less effective than structural ones, they better preserve innovative drive and are less intrusive. Apart from that, it is mentioned that the Turkish law[63] foresees that a behavioral remedy always has to be implemented in first place and only if it fails to address the competition concerns, a structural remedy can be considered.

In cases where a theory of harm related to the impediment of data portability[64] was examined, the remedy imposed required the provision of an infrastructure that enabled customers to freely transfer their data to other platforms, should they wish to do so.

In Storytel it was deemed necessary to eliminate the exclusivity clauses under investigation. In this case, a period of 5 years was established for the TCA to re-evaluate the remedy applied in accordance with changing market conditions. The duration of remedies, as emphasized by the TCA, depends on the specific characteristics of each case—particularly in digital markets, where **a one-size-fits-all approach is impractical** due to the diversity of digital goods and services. If a remedy targets user behavior, a longer period may be necessary to observe user responses and adapt accordingly. Conversely, in highly dynamic markets, a shorter remedy duration may be appropriate to reflect rapid changes.

The contribution from the **Swiss competition authority (COMCO)** is particularly interesting. It clarifies that in the Sports on Pay TV case, **COMCO** did not impose any remedies, but only a monetary sanction[65]. This was because the allocation of new broadcasting rights was imminent at the time of the decision, which could potentially alter the company's market dominance situation. They emphasize that corrective measures are only justified to the extent that the dominant position of the company concerned is maintained in time, also in digital markets.

[63] Article 9 of the Law No. 4054 on the Protection of Competition.
[64] Nadirkitap, Trendyol and Sabihinden cases. For reference, please see above about theories of harm and summary of cases.
[65] A fine of around 70 Mio Swiss francs.

The **Mexican Competition Authority (COFECE)** mentioned a preliminary investigation to determine barriers to free competition in the national retail e-commerce market. The Investigative Authority issued a preliminary investigative opinion in which identified certain behaviors in the market that could amount to barriers to competition and proposed measures to the Commission's Board of Commissioners to eliminate those barriers. No final decision had been made at the time of completing the survey by the Board of Commissioners but some of the remedies proposed included:

- Amazon and Mercado Libre were ordered to dissociate streaming and other non-marketplace-related services (e.g., music, games) from their memberships and loyalty programs. While both platforms remain free to offer such services, they must do so independently and charge for them separately from any subscription or loyalty program linked to the marketplace.
- To cease promoting streaming services and other services unrelated to the marketplace on their platforms.
- Amazon and Mercado Libre were ordered to create a dedicated section within its seller portal to inform users of all variables and weighting factors used in the Buy Box selection process. This information must be communicated through all available channels, enabling sellers to adjust their business strategies with full transparency. The portal must also include timely updates on any changes to these variables, as well as on the implementation and functioning of any other tools used to determine the featured offer. To facilitate effective monitoring, both companies were required to publicly announce the corrective measures on their seller portals and provide COFECE's contact details to business users. This ensures transparency and enables users to report any non-compliance directly, hereby enhancing COFECE's ability to detect breaches through those most closely in touch with the activity of the targeted undertakings.
- Amazon and Mercado Libre were required to revise their Buy Box and badge assignment criteria to ensure neutrality in logistics. The use of in-house logistics services can no longer be a factor in determining featured offers or in assigning labels such as 'Prime' or 'Full'. Instead, selection criteria must be based on objective performance indicators—such as delivery speed, geographic coverage, and customer ratings—regardless of the logistics provider. Both platforms must also open access to independent logistics companies via APIs and publish clear service standards, subject to approval by the Commission, to guarantee fair competition in the provision of logistics services.

In the case involving Booking, **the Japan Fair Trade Commission (JFTC)** intervened in response to the company's conduct of introducing MFN (Most-Favored Nation) clauses in its contracts with businesses on the platform. The JFTC approved the Commitment Plan which eliminated the conduct, requiring the company to rescind such clauses from its contracts. Additionally, the company was required to report annually to the JFTC on the implementation of the measures adopted for a period of three years. A substantively identical decision was also issued in the case concerning Expedia, requiring similar commitments from the company. In both the SCINEX Corporation and Smartvalue Co., Ltd. cases[66] (decided on 30 June 2022), the JFTC approved commitment decisions proposed by each company using the commitment procedures to close the case and restore rapidly competition on the markets. The commitment imposed aimed to cease distributing specification-sheet drafts for municipal CMS (*content management systems)* procurements that labeled closed source software as theirs, as "essential" from a security standpoint. Some municipalities with lack of technical knowledge decided to include this as a requirement according to the suggestions of the two companies, but the JFTC considered that even not open-source software may be exposed to security vulnerabilities, hence the distinction was not objectively justified. As a result, suppliers of CMS based on open-source software were effectively prevented from competing to provide web redesign solutions to municipalities. In addition, both firms must submit annual reports to the JFTC on the implementation of these remedies for a three-year period. By securing these commitments, the JFTC aimed to eliminate misleading procurement guidance that could distort competition among CMS vendors and to ensure ongoing compliance through regular monitoring.

In the MMT-Go case (Case Nos. 14 of 2019 and 01 of 2020), **the Competition Commission of India (CCI)** imposed both monetary penalties and behavioral remedies to address the anticompetitive effects arising from the abuse of dominance by MMT-Go in the market for online intermediation services for hotel bookings in India. The Commission found that MMT-Go had imposed price and room availability parity clauses, exclusivity conditions (including the "D-minus" clause), and had entered into a vertical agreement with OYO that resulted in the exclusion of competing hotel chains such as FabHotels and Treebo. These practices limited inter-platform competition, reinforced MMT-Go's dominance, and reduced the bargaining power of hotels. To remedy these effects, the CCI required MMT-Go to modify its agreements by removing the parity and exclusivity clauses, to ensure fair, transparent, and non-discriminatory access to its

[66] Access to press release: https://www.jftc.go.jp/en/pressreleases/yearly-2022/June/220630.html

platform, and to provide clear disclosures about the availability or absence of certain hotel listings.

In the case of Google, the **CCI** issued a cease-and-desist order to Google to refrain from continuing the anti-competitive practices identified and refrain from enforcing the anti-competitive clauses with immediate effect. Additionally, behavioral remedies were also applied. Google was given three months to implement necessary changes in its practices and/ or modify the applicable agreements.

