

An Empirical Assessment of Private Antitrust Non-Monetary Remedies

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Policy Practicum Report:

An Empirical Assessment of Private Antitrust Non-Monetary Remedies (2009-2019)

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Table of Contents

EXECUTIVE SUMMARY	6
INTRODUCTION.....	9
2. INSTITUTIONAL AND LEGAL BACKGROUND.....	14
3. RESEARCH DESIGN: DATA AND METHODOLOGY.....	16
3.1. DATASET CONSTRUCTION.....	16
3.1.1. Case Selection.....	16
3.1.2. Data Sources.....	17
3.1.3. Unit of Analysis.....	17
3.2. CODING METHODOLOGY.....	18
3.2.1. Remedy Classification.....	18
3.2.2. Coding Process.....	19
3.2.3. Variable Construction.....	19
3.3. LIMITATIONS	20
4. THE SAMPLE LANDSCAPE.....	22
KEY TAKEAWAYS.....	22
4.1. OVERVIEW OF THE COMPLAINTS DATASET.....	23
4.2. CASE CHARACTERISTICS AND NON-MONETARY REMEDY REQUESTS.....	23
4.2.1. Case Characteristics.....	23
A. Plaintiff Categories.....	23
B. Prior Government Antitrust Investigations	25
C. Legal Basis	25
D. Conduct History	26
E. Procedural Features	27
F. Jurisdiction	28
4.2.2. Non-Monetary Remedy Requests	29
A. Distribution by Plaintiff Category.....	29
B. Distribution by Antitrust Provision Asserted.....	30
C. Distribution by Ongoing/Past Conduct.....	31
D. Distribution by Prior Government Antitrust Investigation.....	32
4.3. DISCUSSION OF KEY FINDINGS	33
4.3.1. Plaintiff Categories and Differences in Shares of Follow-On Suits.....	33
4.3.2. Plaintiff Categories and Differences in Antitrust Provisions Asserted.....	34
4.4. NON-MONETARY REMEDY REQUESTS.....	34
5. NON-MONETARY REMEDIES: TAXONOMY AND DESCRIPTIVE PATTERNS.....	37
KEY TAKEAWAYS.....	37
5.1. PREVALENCE AND FREQUENCY OF NMRs	37
5.1.1. Variation Across Enforcement Contexts.....	38
5.1.2. Variation Across Plaintiff Categories	39
5.2. THE RELATIONSHIP BETWEEN NON-MONETARY AND MONETARY RELIEF	40
5.2.1. Co-occurrence of NMRs and Monetary Relief.....	40
5.2.2. Settlement Size and NMRs.....	41
5.2.3. Settlement Size and NMRs Across Enforcement Contexts and Plaintiff Categories	43

5.3. RELATIONSHIP BETWEEN NRMs AND COOPERATION PROVISIONS.....	46
5.4. DISTRIBUTION OF DISTINCT NRMs PER CASE	47
5.5. SCOPE AND COMPOSITION OF NRMs	49
5.6. VARIATION IN NMR DESIGN.....	53
5.6.1. NMR Characteristics	53
5.6.2. Differences Across Enforcement Contexts	55
5.6.3. Differences Across Plaintiff Categories	56
5.7. CONCLUSION	57
6. THE GAP BETWEEN REQUESTED AND OBTAINED NON-MONETARY REMEDIES	58
KEY TAKEAWAYS.....	58
6.1. OBTAINMENT RATES FOR REQUESTED REMEDIES.....	59
6.1.1. <i>Obtainment Rates by Type of Non-Monetary Remedy</i>	59
6.1.2. <i>Obtainment Rates by Enforcement Context</i>	60
6.1.3. <i>Obtainment Rates by Plaintiff Category</i>	60
6.2. UNREQUESTED REMEDIES.....	61
6.3. SCOPE COMPARISON	64
6.4. CONCLUSION	64
7. PREDICTORS OF REMEDY OUTCOMES	65
KEY TAKEAWAYS.....	65
7.1. MODELING APPROACH.....	65
7.2. THE GATEWAY: WHETHER ANY NMR IS OBTAINED (MODEL 1)	66
7.3. THE INTENSITY: HOW MANY NRMs ARE OBTAINED (MODEL 2).....	69
7.4. REMEDY-LEVEL OBTAINMENT OF SPECIFIC REQUESTED TYPES (MODEL 3)	70
7.4.1. <i>Remedy-Type Results Without Conditioning on Request at the Pleading Stage</i>	71
7.5. DISCUSSION OF KEY FINDINGS.....	72
7.5.1. <i>The Complaint as Agenda-Setter: Why Requesting NMR Matters</i>	72
7.5.2. <i>The Government Plaintiff Advantage</i>	73
7.5.3. <i>Section 2 Claims</i>	73
7.5.4. <i>MDL Dynamics: Multiple Plaintiff Categories and Prior Government Antitrust Investigations</i>	74
7.5.5. <i>Monetary Relief and the Two-Hurdle Interpretation</i>	75
7.5.6. <i>The Remedy-Type Hierarchy</i>	76
8. DISCUSSION AND POLICY IMPLICATIONS	77
KEY TAKEAWAYS.....	77
8.1. NRMs ARE NEGOTIATED, NOT SIMPLY IMPOSED	78
8.2. GOVERNMENT ENFORCERS WERE THE MAIN DRIVER OF NRMs	79
8.3. STATUTORY PATTERNS LED PRIVATE PLAINTIFFS TO DIFFERENT NRMs	81
8.4. BEHAVIORAL REMEDIES PREDOMINATED OVER STRUCTURAL REMEDIES	82
8.5. NRMs AND THE ANTITRUST ENFORCEMENT SYSTEM.....	85
8.5.1. <i>The Complex Relationship between Public and Private Enforcement</i>	85
8.5.2. <i>Implications for State Antitrust Enforcement</i>	86
8.5.3. <i>Implications for Private Antitrust Enforcement</i>	88
8.6. LIMITATIONS AND DIRECTIONS FOR FUTURE RESEARCH.....	89
9. CONCLUSION	91
APPENDIX A. SELECTED METHODOLOGICAL NOTES AND REGRESSION TABLES.....	94

SELECTED METHODOLOGICAL NOTES..... 94

REGRESSION TABLES..... 95

Model 1..... 95

Model 2..... 99

Model 3..... 103

Model 3 – Not Conditional on Remedy Being Requested in Complaint..... 107

Executive Summary

Antitrust enforcement in the United States serves two primary purposes: compensation and deterrence.¹ Courts grant two types of remedies to achieve these effects: monetary awards and non-monetary remedies (NMRs). Generally, government actors focus on injunctive relief, while private litigation focuses on damages.² But private plaintiffs can also seek out injunctive relief. What non-monetary remedies do private parties seek in antitrust litigation? What do they obtain? And how does it compare with government-led lawsuits? These three underexplored questions motivated this policy report.

Over five months, we collected and processed data from roughly 4,200 documents related to federal antitrust lawsuits challenging anticompetitive conduct filed between 2009 and 2019. This scope encompasses over a third of all antitrust actions (about 3,450 actions) filed in that period, including all publicly accessible multi-district litigation (MDL) and government-led antitrust cases. This effort resulted in three datasets at the complaint, outcome, and individual remedy levels.

Drawing on these datasets, we find that non-monetary remedies are much more frequent than one could expect. This finding is especially true for complaints: most plaintiffs request at least one type of NMR, with government enforcers (State AGs/DOJ/FTC) serving as the main drivers of such requests, followed by indirect plaintiffs and competitors. The legal, factual, and procedural contexts also influence NMR requests. Plaintiffs asserting Section 2 claims, for instance, request a slightly different set of NMR types compared to litigants not asserting this provision. Claims challenging ongoing conduct exhibit higher request rates than those targeting past conduct. Likewise, lawsuits that do not follow a government investigation are more likely to include an NMR request than follow-on litigation.

Moving to case outcomes, we find that NMRs are mostly negotiated. This finding holds true across private (class actions) and public enforcement settlements. Courts generally do not exercise visible intervention or overt scrutiny over negotiated NMRs. Their oversight is more present in contested requests for imposed remedies, with them occasionally denying such motions entirely.

When it comes to the type of NMR, behavioral remedies predominate over structural remedies, both in requests and in obtainment. Plaintiffs overwhelmingly favor remedies aimed at future conduct (e.g., injunctions) as opposed to relief

¹ See Joshua P. Davis & Robert H. Lande, *Defying Conventional Wisdom: The Case For Private Antitrust Enforcement*, 48 GA. L. REV. 1, 8 (2013).

² Daniel Francis & Christopher Jon Sprigman, Private Enforcement, *in* ANTITRUST: PRINCIPLES, CASES, AND MATERIALS 701 (3d ed. 2025).

focused on changing market structures (e.g., divestiture). Government enforcers are the key actors seeking structural remedies, yet they request such relief sparingly.

The design and complexity of NMRs vary across remedy types, enforcement contexts, and plaintiff categories. Parties and courts frequently bundle specific types of remedies even when they are not part of the pleadings. Compliance programs and monitoring mechanisms, for instance, serve mainly as auxiliary remedies. Plaintiffs hardly request them; even so, settlements and court orders often include them, bundling such measures with primary remedies such as divestiture and injunctions.

Moving to the actors, government enforcers are the primary drivers of NMR. Public enforcers request NMRs at a higher rate and are more successful at obtaining them than private plaintiffs. Our evidence suggests that this superior performance may stem from governments' settlement-bargaining advantage, as well as from different litigation goals, procedural constraints, and dismissal risks.

All these findings reveal a complex relationship between private and public enforcement, with both groups performing different institutional functions, complementing and substituting for one another. Private plaintiffs expanded the scope of antitrust enforcement by challenging additional conduct, while public enforcement played the primary role in securing NMRs designed to shape market behavior. At the same time, both systems may have occasionally substituted for one another: private plaintiffs were more likely to seek tailored NMRs when government enforcement was absent, whereas the prospect of government-obtained remedies may have reduced incentives for private parties to seek non-monetary relief in follow-on litigation.

From a policy perspective, these results present important implications for both state and private enforcement. State AGs are already highly effective NMR enforcers. That said, State antitrust law can further enhance their role by (i) making new cases viable that current Section 2 precedents constrain; and (ii) enabling them to litigate under potentially more pro-enforcement case law and less restrictive procedural rules in state courts. In addition, State AGs may want to consider the potential substitution dynamics mentioned above to better achieve longer-term improvements in competition.

For private enforcement, our findings suggest that their longer-lasting contributions may lie in challenging conduct not targeted by governments. In those instances, private enforcement could be the only realistic avenue to redress violations and secure competition-enhancing remedies. Additionally, we highlight the following insights: (i) including NMR requests in complaints should be

encouraged; (ii) parties should avoid collectively deprioritizing NMR efforts under the assumption that another plaintiff group will secure such relief benefiting all of them; and (iii) compliance programs face stronger defendant resistance, suggesting that obtaining them can require negotiating priority.

Expanding data coverage is essential to increase available analytical power and potentially enable cross-context comparisons. Several research questions raised during presentations to our clients suggest lines of inquiry that an adequately resourced and maintained database can systematically support. Subsequent work applying quasi-experimental methods could strengthen the potential for causal interpretation.

Introduction

Antitrust enforcement in the United States serves two primary purposes: compensation and deterrence.³ Courts grant two types of remedies to achieve these effects: monetary awards and non-monetary remedies (NMRs). Generally, government actors focus on injunctive relief, while private litigation focuses on damages.⁴ But private plaintiffs can also seek out injunctive relief. Section 16 of the Clayton Act entitles private parties to “sue for and have injunctive relief . . . against threatened loss or damage by a violation of the antitrust laws.”⁵ As the Supreme Court held in *Perma Life Mufflers, Inc. v. Int’l Parts Corp.*, “the[se] purposes of the antitrust laws are best served by ensuring that the private action will be an ever-present threat to deter anyone contemplating business behavior in violation of the antitrust laws.”⁶ The ability to seek injunctive relief is a critical component of the deterrent effect of private enforcement actions.

The issue, however, is that “[m]ost of the key questions [about private antitrust enforcement] remain unanswered.”⁷ Scholars and practitioners have traditionally evaluated the deterrent effect of private antitrust litigation almost exclusively through the lens of monetary remedies.⁸ But private plaintiffs “can and do sue for injunctions” under Section 16 of the Clayton Act.⁹ Private antitrust enforcement actions can lead to structural remedies that directly affect market structure or behavioral remedies that restrict or compel defendants’ conduct. Since private actions greatly outnumber government actions, they act, in practice, as the “primary regulator[s]” of antitrust laws.¹⁰ Consequently, current antitrust literature, with its focus on monetary remedies, has not yet accounted for the market-altering potential of antitrust enforcement through private litigation.

Without empirical evidence on the actual reach of private enforcement, we cannot assess how private and public enforcement interact. Scholars, for instance,

³ See Davis & Lande, *supra* note 1, at 8.

⁴ Francis & Sprigman, *supra* note 2, at 701.

⁵ 15 U.S.C. § 26.

⁶ 392 U.S. 134, 139 (1968), *overruled on other grounds*, *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984).

⁷ *Id.* at 15.

⁸ See, e.g., Jeffrey M. Perloff and Daniel L. Rubinfeld, Settlements in Private Antitrust Litigation, in PRIVATE ANTITRUST LITIGATION: NEW EVIDENCE, NEW Learning (Lawrence J. White ed., 1988); John M. Connor and Robert H. Lande, *Not Treble Damages: Cartel Recoveries Are Mostly Less Than Single Damages*, 100 IOWA L. REV. 1997 (2015).

⁹ Francis & Sprigman, *supra* note 4, at 702; see 15 U.S.C. § 26.

¹⁰ Christine P. Bartholomew, *Antitrust Class Actions in the Wake of Procedural Reform*, 97 IND. L. J. 1315, 1317-18 (2022) (finding antitrust class actions “exceed government actions by more than twenty-five-to-one”).

have long hypothesized that both private and public enforcers complement or substitute for one another. Some commentators even argue that each “focus[] on what each is best positioned to do.”¹¹ If that is true, one could expect that private plaintiffs would focus solely on monetary remedies. But that is not the case.

While some contemporary scholars have documented private antitrust settlement amounts and case outcomes at scale, researchers have yet to systematically characterize and analyze NMR provisions in private litigation.¹² Likewise, the studies on non-monetary relief in government-led cases are scarce. In 2001, Robert W. Crandall analyzed the frequency of structural remedies in government cases filed under Section 2 of the Sherman Act between 1890 and 1996. He concluded that structural remedies in monopolization cases involving a single firm were rare. Most cases, instead, involved behavioral remedies.¹³ None of these studies, however, focused on comparing public and private performance. To be sure, broad systematic comparisons between the contributions of private and public enforcers through non-monetary relief remain largely underexplored.

This report seeks to fill that gap, focusing specifically on antitrust conduct litigation. Three key questions drove our work: (1) What NMRs do private parties seek in antitrust litigation? (2) What do they obtain? and (3) How does it compare with government-led lawsuits?

We built three novel databases to support such analysis. Our data includes private and public antitrust lawsuits filed in federal courts against anticompetitive conduct between 2009 and 2019. This scope encompasses over a third of all antitrust actions (about 3,450 actions) filed in that time frame, including all publicly accessible multi-district litigation (MDL) and government-led antitrust cases. Upon identification, we gathered approximately 4,200 documents, including complaints, settlements, court orders, and judgments. Our research team manually reviewed these materials following a pre-established coding protocol. This effort resulted in three datasets at the complaint, outcome, and individual remedy levels.

The complaint dataset summarizes plaintiffs’ requests at the level of plaintiff groups. It includes variables on the parties, the statutory basis, class-action characteristics, and NMR requests. It also tracks the evolution from the original to

¹¹ Competition Committee, OECD, *Relationship Between Public and Private Antitrust Enforcement: United States*, 2 (2015), <https://www.justice.gov/d9/316212.pdf>.

¹² Bartholomew, *supra* note 10 (reviewing 1,300 antitrust class settlements but looking only at monetary remedies); Joshua P. Davis & Robert H. Lande, *Benefits from Private Antitrust Enforcement: An Analysis of Forty Cases*, 42 U. SAN FRANCISCO L. REV. 879 (2008) (conducting an empirical study on forty private antitrust cases, but with a focus on monetary relief).

¹³ Robert W. Crandall, *The Failure of Structural Remedies in Sherman Act Monopolization Cases*, 80 OR. L. REV. 109, 198 (2001).

the amended complaints. The outcome dataset, in turn, catalogs the lawsuit result (i.e., settlement, dismissal, judgment) for each plaintiff-defendant pair, recording information on multiple aspects of a class settlement, consent decree, or litigated court order, when applicable, and the remedies obtained. Finally, the remedy-level dataset enables comparison between requested and/or obtained NMRs and records specific information on their design and implementation features, such as duration and oversight mechanisms.

Drawing on these datasets, we find that non-monetary remedies are much more frequent than one could expect. This finding is especially true for complaints: most plaintiffs request at least one type of NMR, with government enforcers (State AGs/ DOJ/FTC) serving as the main drivers of such requests, followed by indirect plaintiffs and competitors. The legal, factual, and procedural contexts also influence NMR requests. Plaintiffs asserting Section 2 claims, for instance, request a slightly different set of NMR types compared to litigants not asserting this provision. Claims challenging ongoing conduct exhibit higher request rates than those targeting past conduct. Likewise, lawsuits that do not follow a government investigation are more likely to include an NMR request than follow-on litigation.

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The design and complexity of NMRs varies across remedy types, enforcement contexts, and plaintiff categories. Parties and courts frequently bundle specific types of remedies even when they are not part of the pleadings. Compliance programs and monitoring mechanisms, for instance, serve mainly as auxiliary remedies. Plaintiffs hardly request them; even so, settlements and court orders often include them, bundling such measures with primary remedies such as divestiture and injunctions.

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may stem from governments' settlement bargaining advantage, as well as different litigation goals, procedural constraints, and dismissal risks.

All these findings reveal a complex relationship between private and public enforcement, with both groups performing different institutional functions, complementing and substituting for one another. Private plaintiffs expanded the scope of antitrust enforcement by challenging additional conduct, while public enforcement played the primary role in securing NMRs designed to shape market behavior. At the same time, both systems may have occasionally substituted for one another: private plaintiffs were more likely to seek tailored NMRs when government enforcement was absent, whereas the prospect of government-obtained remedies may have reduced incentives for private parties to seek non-monetary relief in follow-on litigation.

These findings present important implications for both state and private enforcement. State AGs are already highly effective NMR enforcers. That said, State antitrust law can further enhance their role by (i) making new cases viable that current Section 2 precedents constrain; and (ii) enabling them to litigate under potentially more pro-enforcement case law and less restrictive procedural rules in state courts. In addition, State AGs may want to consider the potential substitution dynamic mentioned above to better achieve longer-term competition improvements.

For private enforcement, our findings suggest that their longer-lasting contributions may lie in challenging conduct not targeted by governments. In those instances, private enforcement could be the only realistic avenue to redress violations and secure competition-enhancing remedies. Additionally, we highlight the following insights: (i) including NMR requests in complaints should be encouraged; (ii) parties should avoid collectively deprioritizing NMR efforts under the assumption that another plaintiff group will secure such relief benefiting all of them; and (iii) compliance programs face stronger defendant resistance, suggesting that obtaining them can require negotiating priority.

By lifting the veil on NMR sought and obtained by private and public plaintiffs, this report provides a systematic, quantitative overview of these remedies in antitrust litigation. To the best of our knowledge, this report is the first empirical effort to systematically map and identify patterns in NMR requests and in NMR that are requested and obtained—or not obtained—in private and public antitrust conduct litigation.

This report synthesizes our initial findings and unfolds as follows. Chapter 2 outlines the legal and institutional aspects of the antitrust enforcement landscape.

Chapter 3 explains our research design, clarifying our sampling strategy, data collection, and coding processes. Drawing on the complaint's dataset, Chapter 4 presents our findings regarding NMR requests. Chapter 5 then explores the outcome dataset, addressing what public and private plaintiffs actually obtained in terms of non-monetary relief. Chapter 6 presents a comparison between requested and/or obtained NMRs and introduces the concept of "bundling." Chapter 7 identifies specific predictors of non-monetary relief outcomes. Chapter 8 discusses what NMR reveals about the antitrust enforcement landscape, the respective roles of public and private antitrust enforcement, implications for private and public enforcement, and direction for future research. Chapter 9 concludes.

2. Institutional and Legal Background

Despite the “prevailing view” that private enforcement “causes all kinds of mischief,” it remains an integral part of the antitrust landscape in the United States.¹⁴ Indeed, U.S. antitrust enforcement relies on litigation to develop antitrust law and policy as applied to specific violations.¹⁵ Three actors help drive antitrust litigation: federal agencies, state and local governments, and private plaintiffs. In sheer volume alone, “antitrust class actions [by private plaintiffs] exceed government actions by more than twenty-five-to-one.”¹⁶ And from the inception of the Clayton Act, private enforcement was “in no sense an afterthought” but “an integral part of the congressional plan for protecting competition.”¹⁷

In addition to volume, the financial potency of ‘treble damages’ makes private plaintiffs key players in antitrust enforcement.¹⁸ Treble damages allow prevailing plaintiffs to recover three times their total compensatory damages. While the statutory threat of treble damages remains the primary economic engine that drives private antitrust litigation,¹⁹ enforcers rely on NMR to directly modify defendants’ market conduct and better achieve deterrence. Courts have wide discretion in designing such an NMR, given that “the relief represents a reasonable method of eliminating the consequences of the illegal conduct.”²⁰ These remedies range from prohibitory injunctions to structural divestitures. In government-led actions, courts generally afford deference to the agencies in designing an effective non-monetary remedy.²¹ This report sheds light on what happens in public and private enforcement actions.

