Divestment as a remedy in competition cases: A brief introduction

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What’s the point of market investigations?

Refreshing the markets other antitrust cannot reach.
What does this mean in practice?

Anti-competitive agreements

Exclusionary abuse

Anti-competitive mergers

Existing structural issues

Tacit collusion

Networks of agreements?

Search costs

Switching costs & ex post hold-up

Poor info transparency

Divergence of incentives

Behavioural biases
What makes a good remedy?

- It should be **effective** in removing the AEC:
  - Creating, or even enhancing, competition can be tricky
  - Raises questions about what the right counterfactual might be (What is a realistically competitive market?)
  - Testing can be important, but hard within a tight timetable

- It should be **proportionate** to the problem:
  - Shouldn’t be used to correct wider problems, outside scope of investigation
  - Importance of low ongoing admin costs: Can militates against behavioural remedies

- It should not create **adverse incentives**:
  - Either for firms directly affected or for firms in markets more generally
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(Almost) 50 shades of remedy in past CC market inquiries

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Note: The table summarizes various types of remedies in past Competition and Markets Authority (CMA) market inquiries, including changes to regulatory framework, demand-side remedies, supply-side remedies, and structural remedies. The table lists examples of each type of remedy and the sectors affected, such as BAA Airports, Groceries, Local Buses, Audit, etc. The remedies aim to improve competition and consumer welfare by addressing issues like access to key inputs, divestment, improved information, measures to facilitate search, unbundling, and limits on restrictions in agreements.
Divestment remedies – Like buses
None for ages then three in a row!

British Gas (MMC, 1989)
Beer (MMC, 1993)

BAA Airports (CC, 2009)
Private Healthcare (CC, 2014)
Aggregates (CC, 2014)

MMC (1973-1999)
Competition Commission (1999-2014)
CMA (2014-?)
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