Slovakia closed a case on digital markets with a commitment decision. In Slovakia**, the Antimonopoly Office** concluded a proceeding against the online platform Slevomat.sk, operated by the Czech company Slevomat.cz, concerning possible abuse of dominance in the online discount portal market. The investigation was triggered by complaints alleging that Slevomat imposed exclusivity obligations and wide price parity clauses (MFNs) on its business partners, restricting their ability to offer the same products or services on other platforms or at lower prices.

To address the competition concerns, the authority accepted a set of commitments proposed by the company under a cease-and-desist decision, which included the following:

- A five-year ban on requiring exclusivity from merchants or business partners offering goods or services via Slevomat.sk.
- A five-year ban on wide price parity clauses, i.e., requiring merchants to offer their products/services on Slevomat.sk at prices that are equal to or lower than those on other sales channels, including their own websites or rival platforms.
- A requirement to publish a notice on its website for 12 months informing partners of the removal of exclusivity and price parity conditions.
- An obligation to amend contractual terms and commercial practices to reflect these commitments and to ensure that partners are not penalized for offering their products or services on competing platforms.

These commitments were accepted by the Slovak authority and led to the closure of the investigation without the imposition of a fine. The authority concluded that the commitments effectively removed the identified competition concerns related to abuse of dominance.

The **Superintendence of Economic Competition of Ecuador** mentions that in the case of Banred, apart from the monetary sanction for abusing its dominant position on the relevant market, the authority deemed necessary to request the undertaking to prepare and approve a compliance program in competition. This requirement was intended to

ensure that the company adopts internal measures to prevent the recurrence of similar anticompetitive conduct in the future, particularly in light of its special responsibility as a dominant operator in the market under scrutiny.

The **European Commission – DG COMP** accepted behavioral commitments in the Case AT. 40462 Amazon Marketplace and in the case AT. 40703 Amazon BuyBox[67]. Firstly, Amazon committed to stop using non-public business data obtained through its role as a marketplace operator and—relating to third party seller listings and transactions—to benefit its own retail activities. The remedy addresses concerns about data usage, ensuring that Amazon cannot exploit its dual role to gain an unfair advantage over independent sellers. Secondly, regarding the Buy Box, the remedy addresses concerns of self-preferencing, where Amazon was preliminary found to systematically advantage its own retail offers or those using its logistics services (FBA sellers). To neutralize this effect, Amazon committed to apply non-discriminatory conditions and criteria for the purposes of identifying the featured offer displayed in the Buy Box. Thirdly, when an alternative offer provides clearly differentiated conditions for the same product and is offered by a different seller, Amazon must display a second Buy Box alongside the main offer with the same descriptive information and purchasing experience. Fourthly, Amazon committed to applying non-discriminatory criteria for Prime eligibility as well as, the Prime label regardless of whether the seller is Amazon itself or an independent seller using Amazon's logistics (FBA). Finally, sellers can now freely negotiate with independent carriers, and Amazon is prohibited from using third-party carrier data—relating to their performance or terms—to benefit its own logistics operations. The European Commission is monitoring the implementation of these commitments together with an independent trustee.

In the case AT. 40735 – Online rail ticket distribution in Spain[68], the remedies applied are behavioral and are linked to the theory of harm analyzed in this case, the refusal of supply by Renfe (the incumbent railway public operator in Spain) to provide access to all Renfe content and RTD[69] accessible on Renfe's own online distribution channels (including its

[67] For further reference of the conducts analyzed in these cases, see section 2.1. Full text of the decision by the European Commission can be found on this link: https://ec.europa.eu/competition/antitrust/cases1/202310/AT_40703_8990760_1533_5.pdf?utm_source=chatgpt.com

[68] Full text of the decision by the European Commission can be found on this link: https://ec.europa.eu/competition/antitrust/cases1/202412/AT_40735_9970535_1360_8.pdf

[69] Real-time data (RTD) refers to up-to-date information on train services, such as platform numbers, delays, disruptions, and passenger rights (e.g., compensation). Third-party ticketing platforms need access to this data to match the service quality offered by Renfe's own channels and provide customers with reliable, end-to-end travel support, including during and after the journey. According

mobility platform dōcō) to third-party ticketing platforms. Renfe committed to granting third-party ticketing platforms access to all current and future content and real-time data that it displays on any of its own online distribution channels. This remedy ensures that access is not static or limited to existing content and RTD but evolves in parallel with any updates or additions Renfe introduces on its own digital platforms. By establishing a dynamic commitment, the remedy is designed to maintain competition over time and enable third-party ticketing platforms to compete effectively with Renfe's online distribution channels. Also, the criteria as to which Renfe is allowed to suspend the access of a third-party ticketing platform to its content and real-time data are clarified, as Renfe committed to establishing specific values of L2B[70] that are considered reasonable by the Commission to avoid jeopardizing the stability of Renfe´s sales system as well as giving guarantees to third-party ticketing platforms. Additionally, suspension must be based on the conditions in the commitments, and a monitoring trustee is notified of any suspension process in the event of non-compliance with the maximum monthly average L2B and may act as a contact point in case of disagreement. Renfe also committed to providing high-quality IT services by capping the maximum annual average Error Rate (ER)[71] at 4 % as from 2024 and the Unavailability Rate (UR)[72] at 1 % as from 2025. These performance thresholds ensure that third-party ticketing platforms receive reliable and stable access to content and RTD, preventing system failures from hindering competition.

In the case AT.40452 Apple – Mobile payments[73], DG COMP accepted commitments by Apple opening access to 'tap and go' technology on iPhones. To address the Commission's competition concerns relating to Apple's refusal to grant rivals access to NFC input, Apple committed to allow third-party wallet providers access to the NFC input in Host Card Emulation mode ('HCE') on iOS devices free of charge, without having to use Apple Pay or Apple Wallet. Apple also committed to apply a fair, objective, transparent and non-discriminatory procedure and specified eligibility criteria to grant NFC access to third-party mobile wallet app developers. Apple further committed to

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to the Commission's decision, RTD is an important input for the provision of online rail ticketing services in Spain.

[70] The L2B ratio is the ratio between the number of availability requests ("look") made to the transport provider's ticket sales system and the number of actual sales ("book") made during a given period of time. An abnormal peak in L2B—where a third-party platform sends a very large number of availability ("look") requests relative to actual bookings—can overload Renfe's ticketing system, disrupting service for both itself and others.