Some critics observe that recent procedural “reforms” have “hobbled private antitrust enforcement.”²² In a series of decisions, the Supreme Court heightened

¹⁴ Davis & Lande, *supra* note 1, at 4 (citation omitted).

¹⁵ Thomas O. Barnett, Assistant Att’y Gen., Antitrust Division. U.S. Dep’t of Just., Presentation to the Lisbon Conference on Competition Law and Economics (Nov. 16, 2007) (stating “the U.S. antitrust laws set forth general principles that do not seek to define in detail actions that violate the law” and instead charged the courts to develop the “relatively general statutes as applied to specific facts in particular cases”).

¹⁶ Bartholomew, *supra* note 10, at 1317-18.

¹⁷ *California v. Am. Stores Co.*, 495 U.S. 271, 284 (1990).

¹⁸ See 15 U.S.C. § 15(a) (“any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may . . . recover threefold the damages by him sustained”).

¹⁹ See William Breit & Kenneth G. Elzinga, *Private Antitrust Enforcement: The New Learning*, 28 J. L. & Econ. 405, 412 (1985) (claiming “the private action treble damages award is the most important deterrent”).

²⁰ *Nat’l Soc. of Prof. Engineers v. United States*, 435 U.S. 679, 698 (1978).

²¹ Francis & Sprigman, *supra* note 2, at 687.

²² Bartholomew, *supra* note 10, at 1318.

procedural hurdles for private antitrust plaintiffs by increasing pleading standards, mandating forced arbitration, and tightening class certification.²³ Certification of the antitrust class no longer indicates a likely settlement. Additional rounds of “procedural gatekeeping” drag on cases, keeping them from going to trial. In another empirical study of antitrust class action, the researcher found that the average settled antitrust class action lasted almost five years.²⁴ Given these procedural hurdles, understanding which types of remedies plaintiffs request and which they successfully obtain is increasingly important. This data could also shed light on whether public enforcers have responded to these elevated hurdles by increasing the frequency of non-monetary remedy requests. Yet, existing literature suffers from a significant blind spot: its exclusive focus on monetary remedies.

Foundational efforts to provide empirical data on private antitrust enforcement deliberately excluded analyzing non-monetary settlement provisions. In fact, Perloff and Rubinfeld, in their seminal piece summarizing the findings of the Georgetown Project, acknowledged that plaintiffs might benefit from injunctive relief changes but explicitly stated “[f]or simplicity, these nonmonetary effects [were] ignored” in their empirical research.²⁵ Other existing empirical work documents settlement amounts and case outcomes at scale, but does not systematically characterize non-monetary remedy provisions.²⁶ On the other hand, existing qualitative literature examines individual cases or remedy types, especially for government-led actions, but lacks the systematic data needed to identify patterns across enforcement contexts.²⁷

Such widespread sidestepping of NMR not only paints an incomplete picture of the efficacy of private enforcement in deterring anticompetitive conduct but also provides a flawed understanding of monetary remedies by failing to account for the strategic trade-offs plaintiffs make between cash damages and forward-looking injunctive relief. This report attempts to fill that gap.

²³ Antitrust class actions, typically brought under Fed. R. Civ. P. Rule 23(b)(3) must satisfy the superiority and predominance requirements in addition to the Rule 23(a) numerosity, commonality, and adequacy requirements. Fed. R. Civ. P. 23.

²⁴ Bartholomew, *supra* note 10, at 1318.

²⁵ Perloff & Rubinfeld, *supra* note 8, at 151.

²⁶ See, e.g., *id.* at 163 (analyzing monetary remedies in a total dataset of 1,169 antitrust cases); Connor & Lande, *supra* note 8, at 2008-09 (analyzing monetary remedies in a sample of 71 cases); Bartholomew, *supra* note 10, at 1318 (analyzing monetary remedies in over 1,300 settlements).

²⁷ Robert W. Crandall & Kenneth G. Elzinga, *Injunctive Relief in Sherman Act Monopolization Cases*, J. RSCH. IN L. & ECON. (2012) (focusing on ten DOJ monopolization cases in a database of 172 consent decrees); Jessica C. Strock, *Setting the Terms of a Break-Up: The Convergence of Federal Merger Remedy Policies*, 53 WM. & MARY L. REV. 2147 (2012) (discussing divestiture as a preferable antitrust remedy for the FTC and DOJ).

3. Research Design: Data and Methodology

This study employs a descriptive empirical research design to systematically document the role of NMRs in antitrust litigation, particularly lawsuits challenging anticompetitive conduct. It addresses three questions: (1) What do private parties seek in antitrust litigation? (2) What do they actually obtain? And (3) how does it compare with government-led lawsuits? To tackle them, we systematically review and code multiple case documents to identify patterns in NMR requests and awards. Our effort resulted in a novel database of federal antitrust cases.

In this chapter, we describe the research design and methodology underlying this study. We detail the case selection process, data sources, review of litigation documents, coding methodology used to construct our datasets, and the study's strengths and limitations.

3.1. Dataset Construction

This project proceeded in two stages. We first reviewed complaints and built a complaint-level dataset identifying requests for NMRs. Next, we analyzed case outcomes and constructed two additional datasets: one at the case-outcome level (comprising all remedies at issue) and another one at the individual remedy level.

3.1.1. Case Selection

We relied on a sampling strategy centered on antitrust multidistrict litigation (MDL) proceedings. Specifically, we analyzed all 80 MDLs centralized with lawsuits filed between 2009 and 2019. Although MDLs do not encompass all private antitrust enforcement, they account for most antitrust litigation, including many of the large and consequential disputes. Their centralized dockets also facilitate the systematic identification and coding of litigation materials, providing an important methodological advantage.

To facilitate comparisons between public and private antitrust enforcement, we also included all government actions challenging anticompetitive conduct brought by the Department of Justice (DOJ), the Federal Trade Commission (FTC), and the State Attorneys General (State AGs). These cases include both direct enforcement actions and *parens patriae* lawsuits under federal and state antitrust statutes, including the Sherman Act, the Clayton Act, and the FTC Act.

Our data also includes cases consolidated under Rule 42 and selected non-MDL private actions involving NMRs filed in the same period. Although we have completed the complaint-level coding, case outcome and remedy-level coding remains ongoing.

As noted above, our data focuses on cases filed in federal courts between 2009 and 2019. We selected this period to maximize the likelihood that cases had reached a meaningful procedural endpoint (i.e., settlement, dismissal, or judgment), allowing us to examine the litigation outcomes. A more recent filing window would have included a substantially larger number of unresolved cases.

Together, these groups of cases account for about one third of the lawsuits filed in this period (about 3,450 actions).

3.1.2. Data Sources

We constructed the database through a systematic review of publicly available litigation documents. Primary sources included complaints, settlement agreements, consent decrees, motions, court orders, and related docket filings.

We retrieved most documents through Lex Machina and supplemented them with additional documents from Bloomberg Law and LexisNexis. By combining these three platforms, we maximized data coverage. In total, this study involved the review of 4,196 documents, including 2,052 complaints and 2,144 outcome-related documents (i.e., settlements, motions, court orders).

3.1.3. Unit of Analysis

The NMR database consists of three complementary components: a complaint dataset, a case-outcome dataset, and a remedy-level dataset.

The **complaint dataset** records requests for non-monetary relief. We coded the latest version of each complaint and reviewed all prior versions to identify substantive changes, including modifications to the parties, class definition, and requests for relief.

The **case-outcome dataset** reflects the results of each lawsuit. It incorporates information from multiple documents, including motions and orders for preliminary and final approval of class settlements; orders for permanent and preliminary injunctions; consent decrees; joint stipulations; motions for final judgment; responses to public comments; objections; and judgments.

The **remedy-level dataset** links complaints to case outcomes by comparing the individual NMRs plaintiffs requested with those they ultimately obtained. It identifies three relationships: (1) requested and obtained remedies, (2) requested but not obtained remedies, and (3) obtained but not requested remedies.

The unit of analysis varies across these three components. In the complaint dataset, each plaintiff group constitutes a separate observation. For instance, within an MDL, we treated each plaintiff group (e.g., direct purchasers class, indirect

purchasers class) separately, whether it filed a consolidated complaint or pursued an unconsolidated complaint after opting out of the class action. This approach captures variation in requested remedies both across and within plaintiff groups.

The case outcome and remedy-level datasets, by contrast, use different units of analysis. In the case-outcome dataset, each observation represents the entire outcome for a specific plaintiff-defendant pair, including dismissals, settlements, consent decrees, and judgments. In the remedy-level dataset, each observation represents an individual NMR. As a result, a single case may generate multiple observations whenever it involves multiple requested and/or awarded remedies.

3.2. Coding Methodology

A team of 13 students reviewed and coded litigation documents using a comprehensive coding protocol. The following sections describe our approach to identifying, classifying, and coding NMRs.

3.2.1. Remedy Classification

We initially adopted a broad definition of NMRs, classifying any request for relief that did not seek monetary compensation as an NMR. We excluded requests for damages, costs, attorneys' fees, interest, and disgorgement, and over-generic requests for relief, such as requests that the court "grant further relief as it deems just and proper." This approach allowed us to capture the full range of substantive NMRs requested in antitrust litigation.

For the complaint dataset, we employed a preliminary three-category taxonomy consisting of (1) injunctions, (2) information-sharing bans, and (3) a residual "other" category. We selected this simplified classification because injunctions and information-sharing bans accounted for most NMR requests identified during the initial coding stage.

After completing the complaint coding, we revisited this taxonomy while constructing the case-outcome and remedy-level datasets. Some remedies initially grouped under "other" were recurrent, warranting separate categories. The expanded taxonomy included six types of NMRs: (1) injunctions, (2) information-sharing bans, (3) divestitures and other structural remedies, (4) compliance programs, (5) monitoring mechanisms, and (6) other less common forms of relief.

We defined each category as follows:

1. **Injunctions:** Requests that defendants cease or refrain from engaging in specific anticompetitive conduct, including price-fixing, exclusionary practices, tying arrangements, or similar conduct.

2. **Information-Sharing Bans:** Restrictions on the exchange of competitively sensitive information, including prohibitions on information sharing among competitors, participation in trade association information exchanges, or benchmarking activities.
3. **Divestitures and Structural Remedies:** Requirements that defendants divest assets or business units, license intellectual property, or otherwise alter their market structure.
4. **Compliance Programs:** Requirements to establish or maintain antitrust compliance programs, provide employee training, or implement internal controls designed to prevent anticompetitive conduct.
5. **Monitoring Mechanisms:** Requirements for third-party monitors, reporting obligations, or other forms of governmental or judicial oversight.
6. **Other NMRs (residual category):** Less common forms of relief that do not fit within the preceding categories, including notification obligations, interoperability measures, supply commitments, market-access obligations, restitution mechanisms, and changes to business models or commercialization policies.

This taxonomy provides a consistent initial framework for identifying and comparing NMRs across the complaint and outcome datasets. It also supports the analysis that follows, including comparisons between requested and obtained remedies and the identification of broader litigation patterns.

3.2.2. Coding Process

We started the coding process by identifying the relevant litigation documents (i.e., complaints, settlement documents, court orders, stipulations, and judgments), which resulted in a collection of approximately 4,196 documents. The research team then hand-coded each variable using a standardized coding protocol and a predefined codebook.

During the five-month data collection period, we met weekly to discuss ambiguous cases, refine the coding protocol, and ensure consistent application of the coding rules. We also conducted multiple rounds of quality-control checks to verify accuracy and consistency across the research team.

3.2.3. Variable Construction

Each dataset includes a distinct set of variables tailored to reflect its units of analysis and research purpose.

The **complaint dataset** contains 32 variables describing plaintiff groups' pleadings. These variables record general case information (e.g., case number, filing date, district court, and litigation type), party characteristics (e.g., plaintiff-defendant relationship and the defendants), the legal basis of the claims, and the NMRs requested. The dataset also includes information specific to putative class actions, including the proposed class definition and class period.

The **case-outcome dataset** contains 47 variables documenting the resolution of each case through settlements, judgments, stipulations, and other court orders. These variables capture the procedural outcome; settlement characteristics (e.g., settlement amount, date, and cooperation provisions); the class definition and class period adopted in the resolution; and the NMRs obtained through settlement or litigated court order. It also includes variables comparing the remedies requested in the complaint with those ultimately obtained, as well as procedural features such as objections to class settlements and, for government enforcement actions, public comments submitted under the Tunney Act.

The **remedy-level dataset** contains 25 variables and uses the individual non-monetary remedy as the unit of analysis. This structure enables direct comparisons between requested and obtained remedies. The dataset records the status of each remedy (requested, obtained, and both), describes the remedy itself, and captures key characteristics of the relief granted, including its scope, duration, implementation mechanisms, and – for NMRs requested at the pleading stage – the extent to which the final remedy corresponds to the original request.

3.3. Limitations

This research is one of the first broad empirical efforts to map the use of NMRs in antitrust conduct litigation. As explained above, our three novel datasets capture multiple aspects of antitrust litigation and generally support the analysis of the scope of both private and public enforcement.

Despite these strengths, this study has important limitations. First, as with any analysis of filed lawsuits, selection bias may be present at both the filing and outcome levels. The database does not include antitrust disputes that settled before litigation or lawsuits that do not appear in Lex Machina, Bloomberg, and LexisNexis. In addition, many cases ended through undisclosed settlements. In those cases, we had only indicia of settlement (i.e., stipulations of dismissal with prejudice signed by both parties' attorneys) and could not determine whether the parties had agreed to any non-monetary relief. As a result, the reported rates of obtained remedies and the correspondence between requested and obtained remedies likely underestimate their true prevalence.

Second, the database does not cover the entire population of federal antitrust litigation. For example, the outcome- and remedy-level coding for Rule 42 consolidated proceedings and selected standalone actions involving NMRs is still ongoing. Extending the coding for these two groups of cases would provide a more comprehensive picture of the private enforcement landscape, potentially enabling cross-context comparisons.

Third, this report focuses on descriptive statistics and associations between variables rather than causal inference. Selection into settlement, unobserved case characteristics, and strategic behavior by litigants create identification challenges that the current observational design cannot fully resolve. Subsequent work applying quasi-experimental methods could strengthen the potential causal interpretation of these findings.

Finally, we implemented multiple procedures to promote coding consistency, including a standardized coding protocol, weekly team meetings, and multiple rounds of quality-control review. Nevertheless, we continue to validate the database and refine the coding as part of the project's ongoing development.

4. The Sample Landscape

Key Takeaways

Most plaintiffs request at least one type of non-monetary remedy (NMR) in their complaints; however, the types of NMR requested differ across plaintiff categories. In particular, government plaintiffs exhibit by far the highest share of requests for divestiture and compliance programs (11.8% for both remedies, compared to $\leq 2.04\%$ for private plaintiffs). In addition, the residual category NMR type “other” is more frequently requested by public enforcers (15.2%), competitors (21.8%), and “other” plaintiffs (36.7%).

Plaintiffs asserting Section 2 claims request a slightly different set of NMR types in their complaints compared to litigants not asserting this provision. Specifically, Section 2 plaintiffs seem to rely more heavily on NMR “other” type (18.9-20.2% vs. 12.2-12.3%).

Plaintiffs challenging ongoing conduct generally exhibit higher rates of NMR requests than those asserting claims against past conduct.

Plaintiffs asserting claims arising from conduct not preceded by government antitrust investigations have higher rates of NMR requests. In particular, they request more “other” types of NMR than litigants in cases with prior antitrust investigations by public enforcers (20.9% vs. 3.4%).

Section 1 of the Sherman Act is more frequently invoked than Section 2, except for competitors. Most plaintiffs have asserted Section 1 claims (range: 49.4-84.7% of plaintiffs in each category), whereas Section 2 has been far less invoked (range: 10.6-31.2%), except for competitors (77.7% of plaintiffs).

Most plaintiffs brought their lawsuits following prior government antitrust investigations, except for competitors. Most claimants have filed their complaints following government antitrust investigations (ranging from 50.8% to 81.5% of plaintiffs), except for competitors and the residual “other” category (3.0% and 28.6%, respectively). Also, indirect plaintiffs exhibit a far higher share of follow-on suits than direct plaintiffs (81.5% vs. 50.8%).

4.1. Overview of the Complaints Dataset

In this chapter, we document evidence on plaintiffs' complaints filed within government-led actions, MDL proceedings, Rule 42 consolidations, and individual non-consolidated lawsuits asserting antitrust claims in federal district courts.

Our dataset comprises 2,019 complaints filed between January 01, 2009, and March 14, 2025.²⁸ Approximately 822 distinct plaintiff groups are represented across five categories. Among public entities, there are federal, state, and local governments. Among private plaintiffs, there are direct and indirect plaintiffs,²⁹ as well as competitors. In addition, there is the residual category named "other."

In the following sections, we present data on case characteristics, comprising evidence on plaintiff categories, prior government antitrust investigations, legal basis, past/ongoing conduct, procedural features, and jurisdiction. We then shift to a review of requested NMRs. We conclude with a discussion of the descriptive findings regarding complaints.

4.2. Case Characteristics and Non-Monetary Remedy Requests

4.2.1. Case Characteristics

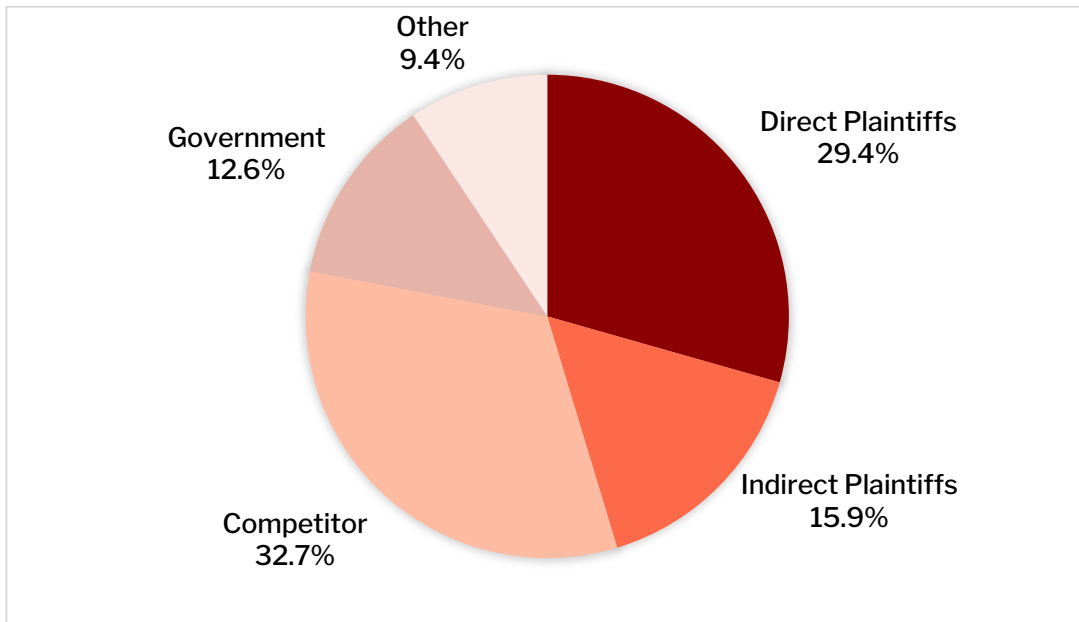
A. Plaintiff Categories

In our full complaint dataset (Graph 4.1 below), direct plaintiffs and competitors have the highest shares of distinct plaintiff groups among private parties (ca. 29.4% and 32.7%, respectively), whereas government plaintiffs have a relevant, albeit smaller, slice (ca. 12.6%). However, this proportion changes considerably for lawsuits included in our settlements and orders dataset (which currently includes MDLs and government-led actions). In that subsample (Graph 4.2 below), direct plaintiffs and government plaintiffs represent the largest groups (about 41.1% and 44.6%, respectively).

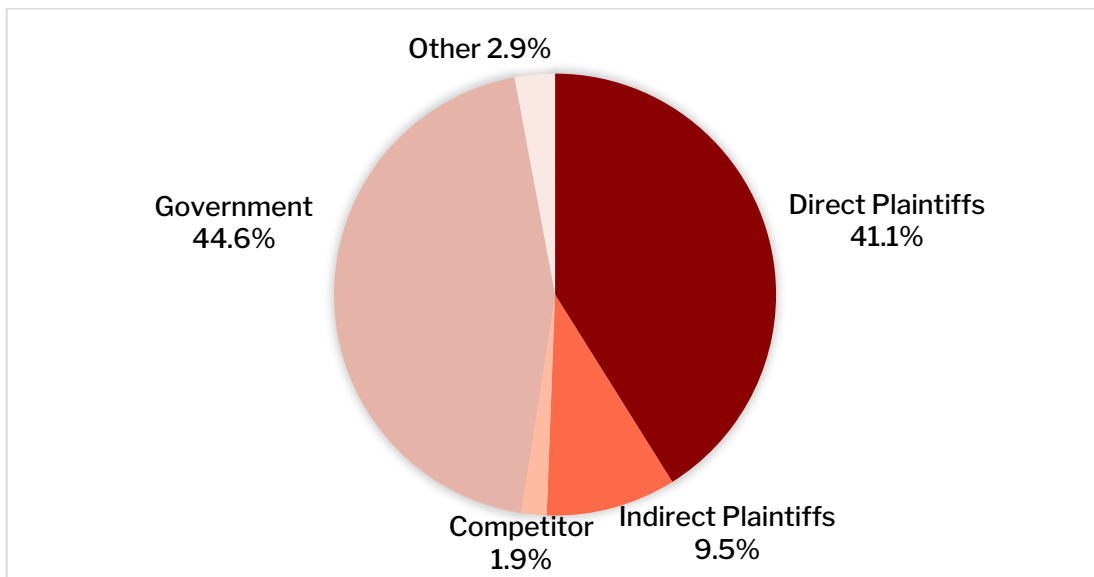
²⁸ Our data covers actions filed or centralized between January 01, 2009, and December 31, 2019, in federal district courts (see Chapter 3 for more details). Complaints filed from 2020 onward refer to lawsuits filed or centralized in the 2009-2019 period.

