Pitfalls for remedies and their implementation

85th Lunch Talk of the GCLC

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Too much focus on “asset – composition” risks?
Three scoping examples

> *Huntsman/Rockwood* (M.7061)
> Concern in Europe, global divestiture

> *Baxter/Gambro* (M.6851)
> Concern in Europe, global divestiture + set up new EEA production for buyer

> *Zimmer/Biomet* (M.7265)
> Product line divested in DK, S + rights facilitating EEA expansion
> “transfer the largest part of Biomet's market share to a competitor”
Too much focus on “purchaser” risks?
Up-front / fix-it-first by the numbers
Up-front beyond the numbers

Remedies notice: considerable
“obstacles for a divestiture” or “risks of preserving the competitiveness and saleability”

In this period:

8: Complex implementation
(Carve-out, 3\textsuperscript{rd} pty depend., mix/match)

5: Limited potential purchaser interest

4: Strict purchaser requirements

2: Decisions not yet published
Fix-it-first beyond the numbers

Remedies notice: “identity of the purchaser is crucial for the effectiveness”

In this period:

3: Standard purchaser requirements

2: Decisions not yet published
Additional purchaser requirements

> Zimmer/Biomet (M.7265)

Purchaser (upfront) must “demonstrate its capability in orthopaedic implants and its presence or willingness to expand its presence in a significant proportion of the EEA countries where the Divestment Businesses are currently active”

> Syniverse/MACH (M.6690)

Purchaser (upfront) must e.g. not be a financial investor, have particular industry-specific capabilities or be part of an MNO
Too much “structural – behavioural” orthodoxy?
Agnostics welcome!

- The aim to make a ‘one-time intervention’ makes perfect sense
- But does this necessarily mean divestiture?
  - Lufthansa/Swiss (M.3770) (Appeal in T-712/16)
  - Liberty Global/Ziggo (M.7000)
- A more agnostic approach: theory of harm, source of concern and solution, e.g.
  - Why are shares persistently high?
  - What prevents entry?
  - What can be effective, proportional and administrable?