[71] ER is the ratio between the number of failed reservation requests and the total reservation requests.

[72] The UR relates to the level of availability of Renfe's sales system between 06:00 and 23:00 hours.

[73] Full text of the decision by the European Commission can be found on this link: https://ec.europa.eu/competition/antitrust/cases1/202441/AT_40452_10269725_10183_3.pdf

enable users to easily set third party payment apps as their default app for payments in stores and to use relevant functionalities such as Field Detect (which opens the default payment app when a locked iPhone is presented to an NFC reader), Double-click (which launches the default payment app when double clicking the side or home button), and authentication tools such as Face ID. The commitments also established a monitoring mechanism and separate dispute resolution for independent review of Apple's decisions related to the application of the eligibility criteria. The commitments, which will remain in force for ten years, apply to all third-party mobile app developers effectively exercising activities through stable arrangements in European Economic Area ('EEA') and to all iOS users with an Apple ID registered in the EEA, also while traveling temporarily outside the EEA.

Chile's FNE imposed behavioral remedies in its case of vertical restraints in the market for food delivery platforms. The case concluded with extra judiciary agreements with the investigated companies that operate widely known platforms for food delivery. The companies committed to eliminating the MFN clauses in all contracts and terms and conditions. Moreover, they undertook not to include such clauses in contracts in the future and to inform the restaurants using their platforms that they are free to set their own prices. In addition, the authority endorsed a forward-looking commitment by two of the three companies investigated (PedidosYa and Rappi) to monitor and report annually on the extent of their use of exclusivity and semi-exclusivity provisions (referring to the percentage of sales on the platform coming from restaurants under exclusive or semi-exclusive deals). The FNE had found their impact to be limited at the time but flagged the possibility that a broader application of such clauses could give rise to anticompetitive risks. The remedies agreed between the companies and the authority were established for a minimum period of time of three years after which the companies could argue with the authority over the necessity of keeping the commitments or reviewing them. This period of time is designed to help the authority understand whether the trend toward exclusivity arrangements will persist and whether it could eventually lead to anticompetitive outcomes in the sector.

In **Canada (CB – BC)**, the Competition Bureau concluded its three-year investigation into crop input supply in March 2022. Although the inquiry uncovered concerning communications among incumbents, it did not find sufficient evidence of illegal coordination or abuse of dominance, and no enforcement measures were taken. The Bureau, however, continues to monitor the industry for future anticompetitive conduct.

In the car-sharing sector, Turo faced scrutiny for imposing an exclusivity requirement on hosts. Following the Bureau's formal notification of an inquiry in summer 2021, Turo

promptly removed the policy in Canada in January 2022. This voluntary removal constitutes the remedy: a commitment not to reinstate exclusivity, with the Bureau maintaining oversight to ensure compliance.

Brazil's CADE has made it clear that regarding remedies there is a fundamental difference in Brazil between the use of TCC[74] agreements (with voluntarily adopted commitments) and obligations imposed by the competition authority, often also with the involvement of the parties. The TCC agreements are described in their guidelines as "an agreement between CADE and the companies or individuals investigated for violation of the economic order, or both, under which the antitrust authority agrees to halt investigations against TCC signatories as long as the signatories comply with the terms of the referred agreement and agree to commitments expressly provided thereunder".

In the three cases reported by CADE during the reference period of the survey, the parties entered into TCC agreements with CADE to settle the case and therefore the authority considers that these cases were solved with commitments that were proposed voluntarily by the parties investigated.

As part of the proceedings involving Gympass, the company offered a set of commitments under the referred TCC agreement (with a duration of three years) which included the prohibition on adopting MFN clauses[75], a prohibition on clauses that prevent partners gyms from contracting with other platforms after the expiration of the contract with Gympass, a limitation on exclusivity clauses (only if that exclusivity is granted in return to certain investments, for no more than two years, and limited to no more than 20% of all the gyms in each city) and a prohibition on exclusivity clauses with corporate clients that prevent those clients from contracting with competing gym aggregator platforms. The TCC agreement incorporated other ancillary obligations basically related to information disclosure and monitoring.

Similarly, iFood assumed a series of commitments under a TCC agreement with the authority. The company undertook the following measures: a ban on exclusive contracts with chains with more than 30 restaurants and limitations on the use of exclusivity clauses with smaller chains operating fewer than 30 restaurants, based on specific thresholds[76], limitations on the duration of exclusive contracts with these chains

[74] *Termos de Cessação de Conduta* in Portuguese (Usually translated as "*Cease and Desist Agreements*").

[75] Including any condition that limits the offer or sale, by partner gyms, of daily passes (i.e. daily access passes to gyms) at a price lower than that offered by the platform.

[76] The agreement sets ceilings at the local and national levels for chains with less than 30 restaurants. At the national level, the platform's volume of transactions bound by exclusivity deals cannot surpass 25% in gross merchandise value (GMV). At the local level, in municipalities of more than

operating less than 30 restaurants (i.e. these agreements must last for a period no longer than two years and right after its expiration, the partner cannot sign a new exclusive contract with iFood for a 1-year period), a ban on MFN clauses and finally a ban on contractual provisions that could induce *de facto* exclusivity. Other ancillary obligations under the TCC include commitments related to information disclosure, monitoring and API (application programming interface) access.

Also, in the case GuiaBolso, the company under investigation reached a settlement with CADE through a TCC agreement to address the competition concerns identified in its conduct. The case centered on barriers faced by GuiaBolso—a financial management platform—in accessing user data held by Bradesco, one of Brazil's largest banks. Under the agreement, the parties committed to ensuring data portability and non-discriminatory access to user-authorized information. Specifically, the company agreed to implement a secure interface that would enable GuiaBolso to request and obtain consent directly from Bradesco's clients, and—upon consent—to access their banking data through encrypted communications. This allowed GuiaBolso to provide its services to users without undue technical or contractual restrictions. In turn, Bradesco committed to guaranteeing the functionality of this interface by meeting defined standards of system availability and response times, thereby ensuring that data access was both technically feasible and commercially viable. This administrative proceeding was closed in January 2023 following full compliance with the commitments under the TCC agreement.

Germany's Bundeskartellamt adopts a distinct approach to addressing potentially anticompetitive practices in digital markets. The German authority increasingly relies on an enforcement tool introduced with the 10th Amendment to the German Competition Act (GWB) in 2021: Section 19a GWB.