²⁹ Direct plaintiffs include direct purchasers, direct sellers and plaintiffs that were assigned claims from direct purchasers. Indirect plaintiffs include indirect purchasers and resellers.

Graph 4.1. Share Of Plaintiffs by Category (Full Complaint Dataset)



Graph 4.2. Share Of Plaintiffs by Category (Case Outcome Dataset)



B. Prior Government Antitrust Investigations

Our data are consistent with public enforcement serving as a functional complement to private enforcement. While standalone actions outnumber follow-on suits (58.65% vs. 41.65%), the prevalence of follow-on litigation varies across plaintiff groups (Graph 4.3 and Table 4.1). Indirect plaintiffs are the most likely to file lawsuits after government investigations, whereas competitors and plaintiffs in the residual “other” category are the least likely. This pattern suggests that government investigations support subsequent private litigation for some categories of plaintiffs more than others.

Graph 4.3. Overall Share of Follow-On Suits

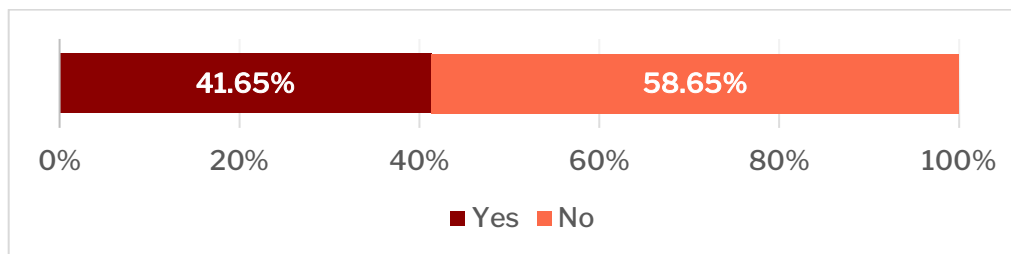


Table 4.1 – Share of litigation with follow-on suits (% plaintiffs in each category)

Plaintiff Category	Prior Government Investigation (any stage)	
	Yes	No
Direct Plaintiffs	50.8%	49.2%
Indirect Plaintiffs	81.5%	18.5%
Competitor	3.0%	97%
Government	58.7%	41.3%
Other	28.6%	71.4%

C. Legal Basis

The most common legal basis for antitrust claims is Section 1 of the Sherman Act (Table 4.2). This provision is also the most prevalent Sherman Act-based cause of action to be combined with state antitrust provisions.

Table 4.2. Most Common Antitrust Provisions Asserted (% plaintiffs)

Legal Basis	Share of Plaintiffs Asserting
Section 1 Sherman Act	70.8%
State Antitrust Laws	45.0%
Section 2 Sherman Act	39.7%
Sections 1 and 2 Sherman Act	22.0%

Table 4.3. Relationship Between State and Federal Antitrust Claims (% plaintiffs)

Among Plaintiffs Asserting State Antitrust Laws	Percent
Also Assert Section 1 Sherman Act	75.9%
Also Assert Section 2 Sherman Act	35.4%
Also Assert Both Sections 1 and 2	22.4%

Across plaintiff categories, our data show a stark divide (Table 4.4). Overall, plaintiffs rely extensively on Section 1 claims (range: 49.4-84.7%), whereas Section 2 claims are comparatively far less frequent (range: 10.6-31.2%), except for competitors (77.7%).

Table 4.4. Most Common Sherman Act Provisions Asserted (% plaintiffs in each category)

Plaintiff Category	Section 1 Sherman Act	Section 2 Sherman Act
Direct Plaintiffs	83.1%	28.5%
Indirect Plaintiffs	84.7%	10.7%
Competitor	49.4%	77.7%
Government	82.7%	10.6%
Other	67.5%	31.2%

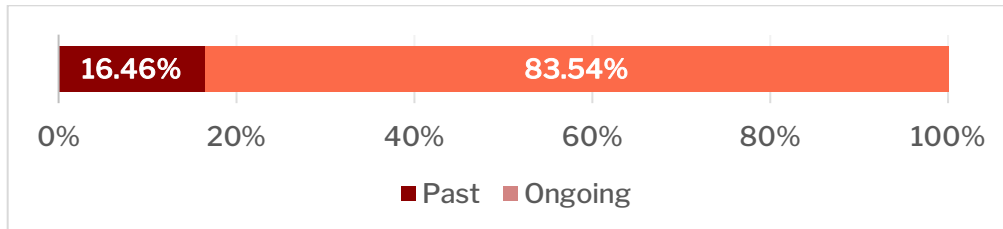
D. Conduct History

Most litigation in our dataset asserts antitrust claims against conduct that plaintiffs characterize as ongoing in their complaints (Graph 4.4). That pattern holds for class actions, where most proposed classes have end dates defined as “present” or “until effects ceased” (78.5%), suggesting that such putative classes – as defined at the pleading stage – would be predominantly targeting ongoing conduct (Graph 4.5).

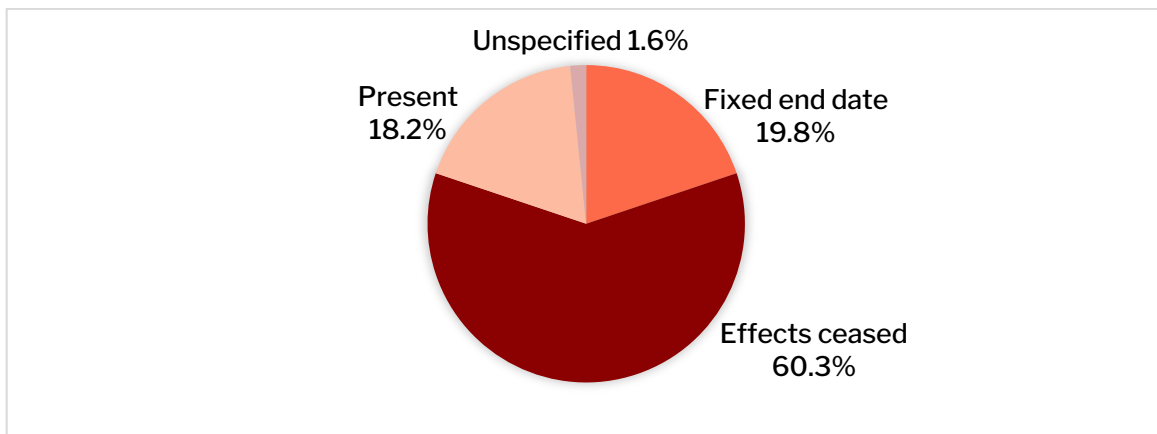
This may be a function of litigation strategies that prioritize bringing claims soon after government investigations are made public, while seeking to avoid

asserting claims regarding conduct further in the past because they may be subject to heightened pleading standards (e.g., fraudulent concealment).

Graph 4.4. Share Of Litigants Challenging Past or Ongoing Conduct



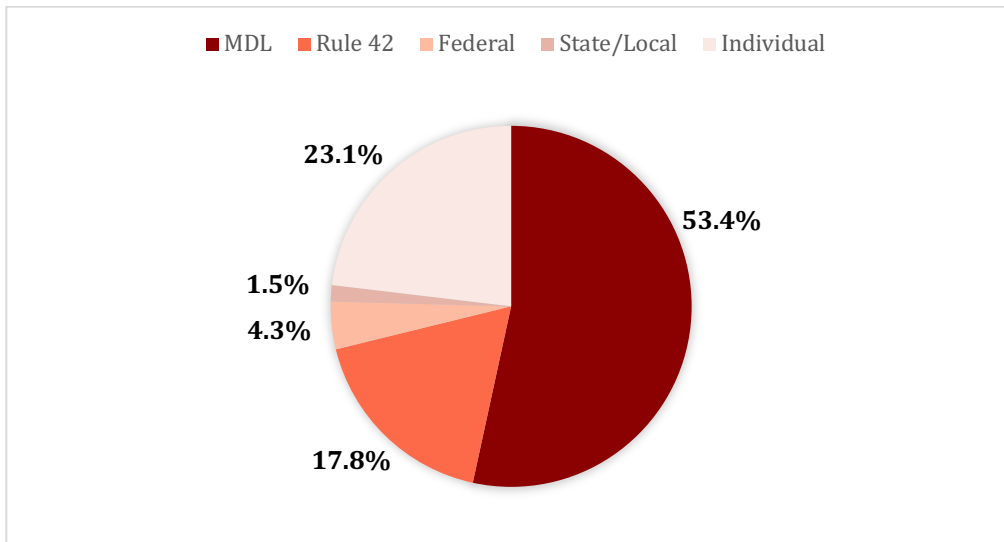
Graph 4.5. Share Of Class Action Plaintiffs Targeting Ongoing Conduct



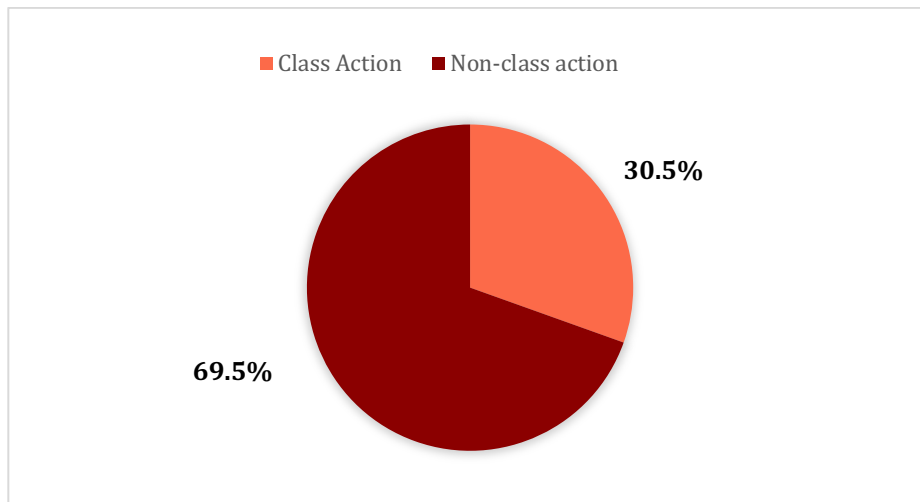
E. Procedural Features

In our dataset, most plaintiffs litigate in centralized proceedings (Graph 4.6), namely: (i) MDL (53.4%); and (ii) Rule 42 consolidations (17.8%). Also, there is a sizeable set of plaintiffs within non-consolidated suits (23.1%), and the remainder are in unconsolidated government-led actions by federal (4.3%) and state/local authorities (1.5%). In addition, a sizeable number of plaintiff groups are litigating outside of class actions (Graph 4.7).

Graph 4.6. Distribution Of Plaintiffs in Centralized/Non-Centralized Proceedings



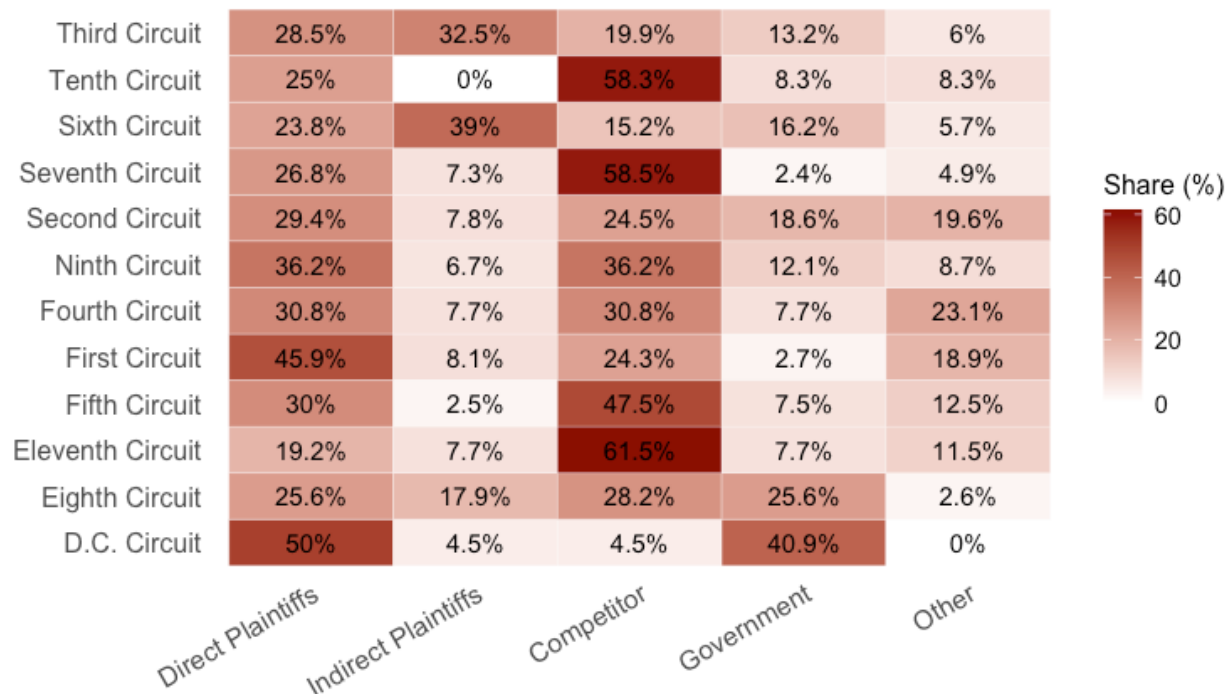
Graph 4.7. Distribution Of Plaintiffs in Putative Class Actions



F. Jurisdiction

Considering the number of distinct plaintiff groups, direct plaintiffs and competitors predominate among private parties across circuits, whereas government plaintiffs have a sizeable share in the D.C. Circuit (Table 4.5).

Table 4.5. Share Of Plaintiff Groups by Federal Circuit



4.2.2. Non-Monetary Remedy Requests

A. Distribution by Plaintiff Category

In our dataset, most plaintiff groups request NMRs in their complaints (69.6%). Across plaintiff categories (Table 4.6), government enforcers (90.8%), indirect plaintiffs (88.5%), and competitors (73.2%) exhibit the highest share of litigants with NMR requests. By contrast, direct plaintiffs have the smallest number of litigants requesting NMRs (51.7%).

Among plaintiffs requesting NMRs, injunctions are the most prevalent remedy for all categories (range: 83.6-99.1%). In addition, suggestive evidence emerges regarding specific non-monetary relief types. For example, government plaintiffs predominate in requests for divestiture, compliance programs, and monitoring. The residual category “other” for NMR type is dominated by public enforcers (15.2%), competitors (21.8%), and “other” plaintiffs (36.7%). This NMR category comprises more idiosyncratic or tailored remedies, such as lowering barriers to entry in licensed occupations (e.g., alarm contractors), combating unlawful restrictions on hospital access privileges, fighting sham litigation, and allowing third-party developers to sell their add-on software on large proprietary platforms, among many others.

Table 4.6. Share Seeking NMRs by Plaintiff Category

Plaintiff Category	Plaintiffs Requesting NMRs
Direct Plaintiffs	51.7%
Indirect Plaintiffs	88.5%
Competitors	73.2%
Government (as Enforcers)	90.8%
Government (not as Enforcers)	71.8%
Other	63.6%

Table 4.7. Distribution of Requested NMRs by Plaintiff Category

Plaintiff Category	Injunction	Information -Sharing Ban	Divestiture	Compliance Program	Monitoring	Other
Direct Plaintiffs	95.2%	20.0%	0.0%	0.8%	1.6%	5.6%
Indirect Plaintiffs	99.1%	6.1%	0.0%	0.8%	0.0%	2.6%
Competitors	86.3%	2.0%	0.5%	0.0%	0.0%	21.8%
Government (as Enforcers)	93.2%	10.1%	11.8%	11.8%	1.7%	15.2%
Government (not as enforcers)	96.4%	0.0%	0.0%	3.6%	0.0%	3.6%
Other	83.6%	4.1%	2.0%	0.0%	0.0%	36.7%

B. Distribution by Antitrust Provision Asserted

Considering the frequency of NMR types requested according to the claims included in complaints (Tables 4.8 and 4.9), there is a slight difference between plaintiffs asserting a Section 2 or state antitrust cause of action (in isolation or jointly with other claims).

Among plaintiffs requesting NMRs, complaints including Section 2 claims exhibit a smaller share of requests for injunctions (range: 84.4-87.2%), whereas they have a higher rate of NMR “other” type (range: 18.9-20.2%).

Table 4.8. Share Seeking NMRs by Legal Theory

Legal Theory	Plaintiffs Requesting NMRs
Section 1 Sherman Act	76.3%
Section 2 Sherman Act	72.5%
Sections 1 and 2 Sherman Act	79.5%
State Antitrust Laws	82.0%

Table 4.9. Distribution of Requested NMRs by Legal Theory

Legal Theory	Injunction	Information-Sharing Ban	Divestiture	Compliance Program	Monitoring	Other
Section 1*	91.5%	3.5%	0.6%	0.6%	0.4%	12.2%
Section 2*	87.2%	0.0%	0.4%	0.0%	0.0%	18.9%
Sections 1 & 2*	84.4%	0.0%	0.7%	0.0%	0.0%	20.2%
State Antitrust Laws	93.5%	2.3%	0.3%	0.6%	0.0%	12.3%

Note: *Sherman Act.

C. Distribution by Ongoing/Past Conduct

Overall, plaintiffs challenging ongoing conduct exhibit higher rates of NMR requests than those seeking compensation for past conduct (Table 4.10).

Among plaintiffs requesting NMRs, those asserting claims against ongoing conduct generally exhibit higher shares of requests for each NMR type (Table 4.11). The most notable difference regards the NMR “other” residual category (13.5% vs. 7.05%).

Table 4.10. Share of NMR Requests in Cases Challenging Ongoing or Past Conduct

Conduct Type	% plaintiffs requesting NMRs
Past Conduct	63.4%
Ongoing Conduct	71.6%

Table 4.11. Distribution of Requested NMRs in Cases Challenging Ongoing or Past Conduct

NMR Type	Past Conduct	Ongoing Conduct	Difference (pp)
Injunction	91.7%	90.3%	-1.4
Information-Sharing Ban	2.3%	3.4%	+1.1
Divestiture	1.1%	1.2%	+0.1
Compliance Program	0.0%	0.6%	+0.6
Monitoring	0.0%	0.4%	+0.4
Other	7.1%	13.9%	+6.8

D. Distribution by Prior Government Antitrust Investigation

Regarding the possible interplay between prior government investigations and requests for NMRs, an interesting contrast emerges between follow-on plaintiffs and litigants who filed their complaints without such prior investigations (Tables 4.12 and 4.13).

Among litigants requesting NMRs, plaintiffs in the latter camp exhibit a lower share of injunctions (86.9%) and a higher proportion of NMR “other” type (20.9%) requests compared to plaintiffs who filed their complaints following government antitrust investigations (injunctions: 98.7%; NMR “other”: 3.4%).

Table 4.12. Share Requesting an NMR in Follow-On and Stand-Alone Cases

Prior Government Investigation	% plaintiffs requesting NMRs
Yes	71.1%
No	69.3%

Table 4.13. Distribution of NMRs in Follow-On and Stand-Alone Cases

NMR Type	Govt. Investigation	No Govt. Investigation	Difference (pp)
Injunction	98.7%	86.9%	+11.8
Information-Sharing Ban	3.4%	3.0%	+0.4
Divestiture	0.4%	0.6%	-0.2
Compliance Program	0.0%	0.3%	-0.3
Monitoring	0.0%	0.3%	-0.3
Other	3.4%	20.9%	-17.5

4.3. Discussion of Key Findings

4.3.1. Plaintiff Categories and Differences in Shares of Follow-On Suits

As shown above, most litigants in our dataset have filed their complaints following government antitrust investigations (range: 50.8-81.5% of plaintiffs), except for competitors and the residual “other” categories (3.0% and 28.6%, respectively). Also, indirect plaintiffs exhibit a far greater share of follow-on suits compared to direct plaintiffs (81.5% vs. 50.8%). We theorize that two reasons may partially account for the observed differences.

First, plaintiffs whose litigation is often funneled through consolidated proceedings (e.g., MDLs) may tend to target conduct more likely to attract government scrutiny (because of a larger number of injured parties and/or lower difficulty proving common injury). If so, then categories with higher proportions of plaintiffs litigating within MDLs would tend to have higher shares of follow-on actions than those less engaged in aggregate litigation.