Section 19a provides the Bundeskartellamt with enhanced powers to intervene early and effectively in digital markets. It allows the authority to designate large digital companies as having "paramount significance for competition across markets"[77], following a structural assessment based on cross-market presence, access to data, financial strength, and ecosystem effects. Once designated, these companies become subject to a specific list of prohibited conduct under Section 19a(2) GWB, including self-

500,000 inhabitants, the number of exclusive restaurants cannot exceed 8% of the platform's listed active establishments.

[77] For an extensive reference of the Section 19a and the cases analyzed by the authority, please visit section 2.1. and also refer to the 2023 report by the JFTC where this tool is thoroughly explained. https://www.internationalcompetitionnetwork.org/wp-content/uploads/2023/08/UCWG-Report-digital-theories-of-harm-remedies-2023.pdf

preferencing, impeding interoperability, imposing unfair conditions, or restricting access to data.

Unlike traditional abuse of dominance cases, which can be procedurally complex and slow, Section 19a GWB does not require precise market definition and includes a reversal of the burden of proof for justifications. In addition, legal challenges are concentrated before the Federal Court of Justice, expediting enforcement.

In terms of remedies, the Bundeskartellamt is empowered to issue prohibitive orders. However, in practice, improvements have been achieved in several cases through cooperation with the companies investigated. For example:

- In the Google Data Processing Conditions case, Google agreed to implement changes giving users more control over how their data is processed across services.
- In the Google Automotive Services and Google Maps Platform case, negotiations are going on with purpose of Google agreeing to give vehicle manufacturers more freedom in choosing between services for infotainment systems from different providers as well as combining them according to customer needs, and to give customers more choice and flexibility in combining Google's various map services with third-party services[78].
- In the Meta Quest VR headset case, Meta enabled the use of its devices without requiring a Facebook account.
- In the Google News Showcase case, structural changes were introduced to ensure more equal treatment of publishers.

Other ongoing proceedings involving Amazon and Apple, are being pursued under the Section 19a framework, with a focus on behavioral restrictions.

Other authorities responded that they had not yet experience in imposing remedies in the digital sector.

France AdIC refers to the commitments adopted in the Google case concerning the press sector. The first set of (behavioral) remedies in this case contemplates the commitment by Google to negotiate in good faith with press publishers and news agencies that so request, the remuneration for any reproduction of protected content on its services in accordance with the modalities laid down in the relevant legislation and according to transparent, objective and non-discriminatory criteria. Other elements of the commitments approved included a binding timeframe for Google to propose

[78] Updates on these cases can found at https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2025/04_09_2025_GAS_GMP.html

remuneration, the option of arbitration to resolve disputes—with arbitrators' fees potentially covered by Google for press agencies and publishers—and safeguards to prevent any negative impact on content visibility or other commercial relationships. The commitments also allowed previously contracted publishers to renegotiate under the new framework without penalty. An independent monitoring trustee, approved by the AdlC, was appointed to oversee implementation, with access to expert support if needed. The second and third sets of remedies addressed Google's restrictive interpretation and application of the French related rights law. By extending commitments to all eligible publishers and agencies and ensuring transparent access to remuneration data, the remedies tackled Google's exclusionary practices and narrow revenue definitions, which had undermined fair compensation under Articles L. 218-1 and L. 218-4 IPC.

In Decision 24-D-03, the AdlC found Google in non-compliance with the abovementioned commitments previously adopted in Decision 22-D-13, particularly regarding transparent, objective, and non-discriminatory negotiations, and the provision of necessary information to press publishers and agencies. As a result, a new set of commitments was imposed to ensure effective implementation. These include: (i) a revision of Google's remuneration methodology (e.g., removal of the €100 threshold, use of Google's own data, inclusion of additional services); (ii) enhanced transparency obligations, including detailed explanations of data reports and methodologies, and disclosure of Bard-related content use; and (iii) improved internal compliance mechanisms, such as better cooperation with the monitoring trustee, regular engagement with the Autorité, and greater procedural clarity. These new behavioral commitments aim to address the deficiencies observed in the execution of the initial commitments.

In its case against Meta over practices in the online advertising sector, the AdlC reached a settlement in which Meta offered binding behavioral commitments to address competition concerns. These included restoring fair and transparent access to its partnership program, implementing mandatory compliance training for its sales teams to prevent denigrating conduct, and developing a new API to ensure non-discriminatory access to essential advertising tools. The commitments aimed to remedy exclusionary practices and restore competitive conditions.

4.2. General trends

Many issues may affect remedy design in digital markets, this section referring to some of the issues mentioned in the responses to the questionnaire.

4.2.1. Behavioural vs structural remedies

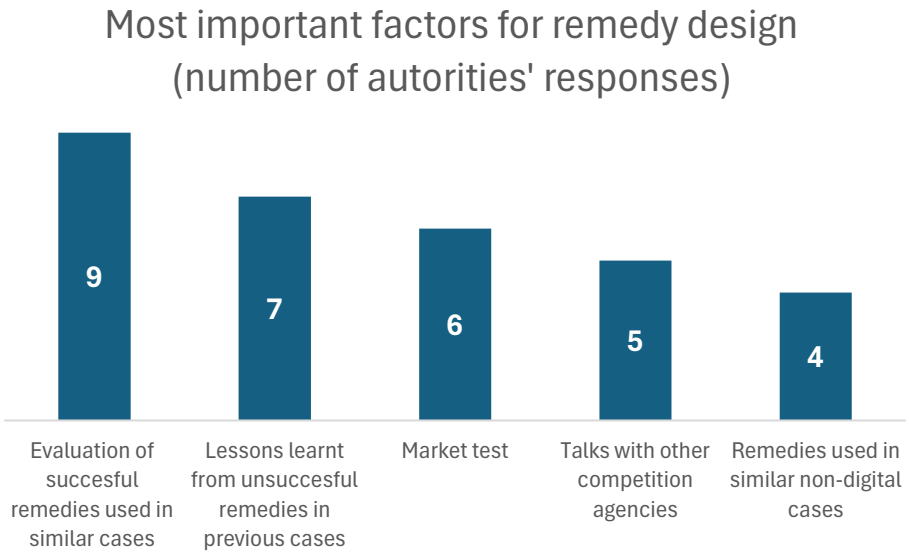
Out of the agencies that had experience with enforcing competition rules against abuse of dominant position on digital markets in the relevant period for the analysis, most of them considered that behavioral commitments are more suitable to address the negative effects for competition arising from these conducts. Practical experience summarized in the previous section shows that behavioral remedies have been more common.

Legal constraints may also limit the scope for imposing certain types of remedies.

- For instance, under Article 59(4) of the **Serbian Law on the Protection of Competition**, structural measures may only be imposed if no equally or comparably effective behavioral measure can be identified, or if a behavioral remedy would impose a greater burden on the undertaking. Structural remedies may also be considered if a previously imposed behavioral measure for the same competition infringement was not fully implemented.
- A similar legal constraint exists under **Turkish competition law**. Article 9 of Law No. 4054 on the Protection of Competition provides that structural remedies may only be imposed when previously applied behavioral remedies have proven ineffective. In such cases, the undertaking or association of undertakings concerned must be granted a minimum period of six months to comply with the structural remedy.
- In **Canada**, certain sections of the Competition Act prescribe the remedy available. Under sections 75 (refusal to deal) and 76 (price maintenance), only behavioral remedies are available. Under section 77 (exclusive dealing, tied selling and market restrictions), behavioral and structural remedies are available; however to date, the Bureau has not sought a structural remedy under this section. Under section 79 (abuse of dominance), the Tribunal may order a structural remedy only if a prohibition remedy (that is, a behavioral remedy) is unlikely to restore competition.

4.2.2. Factors affecting remedy design

Countries emphasize different factors when choosing the most appropriate remedies, but experience (learning from previous successful/unsuccessful experience) seems paramount. Information arising from market tests or contacts with other national competition agencies is also relevant (underscoring the role that fora like the ICN are to play, especially in digital markets). Takeaways from non-digital cases are also mentioned as a potential source of inspiration, but they were the least mentioned factor, pointing to some specificities of digital markets.



Competition authorities seem flexible when designing remedies in unilateral conduct cases in digital markets:

- Some authorities (Brazil, Chile) point out the relevance of timely action in digital markets. This may call for cease-and-desist remedies (as mentioned by Brazil), interim measures (as mentioned by Italy and Brazil) or for the possibility of termination by commitments (as mentioned by Slovakia and Saudi Arabia).
- Most authorities are generally not restricted in general by a specific legal test but some mention the relevance of economic analysis (as mentioned by Japan) and of market test (as mentioned by the European Commission). The European Commission emphasizes that in the Google Android case (for the design of the choice screen), there were discussions about how consumers react to different layouts and questions and about the number of alternatives made available.
- Duration may be a key issue in remedy design. The European Commission has assessed the optimal duration taking the case specificities into account[79]. Duration may be a case by case issue (as emphasized by Türkiye) even if lessons from

[79] In AT.40452 Apple - Mobile payments the commitments have a duration of ten years. This is informed by the requirement to encourage market entry. New entrants will incur initial development costs, which will have to be recouped over a longer period of time. Apple has an incumbent position. It has been active on the market for NFC mobile payments for several years already. In order to challenge this position, market entrants need a longer business perspective.
In AT.40462 (Amazon Marketplace) and AT.40703 (Amazon BuyBox) the commitments relating to the use of non-public seller data, as well as those concerning the application of non-discriminatory conditions for the BuyBox have a shorter duration (5 years), because these commitments are similar to the obligations of the newly in force DMA. The other commitments relating to Amazon Prime and the introduction of a second Buy Box have a longer duration of 7 years.
In AT. 40735 – Online rail ticket distribution in Spain the Monitoring Trustee is appointed for a duration of ten years while the rest of the commitments has an indefinite duration. The duration of the commitments is unlimited as proposed by the company.

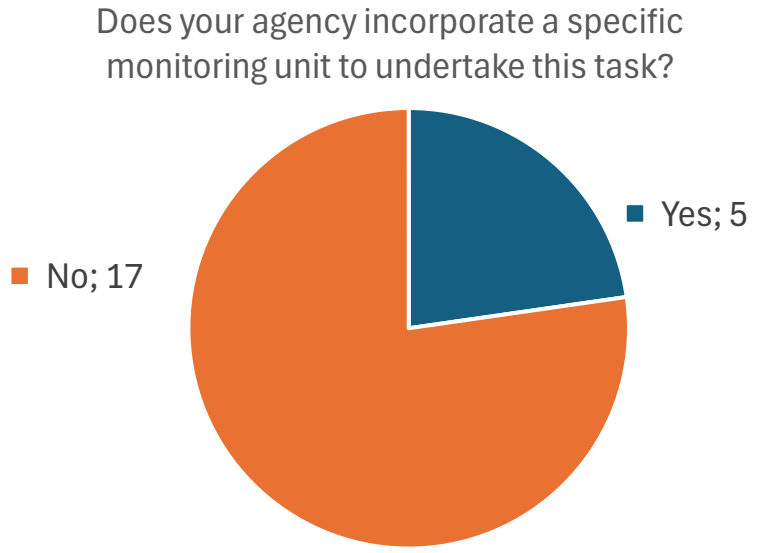
previous case are also of relevance (as suggested by Japan). Brazil and Chile also consider that duration is of utmost importance in digital markets. Actually, in Chile the FNE has asked for a report (in its MFN in food-delivery case) in order to consider a possible revision.

- Most authorities' decision to use behavioral vs structural remedies has not been influenced by how easy is it for the remedies to be monitored[80].
- Most authorities' preference to accept termination by commitments is not different in digital markets from other markets[81].
- No authority has disregarded specific remedies that had been applied in previous cases.

4.2.3. Monitoring and ex-post evaluation of remedies

The survey contained a group of questions to delve more into how competition authorities worldwide deal with the challenge of monitoring remedies on digital markets. The unique characteristics (very dynamic and rapidly changing, price-zero, high share of innovation, etc.) of digital markets or platforms make the implementation and effectiveness of remedies more complicated than in other areas of business.

One issue that may affect monitoring is the existence of a dedicated unit to this task. Most competition authorities responding to the questionnaire do not include a separate division for monitoring in their institutional setting.



[80] Only Mauritius mentions this factor.
[81] Only Slovakia and Türkiye mention this as a potential factor.