At a descriptive level, this hypothesis resonates with our data. Indeed, categories with more litigants engaged in MDLs are also those that have higher shares of follow-on suits. For example, 98.5% of indirect plaintiffs have filed suits adjudicated in MDLs, and they exhibit the highest share of cases preceded by government investigations. Similarly, 79.4% of direct plaintiffs had their actions centralized in MDLs. Conversely, about 8% of competitors and 53.2% of “other” plaintiffs have had their lawsuits consolidated into MDLs. In addition, this could be consistent with data for competitors. Their claims are arguably more particularized, involve a smaller number of affected parties, and require more idiosyncratic remedies, thus inviting less government enforcement and being less amenable to consolidation into MDLs.

That said, we cannot rule out that “causality” may be running in the opposite direction. Specifically, private plaintiffs may prioritize filing suits against conduct already targeted by public enforcers because these cases would be perceived as stronger (higher likelihood of establishing antitrust liability) either on their merits or because they benefit from obtaining discovery materials from government suits.

While this may be reasonable, it does not fully account for the difference between direct and indirect plaintiffs in follow-on suits (50.8% and 81.5%, respectively). For cases included in our data, this may reflect a more risk-averse litigation strategy for indirect *vis-à-vis* direct plaintiffs. The former must meet more stringent standing standards and evidentiary burdens (e.g., *Illinois Brick* and even for state antitrust claims proving cost pass-through). Thus, they may prioritize bringing

actions preceded by government antitrust investigations, which may contribute to clarifying the factual landscape and/or secure NMRs.

As a result, differences in the shares of follow-on litigation may reflect the targeted conduct, litigation strategy, and burdens affecting specific plaintiff categories, among others.

4.3.2. Plaintiff Categories and Differences in Antitrust Provisions Asserted

Most plaintiffs in our dataset have asserted Section 1 claims (range: 49.4-84.7% of plaintiffs in each category), whereas Section 2 has been far less invoked (range: 10.6-31.2%), except for competitors (77.7% of plaintiffs). We consider that two drivers may be at play: (i) standards of antitrust liability applicable to these provisions; and (ii) circumstances that trigger litigation.³⁰

Given the decades-long trend toward increased stringency against antitrust claims in the Supreme Court's case law, plaintiffs may have adapted to this incentive structure by prioritizing claims that face a relatively lower bar to establish antitrust liability. From this standpoint, plaintiffs would prioritize conduct subject to the *per se* rule instead of the rule of reason. If so, then Section 1 claims would be more frequent than Section 2 claims, because most *per se* claims fall under Section 1, whereas Section 2 claims are generally adjudicated under the rule of reason. At a descriptive level, this is consistent with the higher frequency of Section 1 than Section 2 across plaintiff categories. However, this reason alone is insufficient to describe competitors' substantial reliance on Section 2 claims.

For competitors, circumstances that trigger competitors' antitrust litigation might play an outsized role. In particular, the fact that competitors' antitrust litigation is often brought as counterclaims to patent infringement suits might drive their reliance on Section 2 claims. If competitors frequently assert antitrust claims in response to patent infringement actions, we would expect them to bring anticompetitive monopolization claims in response. And that is precisely what we frequently observe.

Thus, the difference – at the descriptive level – in how often Section 1 and Section 2 claims are asserted may be related to standards of antitrust liability and litigation-triggering circumstances.

4.4. Non-Monetary Remedy Requests

Our complaints data suggest differences in requests for non-monetary relief in four dimensions, namely: (i) plaintiff categories request different types of NMRs;

³⁰ It could also be that Section 1-related conducts on average affect greater numbers of injured litigants than those subject to Section 2. However, our data do not speak to this.

(ii) plaintiffs asserting Section 2 claims request different sets of NMRs;³¹ (iii) plaintiffs challenging ongoing conduct exhibit higher shares of NMR requests; and (iv) NMR requests differ between cases preceded by government antitrust investigation and those that did not.

Most plaintiffs requested at least one type of non-monetary remedy in their complaints; however, the types of NMR requested differed across plaintiff categories. In particular, government plaintiffs exhibited a far greater share of requests for divestiture and compliance programs (11.8% for both remedies, whereas the range for each of these remedies for private plaintiffs is $\leq 2.04\%$). This is consistent with the expected government enforcers' priority on longer-term and market-shaping intervention. In addition, the residual category NMR type "other" was more frequently requested by public enforcers, competitors, and "other" plaintiffs. This might reflect these plaintiffs' need for more tailored and/or longer-term remedies that do not fit into more generic relief such as injunctions against anticompetitive conduct.

Plaintiffs asserting Section 2 claims requested a slightly different set of NMR types in their complaints compared to litigants not asserting this provision. Specifically, Section 2 plaintiffs' apparent greater reliance on the NMR "other" type (18.9-20.2% vs. 12.2-12.3%) may reflect the fact that conduct involving firms with market power seeking to exclude competitors or maintain dominance may be more amenable to more tailored remedies (e.g., access obligations).

Plaintiffs challenging ongoing conduct generally exhibited higher rates of NMR requests than those asserting claims against past conduct. This likely reflects the different needs of each subset of plaintiffs: for those challenging ongoing conduct, a more comprehensive or tailored non-monetary remedy package (here, represented by the NMR "other" type) may provide more adequate relief; whereas for those seeking to undo past conduct, it sometimes can be sufficient to either seek preventing the conduct from reoccurring or securing divestiture of assets.

Plaintiffs asserting claims arising from conduct not preceded by government antitrust investigations had higher rates of NMR requests. In particular, they request more "other" types of NMR than litigants in follow-on suits (20.9% vs. 3.4%). This pattern may reflect a substitution mechanism between public and private enforcement. Specifically, these plaintiffs may prioritize more tailored packages of non-monetary relief over injunctions against anticompetitive conduct

³¹ While pleadings with state antitrust claims have the highest proportion of injunctions (93.4%), we do not draw descriptive associations for plaintiffs asserting these provisions as most complaints asserting state antitrust claims also include Sherman Act claims (87.4%).

because no prior government action has produced a remedial package that they can rely on.

5. Non-Monetary Remedies: Taxonomy and Descriptive Patterns

Key Takeaways

Government settlements overwhelmingly drive the use of NMRs. Government settlements include NMR provisions far more frequently than MDL class settlements or litigated court orders, highlighting the central role of public enforcement in securing behavioral and structural reliefs.

NMRs generally complement rather than replace monetary relief. Most settlements containing NMRs also included monetary compensation. However, the extent of this overlap varied substantially across enforcement contexts, with government settlements combining both forms of relief much more frequently than private class settlements.

Behavioral remedies dominate the NMR landscape. Injunctions are the most frequent NMR, followed by compliance programs and monitoring mechanisms. By contrast, structural remedies such as divestitures are significantly less frequent and appear exclusively in government settlements.

NMRs exhibit substantial variation in their design and implementation. Remedy types differ systematically in their duration, geographic scope, reporting obligations, monitoring mechanisms, and compliance structures. Government settlements generally include broader and more diverse remedial packages than private settlements.

Cooperation provisions emerge as a common alternative settlement mechanism. Nearly half of all settlements include cooperation provisions. Settlements containing these clauses involve lower monetary awards, fewer or no NMRs, suggesting that cooperation may represent an alternative bargaining outcome. Although these descriptive findings do not establish correlation or causation, they identify an interesting relationship for subsequent analysis.

We now move to the outcome and remedy-level datasets to discuss patterns regarding the obtainment of NMRs in antitrust conduct litigation.

5.1. Prevalence and Frequency of NMRs

This section starts by examining how frequently settlements and court orders grant NMRs. Drawing on the outcome dataset, we find that roughly one-third (37%)

of cases for which we could determine the outcome included at least one NMR provision.

Table 5.1. Distribution of Obtained NMRs

Any NMR obtained?	Number of Observations
No	1,208
Yes	699
NA	2,521
Total	4,428

Note: NA observations overwhelmingly represent undisclosed private settlements and ongoing cases.

Although NMRs appeared in one-third of observable outcomes, more than half of the original dataset consists of cases for which the outcome could not be determined. These observations represent undisclosed private settlements and ongoing litigation.

5.1.1. Variation Across Enforcement Contexts

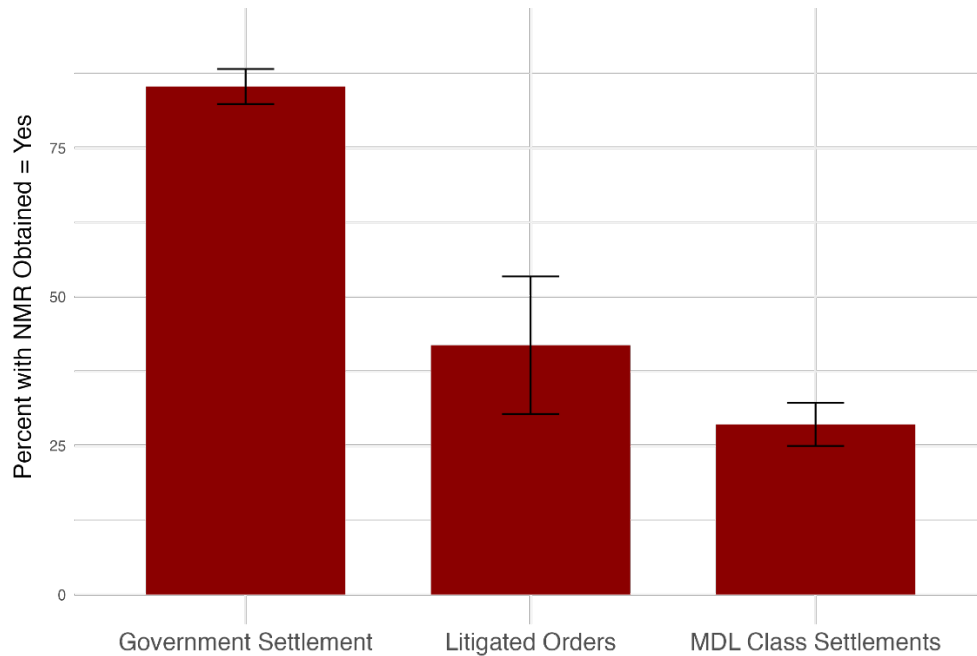
NMR obtainment rates vary widely across enforcement contexts. As shown in Table 5.2 and Graph 5.1, government settlements are the most likely to contain NMR provisions, with an obtainment rate of 85.3%. Consequently, they are over twice as likely to contain these provisions as litigated court orders (which included NMRs in 41.9% of resolutions) and nearly three times as likely to contain them as class settlements (which included them in 28.6% of resolutions).

Table 5.2. Distribution of Obtained NMRs by Enforcement Context

Enforcement Context	Total Observations	Obtained NMRs	NMR Obtainment Rate (%)
Government Settlements	551	470	85.3
Court Order (Litigated)	43	18	41.9
MDL Class Settlements	511	146	28.6

With only 43 corresponding observations, litigated court orders are rare. The high standard error shown in Graph 5.1 below indicates the variability among fully litigated cases. Accordingly, court orders do not consistently result in the attainment of NMRs.

Graph 5.1. Share of Observations with Non-Monetary Relief Obtained by Enforcement Context



5.1.2. Variation Across Plaintiff Categories

Table 5.3 disaggregates NMRs obtainment rates by plaintiff category within each resolution type. The results reveal that different plaintiff categories obtain NMRs at distinct rates across enforcement contexts.

Table 5.3. Share of Observations with Obtained NMRs by Plaintiff Category

Plaintiff Category	Litigated Order	MDL Class Settlement	Government Settlement	Other Outcomes*	Total
Government	12/23 (52.1%)	0/0 (0%)	461/542 (85%)	64/108 (59.2%)	537/673 (79.8%)
Direct Plaintiffs	6/18 (33.3%)	108/310 (34.8%)	0/0 (0%)	0/591 (0%)	114/919 (12.4%)
Indirect Plaintiffs	0/2 (0%)	38/174 (21.8%)	0/0 (0%)	1/52 (1.9%)	39/228 (17.1%)
Other plaintiffs**	0/0 (0%)	0/27 (0%)	9/9*** (100%)	0/51 (0%)	9/87 (10.34%)
Total	18/43 (41.8%)	146/511 (28.6%)	470/551 (85.3%)	65/802 (8.1%)	699/1,907 (36.6%)

Note:

*Court dismissals, ongoing/not yet confirmed, unilateral dismissals.

** Mixed plaintiffs (direct and indirect claims), competitors, others.

*** Lawsuits filed against state/local authorities.

Government plaintiffs overwhelmingly obtain NMRs through negotiated settlements rather than litigated court orders. More specifically, settlements account for 461 of the 537 government observations in the sample. These findings suggest that government enforcers primarily secure NMRs through negotiated resolutions rather than judicial decisions.

Private plaintiffs tell a different story. In our current dataset, direct and indirect plaintiffs obtain NMRs through MDLs. Still, specific MDL settlements include NMRs in fewer than one-third of cases. Thus, although MDL settlements are the principal avenue through which private plaintiffs obtain NMRs, most individual class settlements did not produce this form of relief.

These findings therefore suggest that the use of NMRs depends largely on government enforcement. While MDL class settlements represent the primary mechanism through which private plaintiffs obtained NMRs in the sampled cases, government settlements obtained such remedies more consistently.

5.2. The Relationship Between Non-Monetary and Monetary Relief

We now move to assess the relationship between monetary and non-monetary relief from three perspectives: (1) instances of overlap, (2) relationship between settlement value and NMR prevalence, and (3) variations across enforcement contexts and plaintiff groups.

5.2.1. Co-occurrence of NMRs and Monetary Relief

To begin with, the data suggest that NMRs generally complement rather than replace monetary relief. The extent of this complementarity, however, varies across enforcement contexts.

Overall, 79% of settlements with NMR provisions also include monetary relief, but only 55% of monetary settlements include non-monetary provisions. This gap is even bigger in class settlements. Table 5.4 indicates that nearly every settlement (99.3%) with an NMR also included monetary relief, whereas only 29% of settlements with monetary relief included non-monetary provisions.

In contrast, government cases are more balanced: 80.7% of monetary relief settlements include non-monetary provisions, and a lower share (71.1%) of those with NMRs also include monetary relief. Compared with MDL class settlements, government actions therefore combine monetary and non-monetary relief more frequently.

Table 5.4. Overlap by Enforcement Context

Enforcement Context	Monetary Cases	NMR Cases	Overlap Cases	Percent Monetary Cases with NMR Provisions	Percent NMR cases with Monetary Provisions
Government Settlements	414	470	334	80.7%	71.1%
Litigated Order	20	18	11	55%	61.1%
MDL Class Settlement	500	146	145	29%	99.3%

Because one specific MDL (MDL 2293) involved all fifty states and accounted for many observations, we also tested whether these results hold if we exclude this case. In this scenario, 86% of NMR settlements include a monetary provision, but only 42% of monetary settlements include an NMR. This finding reinforces that NMRs were ancillary to monetary relief in our dataset.

An analysis of these numbers, disaggregated by enforcement context, supports the finding regarding MDL class actions. While MDL class settlements prioritize damages over other forms of relief, a balance exists across government settlements.

Table 5.5. Overlap by Enforcement Context (excluding MDL 2293)

Enforcement Context	Monetary Cases	NMR Cases	Overlap Cases	Percent Monetary Cases with NMR Provisions	Percent NMR cases with Monetary Provisions
Government Settlements	172	143	105	61%	73.4%
Litigated Order	1	6	0	0%	0%
MDL Class Settlements	494	144	143	28.9%	99.3%

5.2.2. Settlement Size and NMRs

We next examine whether settlement size is associated with the prevalence of NMRs. Across the full sample, NMRs appear more frequently in smaller settlements (Table 5.6 and Graph 5.2). The prevalence of NMRs drops dramatically to 24.3% in the third settlement-amount quartile and rises again to 50.2% for the largest

settlements. Overall, settlements up to \$2,698,000 included more non-monetary remedy provisions.

Table 5.6. NMR Prevalence by Settlement Amount Quartile

Settlement Quartile	Settlement Amount Range	Total Cases	NMR Cases	NMR Prevalence Rate
Smallest Settlements (1Q)	\$16,667–\$409,091	252	190	75.4%
Lower-Middle Settlements (2Q)	\$409,091–\$2,698,000	252	176	70.12%
Upper-Middle Settlements (3Q)	\$2,698,000 –\$26,500,000	251	61	24.3%
Largest Settlements (4Q)	\$26,800,000-\$1,200,000,000	251	126	50.2%

However, MDL 2293 had a large influence on this pattern. When we exclude this case, the distribution of NMRs changes. In this new scenario, NMRs appear more frequently in the smallest and largest settlements (Table 5.7). This shift suggests that the relationship between settlement size and non-monetary relief is sensitive to influential cases and should be interpreted with caution. In Chapter 7, we use regression analysis to further investigate this relationship, controlling for this factor.

Table 5.7. NMR Prevalence by Settlement Amount Quartile excluding MD 2293

Settlement Quartile	Settlement Amount Range	Total Cases	NMR Cases	NMR Prevalence Rate
Smallest Settlements (1Q)	\$16,667–\$1,000,000	185	100	54%
Lower-Middle Settlements (2Q)	\$1,000,000–\$7,025,000	185	70	37.84%
Upper-Middle Settlements (3Q)	\$7,100,000 –\$42,000,000	184	22	11.96%
Largest Settlements (4Q)	\$42,500,000-\$1,200,000,000	184	119	64.67%

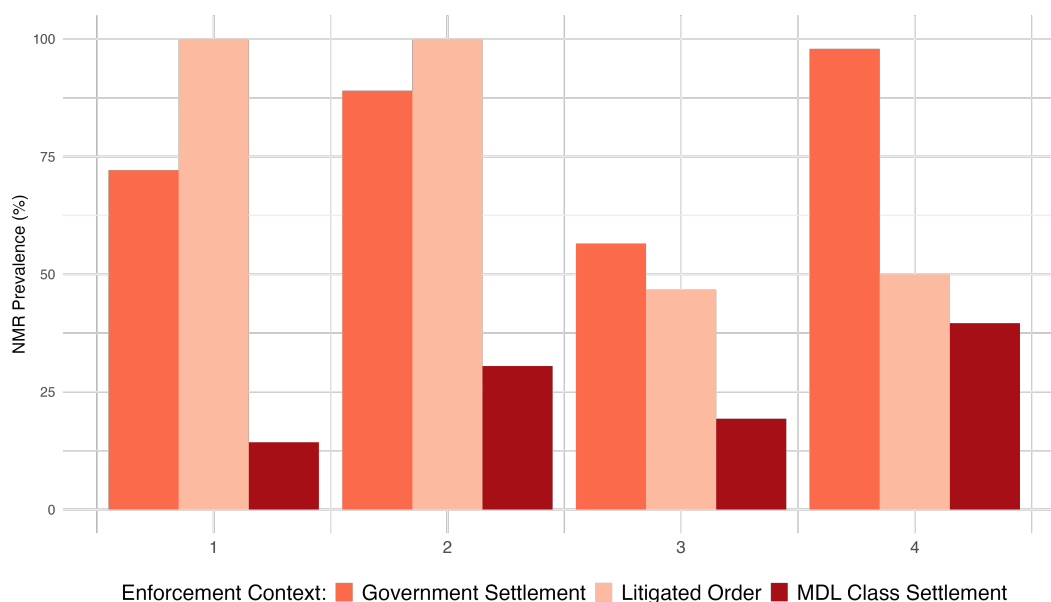
5.2.3. Settlement Size and NMRs Across Enforcement Contexts and Plaintiff Categories

While the prior sections considered all settlements together, this section examines whether the relationship between settlement size and NMRs varies across enforcement contexts and plaintiff categories.

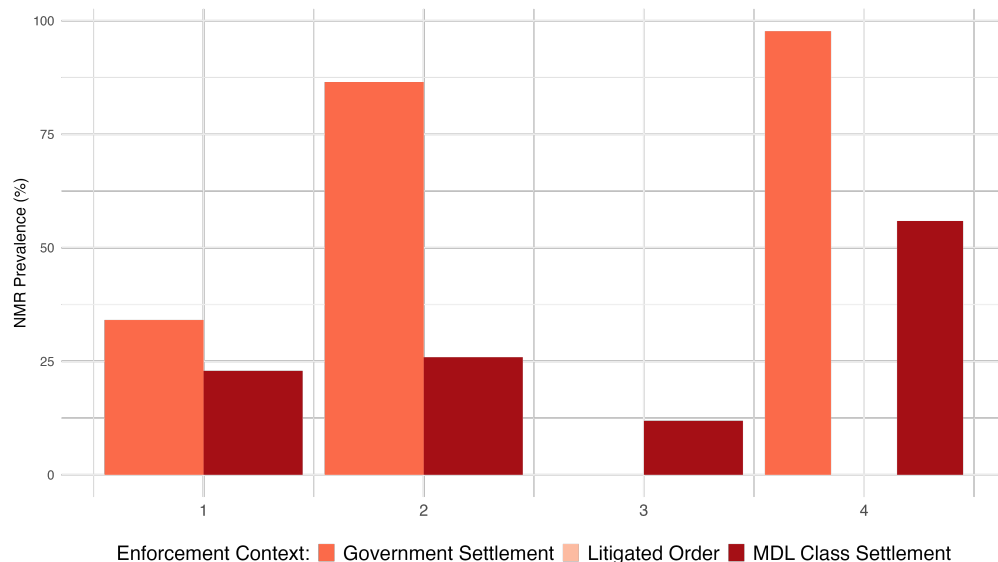
Government settlements consistently exhibit higher rates of NMRs regardless of settlement size (Graph 5.2). This finding holds true even when we exclude MDL 2293 (Graph 5.3). By contrast, class settlements displayed a higher frequency of NMRs in the fourth quartile (i.e., the largest settlements). This predominance, however, does not indicate that large settlements increase the likelihood of obtaining an NMR. Further regression analysis does not identify a statistically significant relationship in this direction (Chapter 7).