In terms of monitoring the remedies, authorities use different tools, like monitoring trustees (Brazil, European Commission or Italy), requests for information (Brazil, Ecuador, Italy, Türkiye) or communication with market participants (Chile and Slovakia), compliance reports (India), evaluation (European Commission) and the possibility of complaints (Brazil). Some authorities (Brazil, European Commission and Türkiye) suggest that this monitoring is especially complex in digital markets in terms of information gathering and ensuring compliance.

Canada also mentions the recent establishment of a remedies unit that will monitor and evaluate remedies (not only restricted to unilateral conduct cases) across different directorates.

4.2.4. Need for timely action in unilateral conduct cases on digital markets

The survey also included questions aimed at understanding how competition authorities address the need for swift intervention in unilateral conduct cases involving digital markets. This reflects a growing recognition that the fast-paced and dynamic nature of digital ecosystems—where technologies, business models, and market structures can shift rapidly—can undermine the effectiveness of traditional enforcement tools or limit the effectiveness of remedies imposed after a full analysis of the conduct. At the same time, the survey explored how authorities seek to balance the need for timely action with the imperative to ensure objective treatment and rigorous analysis of each case.

In particular, an intuition is that remedies imposed at the end of lengthy investigations may be rendered ineffective or obsolete if the market has already evolved significantly or if the conduct has already produced exclusionary effects that are difficult to reverse. The risk of "too-late" enforcement is especially high in digital markets, where network effects, first-mover advantages, and rapid scaling can entrench dominant positions in a short period of time.

A couple of authorities expressly mentioned the possibility of imposing interim measures[82] in response to this question as a way to restore competition on the markets in a timely manner (although with strict requirements). However, in practice most authorities did not issue interim measures because they deemed the final decision was sufficient to repair the alleged harm to competition.

[82] COMCO Switzerland, Italy AGCM, CCI India, CADE Brazil, AdlC France.

5. Conclusions

This report has shed light on the evolving landscape of unilateral conduct enforcement in digital markets, drawing from the responses of 28 ICN different jurisdictions. A clear conclusion is that while enforcement activity remains uneven across jurisdictions, there is a growing global consensus around the importance of addressing unilateral conduct by dominant digital platforms. A core takeaway is the increasing prioritization of digital market cases by competition authorities, driven by the recognition of digital platforms' gatekeeping roles, the amplification of competitive harm through data and algorithms, and the complex dynamics of multisided markets. Despite varying levels of experience, most authorities are actively building capacity, launching sectoral inquiries, and monitoring digital sectors such as app stores, marketplaces, advertising, logistics, and mobility services.

In terms of **theories of harm**, the report reveals a mix of traditional abuse frameworks (such as tying, refusal to deal, exclusivity, and margin squeeze) and novel approaches adapted to the characteristics of digital platforms. Many agencies emphasized the importance of adapting traditional theories—particularly to account for data-driven business models, network effects, and interoperability concerns. Notably, *self-preferencing* has emerged as a leading theory of harm, often used to describe conduct where platforms leverage their dominance to favor their own downstream services or restrict access by rivals. Other emerging concerns include anti-steering clauses, lack of transparency in algorithmic decision-making, and data combination practices. These shifts underscore the need for enforcement tools that address non-price dimensions of competition, such as access, visibility, and innovation.

The analysis of **enforcement experiences** shows that some agencies—particularly those in the EU, India, Brazil, France, Germany, and Türkiye—have gained significant experience, concluding multiple high-profile cases with innovative theories and remedies. Others are at earlier stages, often facing institutional and resource limitations. Still, the growing number of agencies with active investigations or strategic plans focused on digital markets demonstrates increasing engagement. A number of landmark cases—such as those involving Google, Meta, Apple, Amazon—reflect the global nature of digital competition challenges and the importance of cross-jurisdictional learning.

Regarding **institutional settings**, the report highlights the relevance of procedural tools, legal reforms, and cross-agency cooperation. Germany's Section 19a GWB offers a standout example of a forward-looking legal innovation that enables proactive intervention in digital markets. Other authorities, like France's AdlC, emphasize

collaboration with data protection agencies to assess conduct involving personal data. The need for specialized knowledge, centralized judicial review, and early intervention tools is increasingly seen as essential for effective enforcement. However, most agencies still apply competition law horizontally, without specific rules for the digital sector, and formal cooperation with other regulators remains limited.

In the area of **remedies**, the report provides a rich overview of how authorities are addressing harm through mostly behavioral interventions. Structural remedies remain rare, reflecting both legal limitations and the complexity of dismantling platform ecosystems. Instead, agencies increasingly rely on commitments and forward-looking obligations to correct exclusionary practices, improve transparency, restore access, or foster neutrality in platform design. Cases involving data portability, access to APIs, MFNs, exclusivity, and anti-steering provisions were commonly remedied through tailored behavioral commitments. Several authorities—such as the European Commission, France, Türkiye, and Mexico—have also used *monitoring trustees*, publication obligations, and technical performance indicators to improve compliance and oversight.

Importantly, the link between **theories of harm and remedies** is becoming more explicit. Remedies are increasingly being designed to directly reverse the specific exclusionary mechanisms identified in the conduct—whether by restoring access (e.g., to APIs or data), neutralizing platform favoritism (e.g., through interface design obligations), or eliminating discriminatory conditions. Agencies are also paying attention to remedy duration and market dynamics, with some choosing time-limited remedies to reflect rapid technological change, while others adopt ongoing monitoring mechanisms for long-term effects.

Overall, this report provides a practical contribution to ICN's knowledge-sharing goals. It illustrates that addressing unilateral conduct in digital markets demands flexibility, sector-specific expertise, and a growing toolkit of enforcement and remedial strategies, which can be developed with a learning-by doing approach (relying on traditional enforcement approaches that can be adapted to different circumstances). For younger or less experienced agencies, the report serves as a reference of the need to develop internal capacity and procedures reflecting good practices. For more experienced authorities, it offers a platform to deepen convergence and promote effective remedies. Future work may benefit from expanding collaboration on monitoring remedies, improving the interoperability of enforcement frameworks, and developing shared guidance on emerging theories of harm unique to digital ecosystems.

Annex I. 2nd Questionnaire on the analysis of theories of harm and design of remedies concerning unilateral conduct with dominance/substantial market power in digital markets.

Introduction

Definitions: for the purpose of this survey, the term "unilateral conduct by companies with dominance/substantial market power" used in this report is equivalent to the concept of "abuse of dominance" [83], which encompasses various legislative provisions in different jurisdictions with differing terminology but sharing a core principle.