The litigated-order results require particular caution. The sample includes a small number of court orders granting NMRs, and a substantial share of those observations is associated with two MDLs (i.e., MDLs 2293 and 2541) and one federal enforcer case. In the full sample, litigated orders containing NMRs are common among the first and second settlement quartiles (i.e., lower-value cases). However, once MDL 2293 is excluded, this pattern changes, with NMRs appearing only in the fourth quartile (Graph 5.3). This instability indicates that MDL 2293 drives these observed patterns. Once we control for that, only a small number of observations are associated with high-value cases.

Graph 5.2. NMR Prevalence by Settlement Quartile and Enforcement Context



**Graph 5.3. NMR Prevalence by Settlement Quartile and Enforcement Context
(Excluding MDL 2293)**

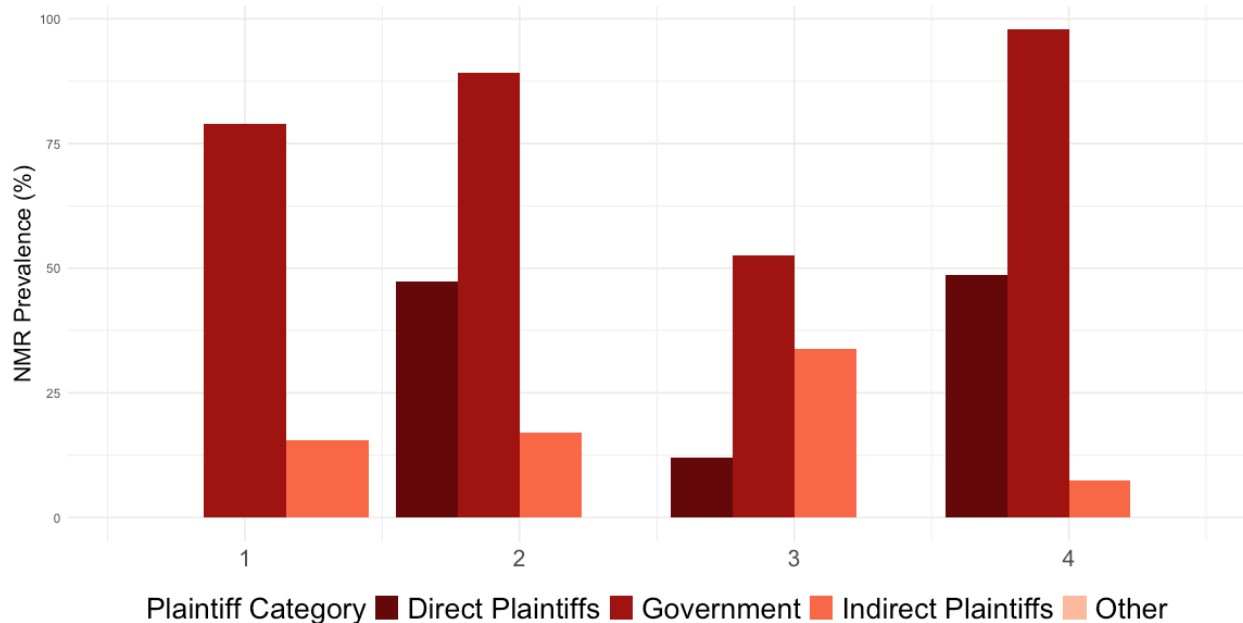


Graphs 5.4 and 5.5 further disaggregate these patterns by plaintiff category. The evidence is consistent with NMRs being frequent in government-led cases regardless of their monetary size. In direct-plaintiff cases, NMRs are more frequent in the second and third quartiles. By contrast, in indirect-plaintiff actions, NMRs are more frequent in mid-tier settlements (i.e., second and third quartiles).

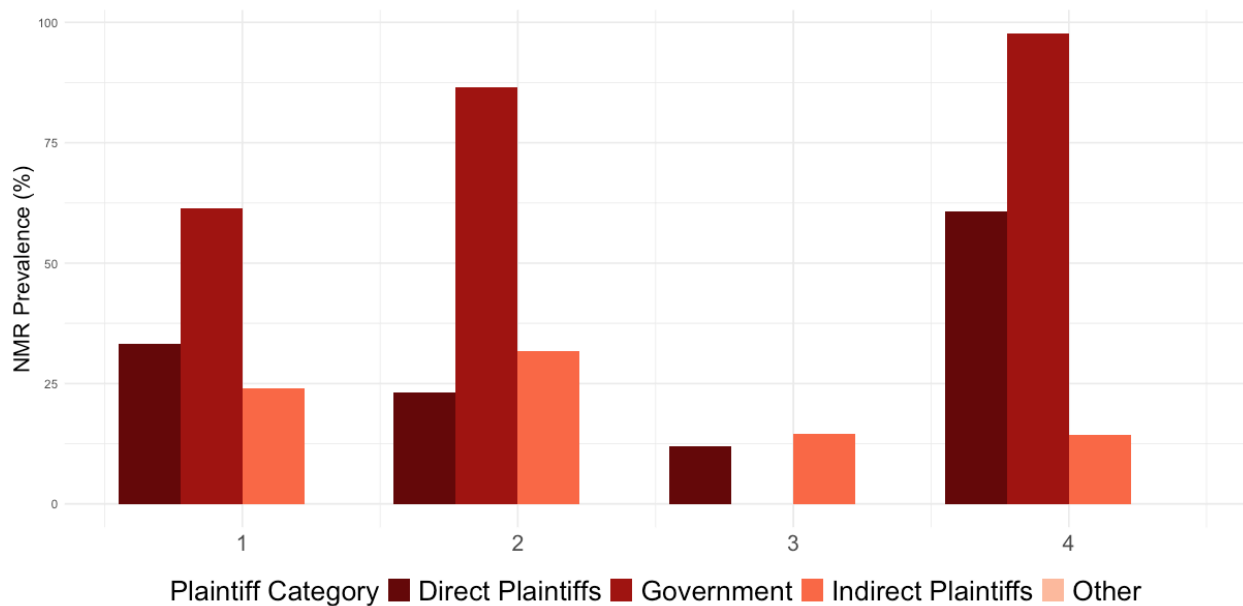
When we exclude MDL 2293 (Graph 5.5), the new results hold true for direct and indirect plaintiffs. Beginning with direct plaintiffs, NMRs remain more frequent in the second and fourth quartiles. We do not interpret the difference in the first settlement quartile, as it is based on only one observation in the full sample and three observations after excluding MDL 2293. These sample sizes are too small to support meaningful comparisons. As for indirect plaintiffs, changes are more nuanced, but results still indicate a higher frequency of NMRs in mid-tier settlements.

The scenario changes for government-led cases. After excluding MDL 2293, only two observations remain in the third quartile. This difference is expected, though, given that MDL 2293 dominates the government observations because it involves all 50 states.

Graph 5.4. NMR Prevalence by Settlement Quartile and Plaintiff Category



**Graph 5.5. NMR Prevalence by Settlement Quartile and Plaintiff Category
(Excluding MDL 2293)**



Taken together, these findings indicate that the relationship between settlement size and NMR depends heavily on enforcement context and a small number of influential cases. Government settlements consistently rely on NMR regardless of settlement size. Direct-plaintiff cases exhibited a higher NMR

frequency in the second and fourth quartiles, whereas indirect plaintiffs consistently exhibited a higher frequency of NMRs in mid-size settlements.

5.3. Relationship between NMRs and Cooperation Provisions

The dataset also allows drawing insights into the relationship between NMRs and cooperation provisions (i.e., clauses requiring the settling defendant to cooperate with plaintiffs in prosecuting claims against non-settling defendants).

Table 5.8. Frequency of Cooperation Provisions in Settlements

Cooperation Provision	Observations	Percentage
No	668	53%
Yes	591	47%

As shown in Table 5.8, cooperation provisions appear in nearly half (47%) of all resolutions in the dataset, making them a standard feature of the antitrust settlement landscape rather than an exceptional arrangement.

Among MDL class settlements, cooperation provisions appear in 55.76% of documented results. Within this group, indirect plaintiffs rely on cooperation provisions much more frequently than direct plaintiffs (61.26% versus 43.14%). Government-led lawsuits exhibit a similar cooperation rate of 43.58%, although they outnumber private plaintiffs in absolute terms (Table 5.9).

Table 5.9. Cooperation Provision by Plaintiff Category

Plaintiff Category	Total Observations	Cooperation Provisions	Cooperation Provision Rate
Direct Plaintiffs	401	173	43.14%
Indirect Plaintiffs	191	117	61.26%
Government	631	275	43.58%

Note: Government-led lawsuits include consolidated and unconsolidated cases.

A comparison between cooperation provisions and obtained NMRs reveals an interesting pattern: cooperation appears more frequently than NMRs. Table 5.10 further shows that settlements containing cooperation provisions include fewer NMRs, with a mean of 0.92 remedies compared to 2.40 in settlements without cooperation provisions. Likewise, only 40.36% of settlements containing

cooperation provisions include at least one NMR, whereas 71.92% of settlements without cooperation provisions do so. Settlements containing cooperation provisions also involve lower monetary awards. Their median settlement value is \$2.06 million, compared with \$2.59 million for settlements without cooperation provisions.

Table 5.10. Comparing Cooperation and Settlement Terms

Cooperation Provision	Total Cooperation Observations	Settlement Amount		NMRs	
		Mean	Median	Mean	Prevalence Rate
No	668	\$30,916,085	\$2,586,207	2.40	71.92%
Yes	591	\$14,865,563	\$2,057,895	0.92	40.36%

These findings therefore reveal three patterns. First, cooperation provisions appear in nearly half of the sampled settlements and are even more frequent in MDL-class settlements. Second, indirect plaintiffs rely on these clauses more than direct plaintiffs and government enforcers. Third, settlements including such commitments result in lower monetary awards and fewer or no NMRs. Accordingly, cooperation provisions may function as an alternative bargaining outcome, with plaintiffs accepting them in exchange for NMRs. Higher standards of demonstration and proof may explain such negotiations. At the same time, we recognize that descriptive statistics do not establish whether cooperation provisions substitute for NMRs or whether other case characteristics explain these observed patterns.

5.4. Distribution of Distinct NMRs Per Case

In addition to identifying the cases with obtained NMRs, this research also recorded the number of distinct types of NMRs obtained in each case. This information enables an assessment of the scope of the NMR awarded in each case, as the number of distinct types ultimately indicates the comprehensiveness of the remedial package.

Overall, resolutions with NMRs included an average of 2.8 of the 6 recorded remedies (i.e., injunctive relief, information-sharing restrictions, divestiture, compliance programs, monitoring mechanisms, and miscellaneous relief). Variation, however, exists behind this average across enforcement contexts and plaintiff groups, as shown in Table 5.11.

Table 5.11. Non-Monetary Remedy Quantity Summary Statistics

Enforcement Context	Plaintiff Category	Median	1 st Quartile	3 rd Quartile	Interquartile Range	Total
Government Settlements	Government	3	2	5	3	460
Litigated Orders	Direct Plaintiffs	1	1	1	0	6
	Government	3	1	4	3	12
MDL Class Settlements	Direct Plaintiffs	3	1	3	2	108
	Indirect Plaintiffs	1	1	2	1	38

Government settlements stand out for the comprehensiveness of their non-monetary relief. As shown in Table 5.11, they include a median of three distinct types of NMRs. In addition, at least 75% of the government settlements include two or more distinct NMR types. The third quartile also indicates that at least 25% of these settlements contain five or more distinct NMR types. At the same time, the interquartile range of three confirms that these settlements involve multiple remedial provisions responsive to the facts of the case. Together, these figures indicate that the government enforcement settlements contain a remedial package that combined multiple types of NMRs.

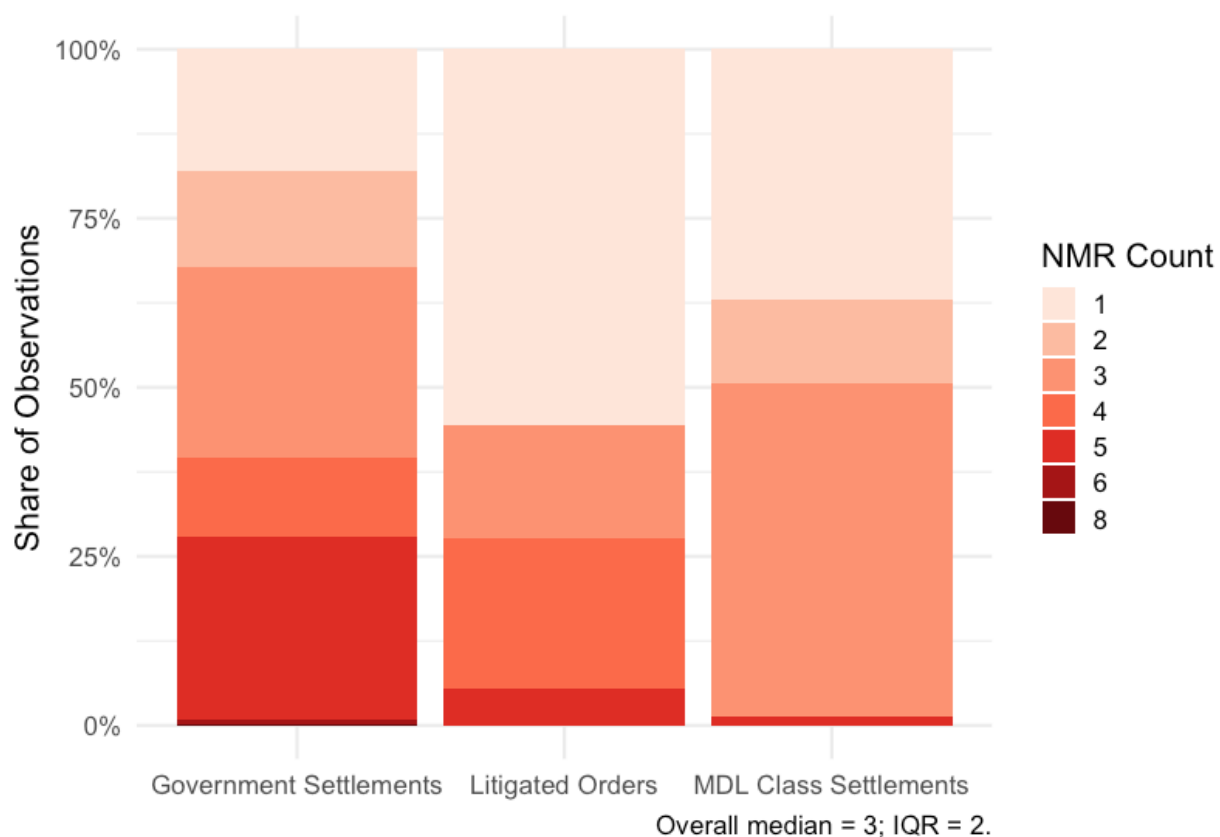
Direct plaintiffs, by contrast, obtain a narrower set of NMRs. Class settlements, particularly those pursued by direct plaintiffs, also result in a median of 3 NMRs. However, the smaller interquartile range indicates less variation than government settlements.

Indirect plaintiffs, in turn, tell an interesting story. Although this group frequently requested NMRs, it exhibited the least variation in the number of obtained NMRs. With both a median of one and an interquartile range of one, indirect plaintiff settlements comprised an even narrower set of NMRs compared to direct plaintiffs. In other words, a higher frequency of NMR requests did not translate into a broader or more diverse range of obtained NMRs.

The number of observations for litigated orders is too small to draw any conclusions. Still, judges granted more comprehensive remedial packages in government litigation. Those with multiple remedy types included a mix of information-sharing bans, monitoring mechanisms, and compliance programs. While some remedies broadly prohibited anticompetitive conduct (for example, an

injunction in MDL 2293 “enjoin[ing] and restrain[ing] Apple from engaging in anticompetitive conduct in the realm of E-books”), many provided specific behavioral remedies, ranging from prohibiting anticompetitive agreements to appointing antitrust compliance officers to changing operating regulations to adopting licensing frameworks. These judicially constructed NMRs exemplify the powerful role of judicial discretion in shaping remedies. At the same time, the small number of litigated orders and the substantial influence of MDL 2293 require us to interpret these findings with caution.

Graph 5.6. Distribution of Obtained NMR Counts by Enforcement Context



These results, therefore, show that the breadth of NMRs varies across enforcement contexts and plaintiff groups. Government settlements frequently combine multiple remedy types, whereas private settlements, particularly those involving indirect plaintiffs, generally rely on a narrower set of NMRs.

5.5. Scope and Composition of NMRs

In addition to examining the number of NMR types, we explore the specific use of five types: injunctions, information-sharing bans, divestitures, compliance

mechanisms, and monitoring mechanisms. Table 5.12 summarizes the frequency of the principal remedy types across settlements and court orders.

Table 5.12. General Distribution of Obtained NMRs

NMR Type	Total Count	% of All Obtained NMR Provisions	% of NMR-Containing Settlements
Injunction	652	33.15%	93.28%
Compliance Program	415	21.10%	59.37%
Monitoring Mechanism	340	17.29%	48.64%
Information Sharing Ban	221	11.24%	31.62%
Divestiture	36	1.83%	5.15%
Other	303	15.40%	43.35%

Note: This Table measures two independent distributions. First, *% of All Obtained NMR Provisions* measures the composition of all obtained NMR provisions in the dataset. Second, *% of NMR-Containing Settlements* speaks to how common a given NMR type is among settlements and orders that contain at least one NMR.

As shown in Table 5.12, injunctions are by far the most popular, included in 93.28% of all non-monetary remedy-containing settlements and accounting for 33.15% of all obtained non-monetary remedy provisions. Compliance programs were the only other NMR type present in more than half of the settlements containing such remedies, appearing in 59.37% of them and comprising 21.10% of all provisions obtained. Information-sharing bans, monitoring mechanisms, and other provisions account for between 1% and 20% of all obtained NMRs, indicating that no other remedy dominates beyond injunctions and compliance programs.

The predominance of injunctions in the absence of divestitures and the broad spread of other remedies suggest that, while enforcers consistently reach for injunctive relief as a baseline, the remaining composition of the settlement or order varies. Overall, Table 5.12 suggests that plaintiffs obtain behavioral remedies more frequently than structural remedies. The telling difference between the frequency measures of injunctions and divestiture illustrates this point. While 93% of settlements and court orders containing an NMR include at least an injunction, only 5% include at least one divestiture provision.

Graph 5.7 shows that the composition of NMRs also varies across enforcement contexts. Government settlements include a wider range of NMRs, with higher frequencies of injunctions (28.68%) and compliance (22.27%) across all NMR provisions obtained. In contrast, private plaintiffs cluster heavily around injunctions and a narrow set of additional provisions. More specifically, 44.94% of all obtained NMR provisions in class settlements include injunctions. Monitoring mechanisms are also relatively frequent, accounting for 23.42% of all NMR provisions obtained in this enforcement context.

Although the number of observations of litigated orders is relatively small, the decisions clustered around injunctions (46.15%) and monitoring mechanisms (20.51%). Information-sharing bans and compliance appear less often, representing 18% and 13%, respectively, of all obtained NMR provisions in this enforcement context.

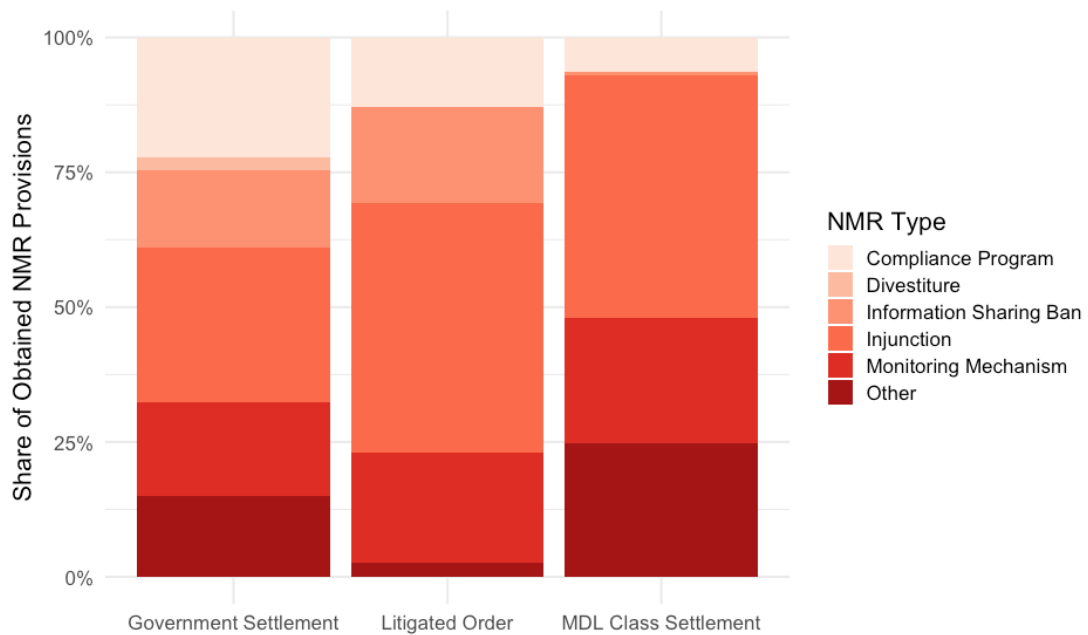
Divestitures deserve particular attention. They appear exclusively in government settlements; in our dataset, they account for 2.43% of all obtained NMR provisions in that context. In other words, we did not identify divestiture measures related to private lawsuits.