We use the term "digital markets", "digital sector" and others to refer to the provision of products or services by use of digital technologies, mainly the internet, but also by any other digital medium.

In the section about remedies, we ask respondents to specify whether the remedy was suggested by the parties ("commitment"), or it was imposed by the competition agency ("cease and desist order/ condition", which include behavioral and structural remedies). In this regard, while "commitments" are measures that firms offer voluntarily in the course of an ongoing investigation, "remedies" refer to measures that competition agencies can impose on their own initiative when they consider them to be necessary to bring the infringement to an end, with or without the investigated firm having offered any commitments. [84]

Context: this questionnaire is the first step of a new UCWG project led by the CNMC with the cooperation of CADE and the Turkish Competition Authority, to follow up on the Report on the Analysis of Theories of Harm and the Design of Remedies Concerning Unilateral Conduct With Dominance/Substantial Market Power in Digital Markets. Our intention is to delve deeper into the details about the practical experience of ICN members and take stock of investigated cases in this area.

The proposed outcome of the project will include a dedicated BOS session at the upcoming ICN Annual Conference in Brazil *(UCWG BOS 2 Theories of Harm and Design of Remedies Concerning Unilateral Conduct with Dominance)*, focusing on the preliminary findings from the responses we would receive to this survey. The ideas and conclusions of this debate will enrich the final report to be drafted by the UCWG and that is expected for the 24/25 ICN year. Finally, we intend to organize an additional session to showcase the report and the takeaways from the work done as well as to spur further discussion.

To obtain updated information about enforcement experience on this area, we would appreciate if you could provide further details about the cases that were still pending at the time you submitted a response to the previous survey mentioned, which was distributed in November 2021. We also welcome additional information about the judicial review of digital cases and, particularly, whether your authority's decisions have been upheld or overturned and the reasoning behind each judicial ruling.

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[83] OECD (2020), "Abuse of dominance in digital markets", p. 9, available at: https://www.oecd.org/daf/competition/abuse-of-dominance-in-digital-markets-2020.pdf.

[84] Following the definition included in https://www.oecd.org/daf/competition/remedies-and-commitments-in-abuse-cases-2022.pdf.

GENERAL INFORMATION ABOUT YOUR AGENCY AND CONTACT DETAILS

1. Name of the person/unit in charge of this submission

2. Email address of the person/unit in charge of this submission

3. Formal name of your agency

4. Jurisdiction that your agency represents

QUESTIONS ABOUT ENFORCEMENT EXPERIENCE IN THE DIGITAL SECTOR

Please answer each of the questions below providing the information requested.

A. Overview of the recent enforcement experience in digital sector

1. How many cases has your authority concluded in the digital sector between 1st of November 2021 and the present. Briefly identify (with case reference or name) the most important decisions[85]. Please include ongoing cases as well to the extent possible.

Please fill out the table below with the details of each case reported above, if possible. In addition, if there has been news on the judicial review of the cases investigated before Nov 2021 that your authority shared in the previous questionnaire on this topic carried out by the JFTC, please do provide relevant updates in a separate row.

Case Name/No	Origin of the case[86]	Summary of the case	Type of decision and date (e.g., infringement, commitment, settlement, injunction, closing decision)	Applicable legal provisions	Relevant Market(s)	Assessment of dominance/substantial market power	Parties

[85] Please provide the case reference and relevant link in English, if available.

[86] Ex Officio investigations (all the investigation activities started on the authority´s own initiative); or complaints procedure.

2. Is the agency's enforcement focus on particular areas within the digital sector, a specific array of companies with market power (with homogeneous traits), or distinct types of unilateral conduct? Please provide details about your approach (in general in the digital sector and specifically in the abovementioned cases).

☐ YES (If possible, briefly specify the main features)

☐ NO

3. If you have answered YES to question n. 2, has this focused approach proven to be more effective in addressing competition concerns in the digital economy (v.gr., it raises the success rates of a probe, or the harmful effects reversed are notable and pervasive)?

☐ YES (If possible, briefly specify the main features)

☐ NO

B. Theories of Harm

4. From the above cases, has your agency identified new challenges when applying traditional theories of harm in their assessment?

(A) ☐ The traditional theories of harm did not adapt well to the specific characteristics (such as but not limited to direct/ indirect network, economies of scale/ scope…) of the market analyzed, so we tend to apply novel ones.

(B) ☐ We consistently apply traditional theories of harm to our cases in digital markets, but with some adaptations to capture specific features of the unilateral conduct in these markets.

(C) ☐ We haven't identified such challenges, and we apply traditional theories of harm similarly to what we do in other unilateral conduct cases in other sectors.

(D) ☐ We tend to apply a combination of traditional and novel theories of harm.

4.1. Please specify the challenges you have encountered, if any. You can also use the box below for further comments or if you want to specify your answer.

5. From the above cases, specify briefly below for each case (i) which theories of harm were applied (ii) whether you consider each theory of harm to be traditional or novel and how these theories of harm were applied. Use the corresponding tables and use the blank box to provide more general comments if needed.

Case 1. Name reference		
Theory of harm 1	☐ Traditional ☐ Novel	[Comments on how it was applied or other comments if you want to specify your answer.]
Theory of harm 2	☐ Traditional ☐ Novel	[Comments on how it was applied or other comments if you want to specify your answer.]
Add more row if more theories		
Other comments on the case		

Case 2. Name reference		
Theory of harm 1	☐ Traditional ☐ Novel	[Comments on how it was applied or other comments if you want to specify your answer.]
Theory of harm 2	☐ Traditional ☐ Novel	[Comments on how it was applied or other comments if you want to specify your answer.]
Add more row if more theories		
Other comments on the case		

Add more cases if needed		
Theory of harm 1	☐ Traditional ☐ Novel	[Comments on how it was applied or other comments if you want to specify your answer.]
Theory of harm 2	☐ Traditional ☐ Novel	[Comments on how it was applied or other comments if you want to specify your answer.]
Add more row if more theories		
Other comments on the case		

6. In the assessment of the cases investigated by your agency, do you consider the importance of factors different from prices (v.gr. innovation, quality, level of dynamism of the market...) in zero-price markets[87] or in digital markets in general?