Remedies aggregated in the “other” category are common in government settlements (15%) and class settlements (25%). Although a closer examination of this category could provide additional insight into the diversity of NMRs, its low frequency suggests that the NMR categories identified in this study capture most remedial provisions included in our data.

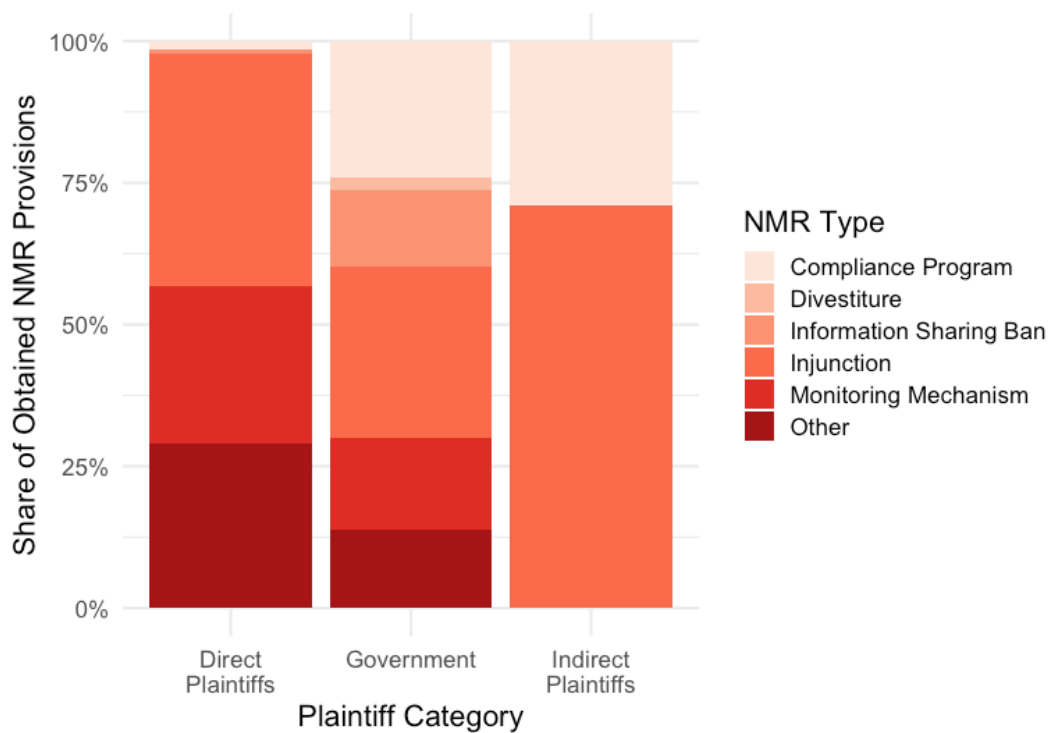
Graph 5.8 disaggregates the composition of NMRs by plaintiff category. The patterns reinforce the enforcement-context findings but also highlight differences between direct and indirect plaintiffs. Government plaintiffs exhibit the broadest range of remedies, whereas private plaintiffs rely more heavily on injunctions.

The contrast between direct and indirect purchasers is particularly stark. Indirect purchasers obtain only two types remedies (injunctions and compliance programs), while direct purchasers secure a mix of injunctions (39.86%), monitoring mechanisms (26.57%), and other provisions (29.37%), each representing a substantial share. Overall, private enforcers skew heavily towards injunctions relative to public enforcers, whose remedy portfolios are distributed more evenly across all six remedy types.

Graph 5.7. Distribution of NMRs by Enforcement Context



Graph 5.8. Distribution of NMRs by Plaintiff Group



5.6. Variation in NMR Design

Beyond their frequency of obtainment, NMR types differ in their characteristics. More specifically, these remedies differ not only in their substantive objectives (i.e., implementing a compliance program or stopping the conduct) but also in their implementation design. For instance, while behavioral remedies often follow a five-year implementation period, data suggest that structural remedies follow a ten-year implementation period. Our data, however, also suggest that one characteristic is present across all NMRs: oversight mechanisms. Therefore, compliance with the NMR provisions seems to be a common concern across antitrust enforcers.

5.6.1. NMR Characteristics

Table 5.13 summarizes the differences in implementation characteristics across NMR types. Several patterns emerge from the data:

Table 5.13. Remedy Characteristics by Type

Characteristic	Compliance Program	Divestiture	Information Sharing Ban	Injunction	Monitoring	Other
Median Duration (Months)	60.00	120.00	60.00	60.00	60.00	60.00
% Nationwide Geographic Scope	60.68	0.00	67.91	64.33	90.86	65.40
% Sunset Clause	68.38	58.97	79.14	69.97	96.00	65.61
% Third-Party Monitoring	4.84	56.41	34.76	31.66	52.57	48.73
% Reporting Requirements	74.64	66.67	91.44	74.66	99.43	81.53
% Compliance Officer	80.63	33.33	89.30	48.91	49.14	28.66

Note: We defined sunset clauses as provisions that specify the remedy expires automatically after a set period or upon a triggering event, without requiring court action. Third-party monitoring provisions refer to remedies that require the appointment of an external monitor, trustee, or special master to oversee compliance. Reporting requirements refer to provisions that require the defendant to submit periodic reports to the court, the plaintiff, or a monitor. Compliance officer provisions require the defendant to designate a compliance officer, establish a compliance committee, or create an internal compliance function specifically for that remedy.

Starting with NMR duration, most behavioral remedies have a median of 60 months (i.e., a five-year implementation period). By contrast, divestitures exhibit a median duration of 120 months (i.e., a ten-year implementation period). This distinction is in line with their different natures; structural remedies tend to be more long term.

Oversight emerges as a common feature across all remedy types, although the mechanism varies. Reporting requirements are the most frequent oversight mechanism, appearing in at least two-thirds of cases across all NMR types. By contrast, third-party monitoring appears much less frequently and is concentrated in monitoring provisions (53%) and divestitures (56%). Compliance officers primarily accompany information-sharing bans (89%) and compliance programs (81%), but appear less frequently in injunctions, monitoring remedies, divestitures, and the residual “other” category. These patterns suggest oversight’s design reflects each remedy context and does not follow a standard structure.

In terms of geographic scope, monitoring remedies often have a nationwide scope, whereas divestitures have a local scope. Other remedies exhibit mixed results, but nationwide remedies seem to prevail. This characteristic, however, may reflect the underlying data, as MDLs are often associated with anticompetitive conduct impacting multiple localities.

Shifting the focus to individual remedies, monitoring remedies rank highest among implementation features. In most cases, they are associated with a nationwide geographic scope (91%), sunset clauses (96%), reporting requirements (99%), and third-party monitoring (53%). All these features suggest that monitoring remedies frequently involve multiple oversight mechanisms rather than isolated reporting obligations.

As expected, compliance programs appear frequently associated with internal governance structures. Unlike monitoring remedies, only 5% of these remedies involve third-party monitors. This gap raises questions about the practical enforceability of this remedy compared with other remedy types that more routinely incorporate external accountability measures.

Information-sharing bans, in turn, frequently include internal and external safeguards. In most cases, they include reporting requirements (91%) and compliance officers (89%). However, third-party monitoring also occurs in one-third of these remedy observations.

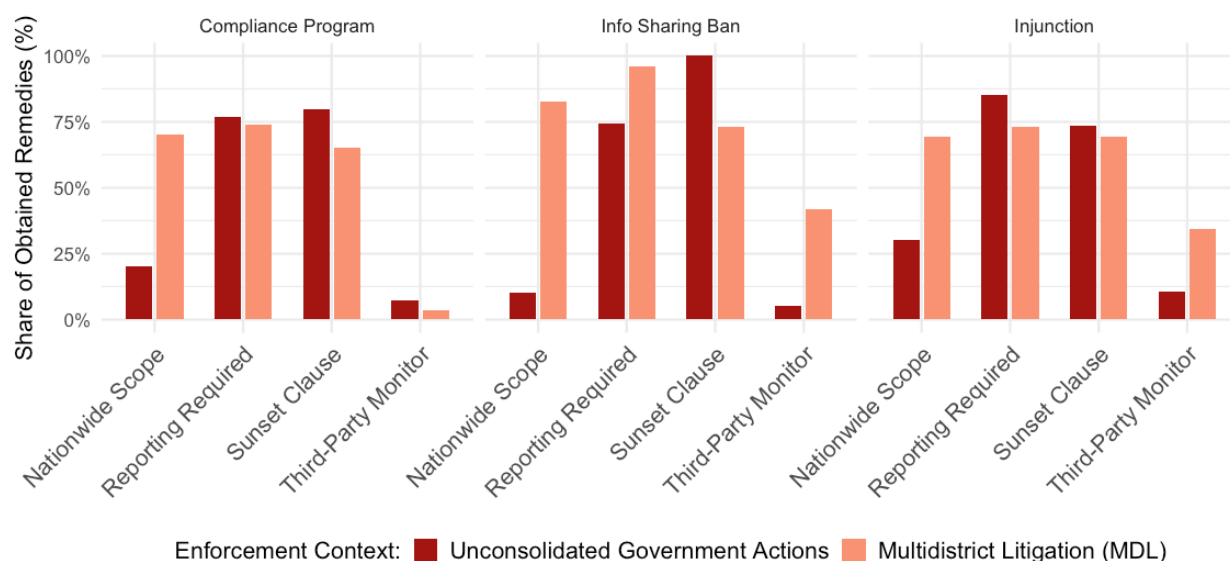
Divestitures are different than other NMRs. These remedies had a median duration of 120 months, targeted specific markets, and rely on third-party monitoring and other reporting requirements. Like information-sharing bans, one-third of divestitures involve third-party monitoring requirements.

The category of “other” remedies is also telling. Most involve reporting requirements (81%) and target the national market (65%). These figures indicate that these remedies often apply to specific markets rather than the entire territory and involve some level of oversight.

5.6.2. Differences Across Enforcement Contexts

Structural differences persist when remedy characteristics are disaggregated by enforcement context. Graph 5.9 compares unconsolidated government actions with MDL settlements.

Graph 5.9. Characteristics of the Main NMRs by Enforcement Context



Note: This Graph refers only to unconsolidated government actions, unlike the prior enforcement context analysis in Graph 5.7 above. It compares unconsolidated government actions with settlements obtained through MDLs. Therefore, it does not reflect a separation between public and private enforcement because MDLs also include government plaintiffs. Graph 5.10 instead supports such a comparison.

For compliance programs, unconsolidated government actions and MDLs are largely similar in reporting, third-party monitoring, and sunset-clause provisions, but differ greatly in their nationwide scope. Unconsolidated government actions call for nationwide-scope provisions at a substantially lower rate.

Information-sharing bans also exhibit similarities regarding reporting requirements and sunset clauses in both types of lawsuits. The difference, again, lies in their geographic scope: MDLs involved nationwide remedies. Third-party monitoring remains relatively less common in both.

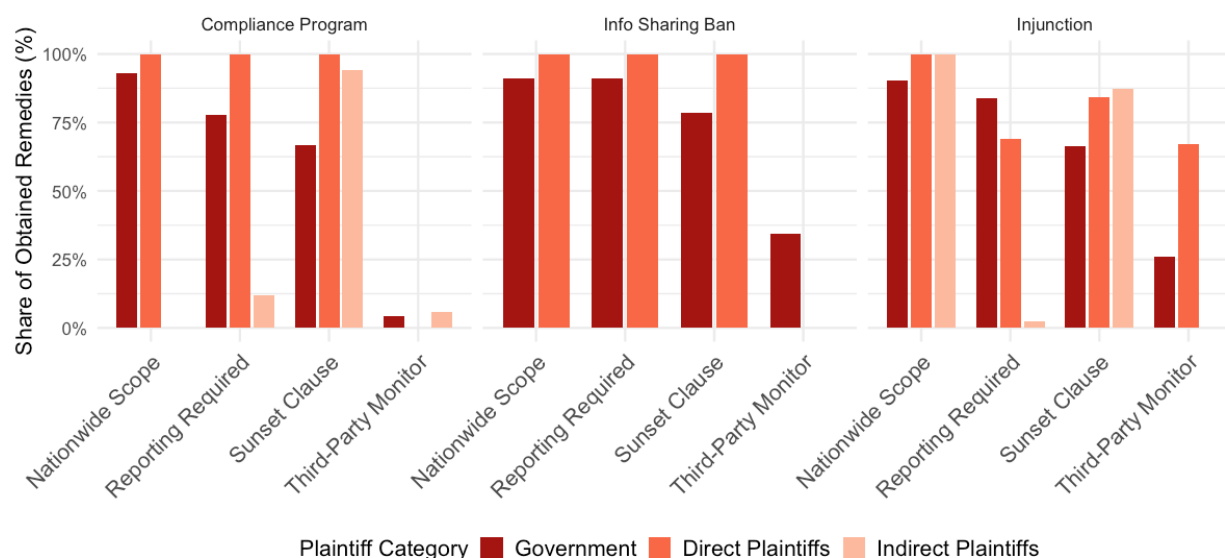
Injunctions exhibit more balanced frequencies across all characteristics. Compared with other NMRs, unconsolidated government actions more frequently include nationwide injunctions. Reporting requirements are generally frequent in

both enforcement contexts. Third-party monitoring is again less common than the other features.

5.6.3. Differences Across Plaintiff Categories

Remedy characteristics also vary across plaintiff categories. Graph 5.10 compares the implementation design of the three main NMRs obtained by government, direct, and indirect plaintiffs.

Graph 5.10. Remedy characteristics by plaintiff category



The government estimates provide the clearest picture of how NMR characteristics vary. Because they rely on larger samples (183 information-sharing bans, 330 compliance programs, and 439 injunctions), they offer the most reliable basis for comparison. Approximately 90% of government remedies apply nationwide across all three remedy types. This finding complements the earlier analysis of remedy scope per enforcement context (Graph 5.9). The results suggest that unconsolidated government actions produce more targeted remedies, whereas consolidated government actions produce broader NMRs. This pattern aligns with the nature of the underlying litigation: MDLs challenged conduct with nationwide effects and often involve multiple state attorneys general acting jointly.

Government enforcers also frequently include reporting requirements across all three remedy types, but they rely less often on third-party monitoring. These findings suggest that government enforcers may prefer reporting obligations over external monitoring as their primary mechanism for oversight.

The direct plaintiff estimates require caution. Compliance programs and information-sharing bans rely on only two observations each, preventing meaningful conclusions regarding these remedies. The injunction results offer a more informative picture. Direct plaintiffs apply 100% of their injunctions nationwide, include sunset clauses in 84% of cases, require reporting in 69%, and incorporate third-party monitoring in 67%. These findings suggest that direct plaintiffs often couple injunctions with supervising provisions, particularly reporting requirements and third-party monitoring. The frequent use of sunset clauses further suggests that these injunctions remain subject to temporal limitations; these remedies are not permanent solutions.

The results for indirect plaintiffs require greater caution, as this group has even fewer observations per remedy type. Compliance programs rely on only 17 observations, while injunctions rely on 39. Within those limitations, indirect plaintiffs most consistently include sunset clauses in their injunctions.

5.7. Conclusion

NMRs constitute a heterogeneous component of the U.S. antitrust landscape. Government settlements include such relief more frequently and implement broader remedial packages than private settlements did. Behavioral remedies, particularly injunctions, dominate the enforcement landscape in our data. Divestitures are generally associated with government settlements, suggesting that private plaintiffs may play a limited role in changing market structures. Instead, their contribution revolves around reshaping market behavior.

This chapter also showed that NMRs generally complement rather than replace monetary relief, but this relationship varies across enforcement contexts and plaintiff categories.

Finally, the findings indicate that remedy design differs systematically across remedy types, enforcement contexts, and plaintiff groups. One element seems to be common, though: oversight mechanisms are constantly integrated into such remedies.

6. The Gap between Requested and Obtained Non-Monetary Remedies

Key Takeaways

A few broad trends emerge from our analysis of obtainment rates for NMRs. Based on the relatively high success rate of requests for divestiture and "other" remedies, specific or tailored remedies seem to be granted more frequently than generic requests for blanket injunctions against anticompetitive conduct. Furthermore, government plaintiffs are significantly more likely than private plaintiffs to secure the NMRs that they request, especially with respect to substantive remedies such as injunctions, information-sharing bans, or divestiture.

Once a remedy is granted, it is often bundled with unrequested remedies like compliance programs and monitoring requirements. Since these remedies are almost never granted on their own, they might best be understood as auxiliary remedies that facilitate the enforcement of more substantive remedies. Rather than limiting themselves to the requested remedies, NMR "packages" therefore appear to take a holistic approach to ensure they are genuinely effective.

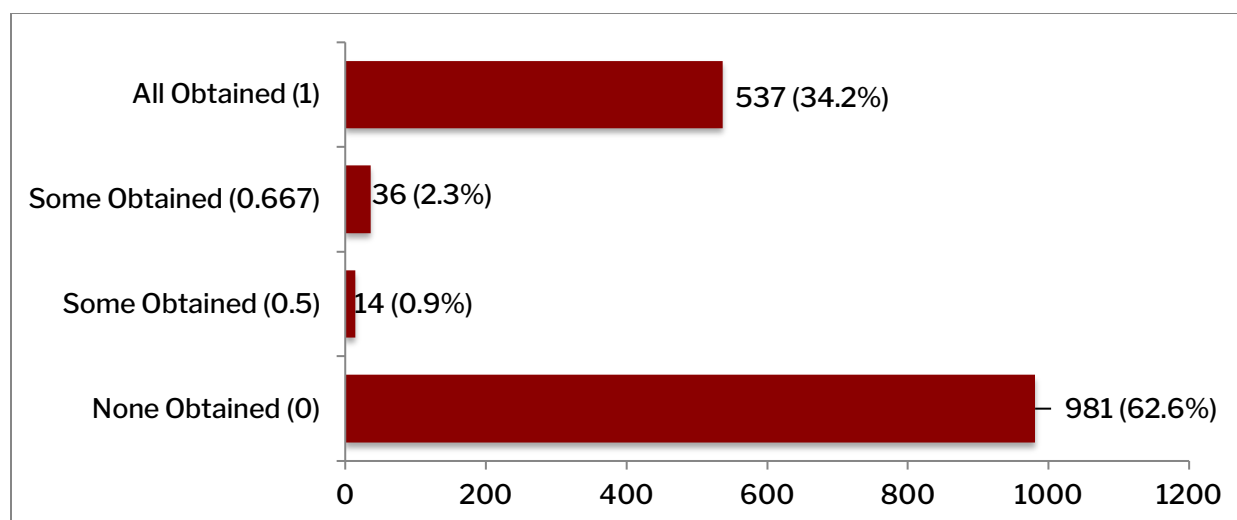
Once a remedy is on the table, how often is it actually obtained? By collecting data from publicly available settlements and court orders, we analyze obtainment rates for various NMRs. The following sections explore how obtainment rates vary by non-monetary remedy type, enforcement context, and plaintiff category. We also consider NMRs that are obtained despite never being requested by the plaintiff at the pleading stage. Such remedies point to a phenomenon we call "bundling", where remedies like compliance programs and monitoring requirements are frequently granted alongside injunctions or information-sharing bans, but are rarely granted on their own. Finally, we consider whether granted remedies tend to be narrower or broader in scope than what plaintiffs originally requested in their complaints.

In this chapter, our data comes from court orders and publicly available settlements. The latter covers class action settlements and agreements entered into by government plaintiffs. This limitation arises from the fact that many private settlements remain undisclosed to the public; therefore, it is not possible to assess whether the parties agreed to a non-monetary remedy.

6.1. Obtainment Rates for Requested Remedies

Overall, plaintiffs who request NMRs obtained at least one of those remedies 37% of the time. When non-monetary relief was granted, plaintiffs were much more likely to receive all of the remedies they requested at the pleading stage, rather than only some. In other words, the obtainment of NMRs is somewhat binary: either all requested remedies are granted, or none are. The following Graph shows the outcome distribution of requested NMRs:

Graph 6.1. Outcome Distribution of Requested NMRs



This overall obtainment rate is heavily skewed towards the obtainment rate of injunctions, which represent the lion's share of NMRs both requested and obtained in our dataset. We turn next to a more granular analysis of obtainment rates by type of non-monetary remedy.

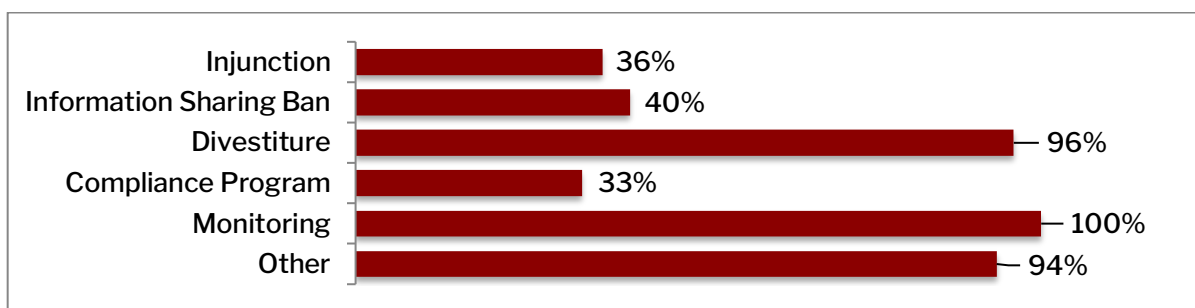
6.1.1. Obtainment Rates by Type of Non-Monetary Remedy

By distinguishing between different types of NMRs, we begin to see significant divergences in obtainment rates. Table 6.1 and Graph 6.2 below break down obtainment rates by type of non-monetary remedy, showing the total count of each type of remedy that was obtained:

Table 6.1. Non-monetary Remedy Counts and Obtainment Rates (by type)

Type of NMR	# Requested	# Obtained	Obtainment Rate
Injunction	1433	509	.355
Information Sharing Ban	70	28	.400
Divestiture	25	24	.960
Compliance Program	70	23	.329
Monitoring	41	41	1.00
Other	108	101	.935

Graph 6.2. Obtainment Rate by Non-Monetary Remedy Type



Graph 6.2 shows that stark disparities exist in the obtainment rates of different types of requested NMRs. Injunctions, which predominate our dataset, were obtained in only about 36% of cases. On the other hand, remedies like divestiture and monitoring are obtained almost universally when requested. The high obtainment rate for our residual category, "other," also suggests that more specific or tailored remedy requests face higher odds of success than generic requests for injunctions (such as requests to enjoin *per se* violations of the Sherman Act).

6.1.2. Obtainment Rates by Enforcement Context

At this stage, our dataset covers two enforcement contexts, namely: (1) government-led actions; and (2) MDLs. Each of these scenarios featured its own landscape of NMRs, and they diverge substantially, as the Table below shows:

Table 6.2. Non-Monetary Remedy Obtainment Rates (by Enforcement Context)

Type of NMR	Government-led Actions	MDL
Injunction	66.9% (69/103)	34.4% (437/1269)
Information-Sharing Ban	92% (23/25)	0% (0/29)
Divestiture	96% (24/25)	NA
Compliance Program	100% (13/13)	9.6% (5/52)
Monitoring	NA	100% (36/36)
Other	81.8% (18/22)	97.5% (78/80)

Across non-monetary remedy types, plaintiffs in government-led actions are almost always more likely to obtain an NMR than their counterparts in an MDL. Indeed, they are almost twice as likely to obtain injunctions as plaintiffs in MDLs. Likewise, plaintiffs in government-led cases are much more likely to obtain information-sharing bans and compliance programs.

6.1.3. Obtainment Rates by Plaintiff Category

Turning from the enforcement context to the plaintiff category, similar patterns seem to hold true. The following Table summarizes the obtainment rates of different NMRs according to the type of plaintiff requesting the remedy.

Table 6.3. Non-Monetary Remedy Obtainment Rates by Plaintiff Category

Type of NMR	Competitor	Direct Plaintiff*	Indirect Plaintiff**	Government	Other
Injunction	0% (0/3)	15.7% (105/667)	23.3% (38/163)	73.6% (354/481)	15.5% (9/58)
Information-Sharing Ban	NA	0% (0/29)	NA	93.3% (28/30)	NA
Divestiture	NA	NA	NA	96% (24/25)	NA
Compliance Program	NA	0% (0/11)	100% (1/1)	37.9% (22/58)	NA
Monitoring	NA	100% (36/36)	NA	100% (5/5)	NA
Other	NA	NA	0% (0/2)	94.2% (65/69)	NA

Note: *Direct Plaintiffs include Direct Purchasers, Direct Sellers, and Parties that were assigned claims from Direct Purchasers

**Indirect Plaintiffs include Indirect Purchasers and Indirect Resellers

Government plaintiffs obtain injunctions, information-sharing bans, and compliance programs at a substantially higher rate than any other plaintiff type. In addition, data provides preliminary descriptive indicia that indirect plaintiffs may be performing better than direct plaintiffs. That said, we add a caveat regarding data on private plaintiffs. As noted, non-class plaintiffs' private settlements are overwhelmingly not disclosed (e.g., suits filed by competitors). In fact, our data on non-class plaintiffs' obtainment rate covers exclusively outcomes from court orders. As a result, evidence on the difference in obtainment rates across plaintiff categories is more robust between government plaintiffs and class plaintiffs, as well as among different class plaintiffs (e.g., direct and indirect purchasers).

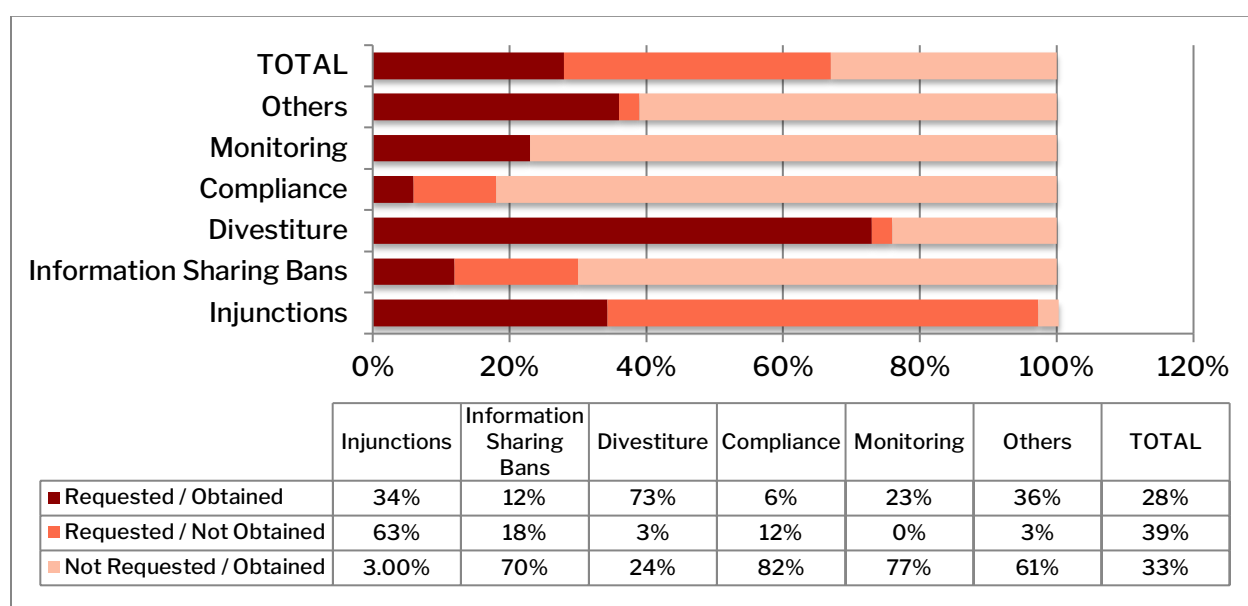
6.2. Unrequested Remedies

Not all obtained remedies are originally requested by plaintiffs in their complaints. The following Table and Graph show that our dataset contains hundreds of remedies that are granted without originally being requested, and even that some remedy types are predominantly obtained without being requested at the initial stage of litigation:

Table 6.4. Requested versus Obtained NMRs

Type of NMR	# Requested And Obtained	# Requested But Not Obtained	# Not Requested But Obtained
Injunction	509	924	49
Information Sharing Ban	28	42	159
Divestiture	24	1	8
Compliance Program	23	47	328
Monitoring	41	0	134
Other	101	7	172
TOTAL	726	1021	850

Graph 6.3. NMRs Requested versus Obtained



Compliance programs, monitoring, and information-sharing bans stand out in particular as types of non-monetary remedy that are requested relatively rarely but nevertheless feature in many settlements. While nominally similar, these types of NMRs are better understood as falling into two categories, each of which has a different reason for the low-request/high-obtain characteristic. With respect to information-sharing bans, it is plausible that they do not feature commonly in complaints because those complaints instead present broad requests for injunctive relief. Information-sharing bans, after all, are a particular type of injunction, and therefore if a plaintiff requested only vague forms of relief in their complaint, they may not have specified that they sought information-sharing bans. On the other hand, compliance programs and monitoring might be considered auxiliary remedies that get bundled with more substantive remedies, such as injunctions. According to this view, a plaintiff requests an injunction and ultimately receives not

only that injunction, but also the means to enforce it through compliance and monitoring.

In fact, "bundling" is pervasive across the settlements that we analyzed, as demonstrated by the following Graph and Table:

Graph 6.4. Non-Monetary Remedy “Bundling”

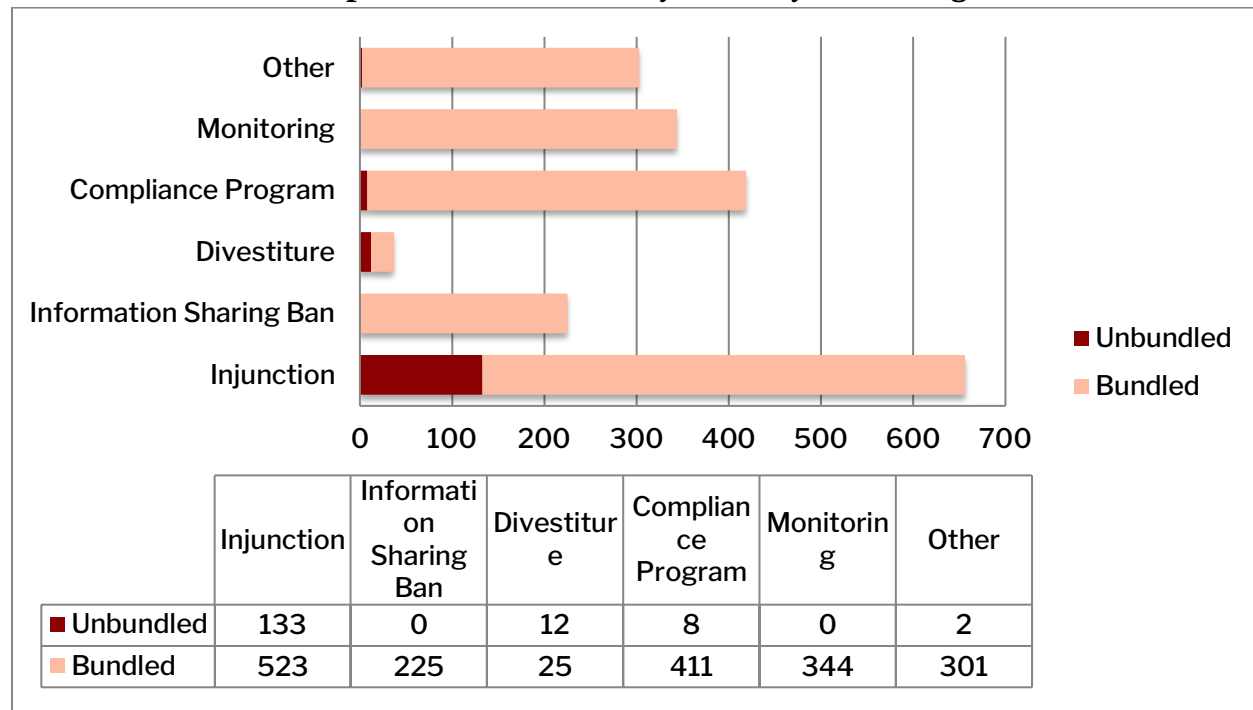


Table 6.5. – Non-Monetary Remedy “Bundling (by NMR type)

Type of NMR	Proportion Bundled (with at least one other NMR)
Injunction	79.7%
Information Sharing Ban	100%
Divestiture	67.6%
Compliance Program	98.1%
Monitoring	100%
Other	99.3%

Compliance is obtained as a standalone remedy in less than 2% of cases where it is granted, and monitoring is obtained as a standalone remedy in 0% of cases where it is granted. While information-sharing bans share a similarly low 0% standalone obtainment rate, this may reflect the broadness of injunctive requests in complaints, as suggested above, rather than indicating that information-sharing bans are auxiliary in the same way as compliance and monitoring.

6.3. Scope Comparison

We finally turn to a qualitative comparison between the scope of requested remedies and the scope of the remedies ultimately obtained. Here, we consider whether the obtained remedy tends to be broader or narrower than what was requested in the plaintiff's complaint. We analyzed settlements and litigated orders not only by remedy type, but also by enforcement context:

Table 6.6. Non-Monetary Remedy Scope Comparison

Actions	Type of NMR	Broader	Same	Narrower	Cannot Compare
Government-led actions	Injunction	14.5%	72.5%	13%	0%
	Information-Sharing Ban	0%	100%	0%	0%
	Divestiture	8.3%	75%	16.7%	0%
	Compliance Program	9.1%	90.9%	0%	0%
	Monitoring	NA	NA	NA	NA
	Other	22.2%	77.8%	0%	0%
MDL	Injunction	8.1%	68.6	23.3%	0%
	Information-Sharing Ban	0%	0%	0%	100%
	Divestiture	NA	NA	NA	NA
	Compliance Program	0%	100%	0%	0%
	Monitoring	0%	100%	0%	0%
	Other	0%	100%	0%	0%

Overall, our data indicate that the obtained NMRs largely had the same scope of requested remedies. This is especially true for plaintiffs in MDLs, who seem to receive either precisely what they requested or nothing at all. That said, there was a bit more variability in scope in government-led actions. This difference may reflect government enforcers' heightened interest in crafting targeted and durable remedies, while class action plaintiffs might focus more simply on righting a discrete wrong. With respect to remedy types, injunctions contained the most variability, regardless of enforcement context.

6.4. Conclusion

In this chapter, we show that the obtainment of NMRs extended beyond a simple question of whether plaintiffs receive the relief they requested. Obtainment rates varied across remedy types, enforcement contexts, and plaintiff categories, with government plaintiffs consistently securing broader and more substantive forms of relief than private plaintiffs. At the same time, settlements frequently reshape the remedies by adding unrequested remedies, particularly compliance programs and monitoring mechanisms, while preserving the scope of the remedies originally sought. These findings therefore suggest that NMRs evolve substantially during the resolution process.

7. Predictors of Remedy Outcomes

Key Takeaways

Government plaintiffs (State AGs/DOJ/FTC) substantially outperform private plaintiffs across the board. They are associated with: (i) 37-66 pp higher likelihood to obtain any NMR; (ii) 0.53-6.81 more NMR types; (iii) 46-71 pp higher likelihood to obtain specific NMRs requested in their complaints.

Section 2 (alone or jointly with other theories). These claims are associated with a boost in private plaintiffs' NMR obtainment, especially for securing specific requested remedies. However, it does not provide *additional* benefit to government enforcers who already operate at near-top obtainment rates.

Concurrent presence of direct and indirect plaintiffs within the same MDL (non-monetary relief underprovision). It is associated with: (i) 36-41 pp lower likelihood of obtaining any NMR; and (ii) 2.65 to 2.85 fewer NMR types.

Prior government antitrust investigations and follow-on actions (substitution mechanism). It is associated with: (i) 26-32 pp lower likelihood of obtaining any NMR; (ii) 1.0 to 2.47 fewer NMR types; and (iii) 26-28 pp lower likelihood of obtaining specific NMRs requested in their complaints.

Compliance programs face stronger defendant resistance. Among requested NMRs, compliance programs are the least likely to be obtained. Even considering remedies not requested at the pleading stage, such programs are among those that defendants seem more able to resist effectively.

Requesting NMRs in the complaint is a powerful predictor of obtaining NMRs. It is associated with: (i) a 24-27 pp increase in the likelihood of obtaining any NMR; and (ii) about 2.4-2.7 more NMR types.

7.1. Modeling Approach

In this chapter, we present the results of an exploratory multivariate analysis examining what factors predict obtaining NMRs in antitrust enforcement in federal courts. Our modeling captures two stages of non-monetary relief obtainment. First, whether plaintiffs secure any NMR at all: the “gateway.” Second, how many types and which specific types of NMRs plaintiffs obtain: the “intensity.” This approach enables us to analyze relationships at the settlement/order and individual-remedy levels.

In particular, we employ three complementary regression-based models. Model 1 predicts whether any non-monetary relief is obtained in a given settlement or litigated court order. Model 2 predicts how many types of NMRs are obtained. Model 3 predicts whether a specific requested remedy is obtained.³² The core explanatory variables are: (i) enforcement context (government-led actions vs. MDLs); (ii) plaintiff categories (direct/indirect plaintiffs, government, competitors, other);³³ (iii) duration; and (iv) Section 2 of the Sherman Act (i.e., whether the action includes claims based on this provision, alone or together with other antitrust claims).

Models 1 and 2 also include variables regarding whether the plaintiff has requested any NMR in their complaint and the amount of monetary relief secured by each plaintiff (log-transformed). To address non-linearity in the relationship between monetary value and NMR obtainment, we include three thresholds in such models, namely: (a) low-tier: awards of less than \$15,000, including zero-dollar values (the latter predominantly in government plaintiffs' settlements); (b) mid-tier: awards between \$15,000 and \$750,000; and (c) high-tier: awards over \$750,000.³⁴ Model 3, in turn, includes a variable on remedy type, including the following categories: (a) injunction; (b) information-sharing ban; (c) divestiture; (d) compliance program; (e) monitoring; and (f) other.

In the following sections, we present results for each model sequentially.³⁵ We then conclude with a discussion of the key findings.

7.2. The Gateway: Whether Any NMR Is Obtained (Model 1)

Using Model 1, we evaluate what predicts whether a settlement or litigated court order includes any non-monetary relief provision. The outcome variable is binary: does the settlement or order contain at least one NMR? (yes/no) In this

³² All models use cluster-robust standard errors to account for non-independence of observations within the same government-led action or MDL (Models 1 and 2) and within the same settlement or litigated order (Model 3). See Appendix A.

³³ Direct plaintiffs include direct purchasers, direct sellers and plaintiffs that were assigned claims from direct purchasers. Indirect plaintiffs include indirect purchasers and resellers.

³⁴ See Appendix A for more details.

³⁵ In the following sections we present results in Average Marginal Effects (AMEs) alongside odds ratios (OR) and incidence rate ratios (IRR) to facilitate interpretation. Regression tables are available in Appendix A: (i) Model 1: Tables A.1 and A.2; (ii) Model 2: Tables A.3 and A.4; (iii) Model 3: Tables A.5, A.6, and A.7.

chapter, we will generally focus on results from our four primary specifications.^{36,37} The first two, applicable to the full sample, are more focused on the likelihood of securing non-monetary relief across different plaintiff categories and cases including Section 2 claims. The other two, applicable to MDLs, illuminate relationships between the outcome of interest and prior government antitrust investigations and proceedings with multiple plaintiff categories (e.g., MDLs with direct and indirect plaintiffs). The model correctly predicts whether a settlement or order includes an NMR in 80-85% of observations (85-88% in the MDL-related specifications), indicating excellent performance.^{38,39}

Government plaintiffs are far more likely to obtain NMRs than private plaintiffs. In models where State AGs and DOJ/FTC are combined in the same category (R1), government plaintiffs are 48 percentage points more likely to obtain any NMR compared to direct plaintiffs (AME = 0.48; $p < 0.001$). When they are separated (R3), State AGs are 54 percentage points more likely and federal enforcers are 61 percentage points more likely than direct plaintiffs (AME_{StateAG} = 0.54, $p_{\text{State AG}} < 0.001$; AME_{DOJ/FTC} = 0.61, $p_{\text{DOJ/FTC}} < 0.001$). In the MDL-applicable specifications (R6-R8), State AGs' far better performance than direct plaintiffs is stable across specifications (AME range: 0.37-0.65). Likewise, every federal enforcer observation in those samples obtained an NMR.

Mid-tier monetary awards predict crossing the NMR gateway, but higher-range amounts do not. Within the mid-tier range, increasing awards is strongly associated with at least 13 percentage points higher likelihood of securing any NMR (AME range: 0.13-0.23; OR range: 4.3-6.9; $p < 0.001$). By contrast, high-range awards are related to lower likelihood of obtaining an NMR. However, results for this tier are generally not statistically significant, except for one MDL-specific model (R8), suggesting that the largest monetary remedies within MDLs are less likely to obtain

³⁶ Namely: (R1) main specification with government plaintiffs as a combined category including State Attorneys' Generals and federal enforcers; (R5) a specification with interaction terms for cases including Section 2 claims and State AG and federal enforcers interactions with Section 2 variable. These are applicable to the full sample. In turn, the MDL-oriented specifications are: (R2) contains variables to account for multiple plaintiff categories within the same MDL; (R6) including prior government antitrust investigation as a predictor. Regression tables for all specifications are included in Appendix A.

³⁷ We occasionally discuss additional insights from other specifications where pertinent.

³⁸ This is further supported by the figures regarding Model 1 specifications' area under the ROC curve (AUC). Here, the AUC measures how well the model distinguishes settlements and litigated orders that include NMRs from those that do not. An AUC of 0.5 indicates random chance while 1.0 means perfect distinction. For Model 1, the AUC ranges from 0.887 to 0.900 in the full-sample specifications and 0.895-0.946 for the MDL-related specifications, indicating excellent classification power across all specifications.

³⁹ In addition, Linktest diagnostics are consistent with no evidence of specification error in Model 1, and variance inflation factors indicate no multicollinearity concerns as well.

NMRs (AME = -0.10; OR = 0.33, $p < 0.001$). Low-tier observations (mainly cases filed by government plaintiffs with no monetary component) are near-certain to include NMRs, with odds ratios exceeding 700 across all specifications.