☐ YES (If possible, briefly specify the main features)

☐ NO

[87] Markets associated with business models that earn revenue from the collection of consumer data, the sale of advertising or the use of customer relationships to sell "premium" or other paid products. (OECD (2022), OECD "Handbook on Competition Policy in the Digital Age", p. 14, available at https://www.oecd.org/daf/competition-policy-in-the-digital-age/.

7. Has your competition authority taken into consideration special parameters (such as number of visits, number of devices or similar) in order to measure market power in the digital sector?

☐ YES (If possible, briefly specify the main features)

☐ NO

8. Have those parameters mentioned in the previous question been taken into consideration following a homogeneous approach, or has it been done on a case-by-case basis? (if it has been done case by case, specify which cases, the factors, and the motivation that has led to use those factors. You can provide just a few examples and not go through each case)

9. Have those parameters mentioned in the previous question changed as your agency has accumulated enforcement experience in markets affected by digitalization?

☐ YES (If possible, briefly specify the main features)

☐ NO

10. In your competition agency's practice, does the experience in merger control in digital markets helps the assessment of theories of harm in unilateral conduct cases in digital markets?

☐ To a certain extent (If so, explain how)

☐ One is not relevant for the other

11. Have you cooperated/ discussed with other regulators (e.g., sectoral regulators, data protection or consumer protection authorities) before adopting a decision

or filing a lawsuit at courts? If so, describe the discussions and final output and how these discussions helped to define theories of harm.

☐ YES (If possible, briefly specify the main features)

☐ NO

C. Remedies

12. Which remedies were implemented in the investigated cases during the reference period to address (possible) infringements and restore competition? (For litigations, which remedies did you seek in the lawsuit to the court). Please specify the corresponding cases for each remedy and its connection with the theory of harm applied. For each remedy, include the duration and provide a brief justification for the chosen length in face of the concerns addressed. Use the corresponding tables and use the blank box to provide more general comments if needed.

Case 1. Name reference				
Remedy 1	☐ Condition/ cease and desist order ☐ Commitment	☐ Structural ☐ Behavioural ☐ Hybrid	Theories of harm link to this remedy	Comments
Remedy 2	☐ Condition/ cease and desist order ☐ Commitment	☐ Structural ☐ Behavioural ☐ Hybrid	Theories of harm link to this remedy	Comments
Add more rows if more remedies				

Case 2. Name reference				
Remedy 1	☐ Condition/ cease and desist order ☐ Commitment	☐ Structural ☐ Behavioural ☐ Hybrid	Theories of harm link to this remedy	Comments
Remedy 2	☐ Condition/ cease and desist order ☐ Commitment	☐ Structural ☐ Behavioural ☐ Hybrid	Theories of harm link to this remedy	Comments
Add more rows if more remedies				

Add more tables if more cases				
Remedy 1	☐ Condition/ cease and desist order ☐ Commitment	☐ Structural ☐ Behavioural ☐ Hybrid	Theories of harm link to this remedy	Comments
Remedy 2	☐ Condition/ cease and desist order ☐ Commitment	☐ Structural ☐ Behavioural ☐ Hybrid	Theories of harm link to this remedy	Comments
Add more rows if more remedies				

13. Does your authority show any preference when deciding whether to implement behavioral, structural remedies or a combination of both in digital cases? If so, please explain any preference and the reason for this.

14. Are there any restrictions in the institutional framework (the legal framework, guidelines for the authority) that affect the decision to use behavioural vs structural remedies?

☐ YES (If so, explain why)

☐ NO

15. With respect to designing the remedies[88], what do you think were the most important factors that influenced the selection and tailoring of remedies, even though each decision is of course based on a case by case analysis? (multiple choices may apply)

A) ☐ Evaluation of remedies that had been used in other similar cases previously enforced and that proved to be successful.

B) ☐ Lessons learnt in cases where the implemented remedies were not fully able to address the competition concerns raised by the unilateral conduct.

C) ☐ The competition agency conducted a market test and the responses of the competitors/ users in the market were decisive for choosing the remedy.

D) ☐ Informal talks with other competition agencies with enforcement experience in similar cases and that had effectively applied remedies.

E) ☐ Remedies that had been used to tackle similar competition concerns in non-digital sector cases

If you have any further comments or want to specify your answer, use the box below.

[88] When we talk about remedies, we include both a remedy that was suggested by the parties ("commitment"), or the one that was imposed by the competition agency ("cease and desist order/ condition", which include behavioral and structural remedies).

16. In dynamic markets in the digital sector that require timely action, how does your agency deal with ensuring effective enforcement and avoid acting hastily in the design of remedies? Please refer to your practice in the cases investigated, if possible.

17. Has your authority applied in the above cases any type of specific economic or legal test during the design stage of remedies?

☐ YES (If so, describe them)

☐ NO

18. In the cases in which you finally adopted behavioral remedies, do you have specific factors to take into consideration in terms of deciding the duration of such remedies?

☐ YES (If so, describe them)

☐ NO

19. Is the authority's decision to use behavioural vs structural remedies influenced by how easy is it for the remedies to be monitored?

☐ YES (If so, explain how and why)

☐ NO

20. Is the authority's preference to accept termination by commitments different in digital markets than in other markets?

☐ YES (If so, explain why)

☐ NO

21. Based on your accumulated experience in dealing with unilateral conducts cases in the digital markets, has your authority disregarded specific remedies that had been applied in previous cases? If so, explain the reasoning behind that.

☐ YES

☐ NO

Monitoring and ex-post evaluation of remedies

22. Does your agency incorporate a specific monitoring unit to undertake this task?

☐ YES, we have a monitoring unit (if so, explain briefly how it works)

☐ NO, we do not have a monitoring unit.

23. How has your authority monitored the implementation and effectiveness of the remedies proposed?

24. Does your authority experience any kind of difficulties or challenges in monitoring the implementation of remedies and the company compliance in unilateral conduct cases?

☐ YES (If so, briefly explain the challenge)

☐ NO

25. In any of the cases investigated from the ones you provided in the previous questions, did the monitoring of remedies lead your agency to undertake further action in the affected market (be it in the enforcement in case of violation of remedies or in the advocacy area (market studies, regulatory reports, etc.)?

☐ YES

☐ NO

26. Can you identify any case in which the ex-post evaluation of the remedies has induced a substantial change in the implementation of remedies in subsequent cases? (lessons learned)

27. Has your authority ever delegated the monitoring of the implementation of remedies in any of your cases to an independent third party/ trustee? Explain what the rationale was behind that decision.