Section 2 claims are associated with higher NMR obtainment in the full sample, but its specific advantage is concentrated among private plaintiffs. Overall (R5), results indicate that private plaintiffs asserting Section 2 claims are more likely to secure NMRs than in cases that do not include this legal basis, a 30 percentage points boost (AME = 0.30; $p < 0.002$). Conversely, government plaintiffs tend to be less successful in cases including Section 2 claims compared to their cases not relying on this provision. Specifically, federal enforcers do not benefit from such claims at the gateway stage (AME = -0.37; $p = 0.045$). Likewise, State AGs' results are in the same direction, but do not reach conventional statistical significance (AME = -0.31; $p = 0.067$). Despite that, State and Federal enforcers still perform better than private plaintiffs in cases with Section 2 claims, even if the gap between private and public plaintiffs is smaller than in other cases. Finally, Section 2 loses significance in MDL-applicable models (R7, $p = 0.056$; R8, $p = 0.226$), reflecting reduced power from their smaller subsamples.

Prior government antitrust investigations are associated with considerably lower NMR obtainment in MDLs. In MDL-applicable specifications (R6-R8), cases preceded by such investigations are about 26-32 percentage points less likely to include any NMR (AME range: -0.26 to -0.32; $p < 0.009$). This suggests a *substitution mechanism*: when government enforcers pursue NMRs through enforcement actions, private plaintiffs in follow-on MDL lawsuits focus on monetary recovery instead of duplicating non-monetary relief that public enforcement may provide.

The concurrent presence of direct and indirect plaintiffs in the same MDL reduces NMR for both. When direct and indirect plaintiffs are present in an MDL (R2), each group is approximately 36 percentage points less likely to obtain any NMR (AME = -0.36, $p < 0.007$). In the most complex MDL model (R8), this decrease reaches 41 percentage points (AME = -0.41, $p < 0.006$). This is consistent with an *underprovision dynamic*: when multiple plaintiff categories are consolidated in the same proceeding, each may deprioritize NMR in the expectation that another group will secure remedies benefiting all plaintiffs. MDLs with direct or indirect plaintiffs and competitors trend in the same direction (R8, AME = -0.43), but the statistical significance of these results is sensitive to specification (R2, $p = 0.588$; R8, $p = 0.001$).

Requesting non-monetary relief at the pleading stage is one of the most powerful predictors of obtaining any NMR. Plaintiffs who include NMR requests in their complaints are approximately 24-27 percentage points more likely to obtain any such remedy, all highly statistically significant (AME range: 0.24-0.27, OR range:

5.2-14.3; $p < 0.003$). These results are stable across every specification, from the simplest (R1) to the most complex (R8), making this finding particularly robust.

7.3. The Intensity: How Many NMRs Are Obtained (Model 2)

Using Model 2, we examine what predicts the number of distinct NMR types obtained through a settlement or a litigated court order. The outcome variable is a count: the number of different NMR categories (injunction, information-sharing ban, divestiture, compliance program, monitoring, other) that a plaintiff secures. We present results based on Poisson models.⁴⁰

Government plaintiffs obtain substantially more types of NMR. State AGs obtain approximately 2.0 to 6.8 more types of NMRs than direct plaintiffs (AME range: 2.00-6.81; $p < 0.014$, except for R8).⁴¹ Federal enforcers obtain roughly 1.4 to 4.2 more types than direct plaintiffs (AME range: 1.35-4.24; $p < 0.021$). In the most complex MDL specification (R8), however, this trend maintains even if its coefficient is not significant, likely reflecting a very small number of federal enforcer observations in that subsample.⁴²

Section 2 claims are related to wider NMR breadth, but its specific benefits are centered on private plaintiffs. Private plaintiffs asserting Section 2 claims (alone or together with other antitrust causes of action) obtain 3.29 more NMR types than when litigating in cases not relying on this provision (R5: AME = 3.29, IRR = 6.88, $p < 0.001$). Similar to Model 1, State AGs and federal enforcers do not have a boost in their NMR breadth in cases with Section 2 claims (R5: AME_{StateAG} = -3.43, $p_{\text{State AG}} < 0.001$; AME_{DOJ/FTC} = -3.34, $p_{\text{DOJ/FTC}} < 0.002$), despite still performing better than private plaintiffs in such cases. That said, Section 2 result is only marginally significant when we do not distinguish its boost between plaintiff categories (R4: IRR = 1.53, $p = 0.086$). The pooled non-significance reflects the dilution of a strong private-plaintiff advantage by the null government-plaintiff effect.

Mid-tier monetary relief does not predict NMR breadth. Unlike Model 1, mid-range monetary award is not significant in any Model 2 specification (IRR range: 0.97-1.83; p range: 0.051-0.704). This suggests a two-hurdle interpretation. Specifically, compensation in this range predicts whether plaintiffs are likely to secure an NMR (Model 1), but once such gateway is crossed, it does not predict the intensity of such relief (Model 2).

⁴⁰ For specification R1, we used a zero-inflated Poisson model, whereas we adopted a standard Poisson model in other specifications (R2-R8). See Appendix A for more details.

⁴¹ In R8, the IRR results are significant at conventional levels ($p = 0.016$) and consistent with this direction, whereas AME does not reach significance. See Appendix A for more details.

⁴² See Appendix A for more details.

Direct and indirect plaintiffs within the same MDL both obtained a narrower set of NMR types. Similar to our findings in Model 1, our data indicates that direct and indirect plaintiffs within the same MDL are associated with 2.65 fewer NMR types for both groups (AME range: -2.65 to -2.85; $p < 0.001$). Unlike Model 1 results, however, this association does not reach significance when the proceeding has either direct or indirect plaintiffs and competitors.

Requesting non-monetary relief at the pleading stage is also a strong predictor of NMR breadth. Plaintiffs who request NMRs in their complaints obtain roughly 2.4 to 2.7 additional NMR types (AME range: 2.43-2.74; IRR range: 4.44-5.37; $p < 0.001$). As a result, requesting NMRs strongly predicts both obtaining any NMR (Model 1) and how many types are secured (Model 2).

7.4. Remedy-Level Obtainment of Specific Requested Types (Model 3)

In Model 3, we shift the unit of analysis from the whole package of non-monetary relief (settlement/litigated order level) to the individual remedy type. The outcome variable is also binary: in particular, is the specific remedy requested in the complaint secured in the settlement or litigated order? (yes/no) Here we present results from specifications paralleling those from Models 1 and 2: (i) a specification with combined government plaintiffs (R9); (ii) others with state/federal enforcer split (R10-R12); and (iii) MDL-specific variations (R13-R14).

Government plaintiffs secure remedies requested at the pleading stage at far higher rates. State AGs are 46-64 percentage points more likely to obtain NMRs requested in their complaints than direct plaintiffs (AME range: 0.46-0.64; $p < 0.001$). Similarly, federal enforcers are 52-71 percentage points more likely to secure their requested NMRs than direct plaintiffs (AME range: 0.52-0.71; $p < 0.001$). These results have the highest magnitude and are the most precisely estimated in the analysis.

Section 2 claims substantially increase the likelihood of obtaining specific remedies for private plaintiffs. Private plaintiffs asserting Section 2 claims (jointly with other claims or in isolation) are 47 percentage points more likely to obtain NMRs requested in their complaints compared to their cases that do not include this legal basis (R12, AME = 0.47, $p < 0.001$). Similar to Models 1 and 2, State AGs and Federal enforcers do not enjoy an *additional* benefit in their cases with Section 2 claims (R12, AME_{StateAG} = -0.45, $p_{\text{State AG}} < 0.001$; AME_{DOJ/FTC} = -0.47, $p_{\text{DOJ/FTC}} < 0.001$). Nevertheless, both outperform private parties in obtaining their requested NMR in such cases.

Indirect plaintiffs are more successful at obtaining NMRs requested at the pleading stage than direct plaintiffs. Indirect plaintiffs are about 7-16 percentage

points more likely to obtain each requested remedy type (AME range: 0.07-0.16; $p < 0.050$). These results are robust across every specification in Model 3, exhibiting the highest magnitude in MDL-applicable subsamples (R13-R14, $p < 0.001$). Combined with gateway results from Model 1 (where indirect plaintiffs' coefficients become significant and positive in two MDL-applicable specifications, R2 and R8), this finding suggests that indirect plaintiffs would be placing greater strategic emphasis on NMRs, possibly due to more stringent evidentiary burdens they face in proving pass-through of overcharges for monetary claims.

Compliance programs are the hardest remedy type to obtain among those requested, whereas divestitures and monitoring are the most likely. Compliance programs are 27-31 percentage points less likely to be obtained than injunctions when requested at the pleading stage (AME range: -0.27 to -0.34; $p < 0.001$). Divestitures are approximately 32-41 percentage points more likely than injunctions (AME range: 0.32-0.41, $p < 0.050$). Monitoring has an even higher success rate: every requested monitoring provision was obtained. The likelihood of obtaining information-sharing bans is not significantly different from injunctions ($p > 0.100$). This hierarchy is stable across all specifications and suggests meaningful differences in how each NMR type fares in litigation (either in settlements or litigated orders).

7.4.1. Remedy-Type Results Without Conditioning on Request at the Pleading Stage

Results above condition on the NMR type requested in the complaint. When we relax this condition and examine which remedy types appear in settlements or litigated orders regardless of whether they were specifically requested at early stages of litigation, a different hierarchy emerges. While divestitures remain positive (OR range: 12.22-19.52, $p < 0.012$), information-sharing bans become strongly positive relative to injunctions (OR range: 8.18-13.15, $p < 0.001$).

Most notably, compliance programs reverse from strongly negative to positive (OR range: 2.97-4.46, $p < 0.001$). In the conditional model, compliance programs are the hardest to obtain when requested; in the unconditional model, they are more likely to be obtained than injunctions.

The reconciliation is informative. Compliance programs often appear in government settlements, regardless of whether the underlying complaints specifically requested them. They are likely standard provisions included in templates adopted by public enforcers, who secure remedies at very high rates across the board. That said, such programs are still among those that defendants seem more able to resist more effectively. This likely reflects this remedy's distinct cost structure. Unlike more time-limited NMRs such as injunctions and one-off divestitures, compliance programs impose organizational costs that defendants have strong incentives to avoid (e.g., training, reporting, dedicated personnel). For

practitioners, this suggests that securing compliance programs requires treating as priorities in negotiations rather than assuming they will be included by default.

7.5. Discussion of Key Findings

7.5.1. The Complaint as Agenda-Setter: Why Requesting NMR Matters

The consistent, large, precisely estimated association between requesting NMRs in the complaint and later obtaining such relief is one of the most robust findings across all three models. A 24-27 percentage point higher likelihood of obtaining any non-monetary relief (gateway stage, Model 1), combined with about 2.4-2.7 more NMR types (intensity stage, Model 2) and a considerably higher odds of securing each requested remedy type (Model 3). At first glance, this might appear unsurprising, as one may expect that plaintiffs who ask for NMRs would be more likely to secure it. However, the findings are less obvious than they seem for two reasons.

First, in settlements, plaintiffs can obtain NMRs regardless of what was pleaded in their complaints. In principle, parties have wide latitude to include terms they agree to, even if those were not previously requested at the pleading stage.⁴³ The vast majority of NMRs in our dataset arise from settlements instead of litigated court orders. As such, the pathway to NMR lies predominantly with the parties. If settlement negotiations were wholly untethered from the complaint's content, we would not expect such strong and stable associations.

Second, NMR requests are typically not comprehensive. Across complaints reviewed for this project, such requests are often worded as broad requests to enjoin defendants from continuing their anticompetitive conduct. In other words, these are not detailed and tailored remedy proposals. Yet even these generic requests are powerfully associated with NMR obtainment. This suggests that the mechanism operates through agenda-setting and signaling rather than through the specificity of the request.

In practice, the complaint seems to be key to placing NMRs on the negotiation agenda from the outset. When the pleading includes NMRs, defense counsel prepares for it, the court is aware of it, and the plaintiff's legal team has committed to pursuing it as an element of relief. Our data is consistent with this possible "*anchoring*" phenomenon: when NMRs are not included in complaints, they are more likely to remain off the table. For class counsel, in-house legal teams, and government enforcers alike, the practical implication is that including NMR

⁴³ Subject to judicial review to ensure their fairness (class settlements) or that they are consistent with the public interest (government settlements).

requests in the complaint is a fundamental first step toward obtaining non-monetary relief.

7.5.2. The Government Plaintiff Advantage

Government plaintiffs are substantially more successful at obtaining NMRs than private plaintiffs. State AGs are 37-65 percentage points more likely to obtain any NMR (Model 1), obtain at least 2.0 additional types (Model 2), and are 46-64 percentage points more likely to secure each specific requested remedy (Model 3). Federal enforcers (DOJ/FTC) show comparable or slightly larger odds, with some MDL-applicable specifications producing perfect prediction (i.e., every federal enforcer observation obtained NMR in those subsamples).

The gap between State and Federal enforcers is notably smaller than the difference between either government enforcer and private plaintiffs. State AGs operate at approximately 85-90% of the federal enforcer's effectiveness across specifications. This suggests that the government enforcement advantage derives primarily from common institutional settings (e.g., consent decree, prosecutorial leverage, less stringent judicial review of settlements compared to class actions) instead of features unique to DOJ and/or FTC.

7.5.3. Section 2 Claims

Actions with Section 2 claims (alone or together with other legal theories) are associated with significantly higher NMR obtainment rate for private plaintiffs but do not provide *additional* benefit to government enforcers. (To be sure, the latter still outperform private plaintiffs in such cases, even if the gap is smaller than in litigation that does not include Section 2 claims.) This finding is consistent with a *ceiling dynamic*. Results are more robust at the individual remedy level (Model 3), where government interaction terms are large and negative.⁴⁴ At the settlement/litigated order level (Models 1 and 2), this pattern is directionally consistent but less precisely estimated.⁴⁵

The substantive interpretation remains clear. Litigation with Section 2 claims normally involves firms using market power to exclude competitors or maintain dominance. If so, then such cases would be more amenable to non-monetary relief (e.g., divestiture, access obligations) than price-fixing conspiracies. From this standpoint, private plaintiffs asserting Section 2 claims have wider access to NMRs, whereas their ability to obtain such relief is more limited in Section 1 *per se*-only

⁴⁴ $AME_{StateAG} = -0.45$, $p_{StateAG} < 0.001$; $AME_{RangeDOJ/FTC} = -0.47$ to -0.77 , $p_{DOJ/FTC} < 0.001$. See Appendix A for more details.

⁴⁵ For example, in Model 1 State AG coefficient indicating no *additional* benefit is marginally significant, while the federal enforcers remains significant (R6, $AME_{StateAG} = -0.31$, $p_{StateAG} = 0.067$; $AME_{DOJ/FTC} = -0.37$, $p_{DOJ/FTC} = 0.045$). See Appendix A for more details.

cases. Government enforcers, by contrast, already obtain NMRs at near top rates regardless of the legal theory, so the Section 2 channel does not *add* marginal value for them.

The *ceiling dynamic* is not specific to State AGs. Specifications estimating the relationship between Section 2 cases and federal enforcers produced comparable or larger negative results. This finding is consistent with a government-wide enforcer phenomenon. This means that government plaintiffs have already maximized their NMR obtainment through institutional advantages operating independently of the legal basis. As a result, it does not stem from a limitation in State AGs' enforcement tools.

7.5.4. MDL Dynamics: Multiple Plaintiff Categories and Prior Government Antitrust Investigations

Within MDLs, two additional features significantly predict NMR outcomes: (i) multiple plaintiff categories within the same proceeding; and (ii) prior government antitrust investigation.

First, the concurrent presence of direct and indirect plaintiffs reduces each group's NMR obtainment by at least 36 percentage points (AME Range: -0.36 to -0.41; $p < 0.007$). In addition, each group is likely to secure 2.65 fewer remedy types (AME Range: -2.65 to -2.82; $p < 0.001$). This NMR *underprovision* is robust across Models 1 and 2 and is the largest negative predictor in MDL-specific analyses. It is consistent with a dynamic in which each plaintiff group may assume that another will secure non-monetary relief from which all plaintiffs can benefit, leading to *collective underinvestment* in pursuing such remedies. Notably, indirect plaintiffs are more likely than direct plaintiffs to obtain any NMR (Model 1, R2 and R8) and to secure each requested remedy overall (Model 3). This suggests that having multiple plaintiff categories within the same MDL diffuses the incentive structure for all groups to pursue non-monetary relief.

Second, cases preceded by government antitrust investigations produce significantly less NMR in the MDL context. Such prior investigations (regardless of their stage when private plaintiffs file their follow-on suits) are associated with a 26-32 percentage point decrease in the likelihood of any NMR (Model 1, AME Range: -0.26 to -0.32, $p < 0.009$), and at least one fewer NMR type (Model 2, AME Range: -1.005 to -2.47; p range: 0.005-0.100). At the individual remedy level (Model 3), it is also related to a lower likelihood of obtaining the specific requested relief (AME Range: -0.27 to -0.28, $p < 0.001$).

This is consistent with a *substitution mechanism*. From this perspective, private plaintiffs in related MDLs would focus more on monetary recovery when

government enforcers have already initiated actions aimed at addressing anticompetitive conduct. That change of priority could be related to either (a) the government enforcement activity being expected to secure meaningful NMR; or (b) the investigation contributing to mitigating factual uncertainty in ways that allow private parties to center efforts on achieving monetary compensation.

Additionally, MDL cases following government investigation may attract plaintiffs' counsel who enter because public enforcers' investigative work reduces litigation risk, thus making a case a more attractive vehicle for monetary recovery. That selection effect can further concentrate follow-on litigation on damages rather than longer-term relief.

7.5.5. Monetary Relief and the Two-Hurdle Interpretation

Monetary value operates differently at the gateway and intensity stages of NMR obtainment. Specifically, monetary compensation levels predict whether an NMR is secured (at certain thresholds); conversely, it does not predict how broadly it appears. At the gateway (Model 1), results suggest a hierarchy across thresholds. Zero-dollar and very small awards almost always include NMRs and involve government plaintiffs.

Mid-range amounts (\$15,000-\$750,000) are strongly and positively related to securing NMRs. A one-unit increase in log award amount is associated with a 13-23 percentage point increase in the likelihood of securing NMRs. This compensation level may represent instances where defendants have engaged with the litigation but the monetary component is not dominant. As such, there is room for including non-monetary provisions.

At the highest tier (over \$750,000), the association with NMR weakens substantially and is not statistically significant in most full-sample specifications. This might indicate that the largest compensation awards would represent two distinct populations. One, comprehensive resolution packages that also include NMRs. Two, purely monetary relief. If so, then the monetary award alone would not be able to distinguish between these two outcomes at the top of the monetary compensation distribution.

At the intensity stage (Model 2), monetary relief is generally not a significant predictor of how many types of NMRs are obtained. The mid-range level does not reach conventional significance in any Model 2 specification (p range: 0.051-0.704). This suggests that once the gateway is crossed (i.e., at least one NMR is present), the number of NMR types may be driven by factors other than monetary value. For example, these would include conduct complexity, enforcement context, and plaintiff's legal theory.

7.5.6. The Remedy-Type Hierarchy

Not all NMR types are created equal (Model 3). When requested, monitoring provisions are always obtained. Divestitures are obtained at rates 32-41 percentage points higher than injunctions. The difference in the rates between information-sharing bans and injunctions is not statistically significant. Compliance programs are 27-31 percentage points less likely to be secured than injunctions, making them the most resisted type among requested remedies.

The compliance finding deserves particular attention. It likely reflects burdens regarding continuing organizational obligations that defendants have strong financial incentives to avoid. For enforcers seeking durable behavioral change, this suggests that securing compliance programs may require stronger negotiating priority or statutory backing.

8. Discussion and Policy Implications

Key Takeaways

Courts generally did not exercise visible intervention nor overt scrutiny over negotiated non-monetary remedies. This has held true for across private (class actions) and public enforcement settlements. By contrast, courts have exerted more oversight over contested requests for imposed remedies, having occasionally even denied such motions entirely.

Government antitrust enforcers as key drivers for securing non-monetary relief. Public enforcers request NMRs at higher rate and are more successful at obtaining them than private plaintiffs. Our evidence suggests such superior performance may lie in governments' settlement bargaining advantage, in addition to different litigation goals, procedural constraints, and dismissal risks.

Distinct statutory causes of action are associated with different remedial packages. Cases including Section 2 claims (alone or together with other claims) were associated with increased likelihood of obtaining any NMR and broader breadth of such remedies for private parties (it did not provide *additional* benefit for public enforcers). In part, this may be a function of such cases being more amenable to non-monetary relief than price-fixing conspiracies, for example.

Behavioral remedies predominate over structural remedies. Plaintiffs overwhelmingly favor remedies aimed at future conduct (e.g., injunctions) as opposed to relief focused on changing market structures (e.g., divestiture). Government enforcers are the key actors seeking structural remedies, and, even so, they request such relief sparingly.

Complex relationship between public and private antitrust enforcement. Our data indicate that they can complement one another by expanding overall scope of enforcement, especially through private enforcement. However, they might substitute for one another when private plaintiffs expect that government-led actions will secure NMRs that are likely to benefit private parties as well.

Implications for State Enforcement. State AGs are already highly effective NMR enforcers. That said, State antitrust law can further enhance their role by (i) making new cases viable that current Section 2 precedents constrain; and (ii) enabling them to litigate under potentially more pro-enforcement case law and less restrictive procedural rules in state courts. In addition, State AGs may want to consider the potential substitution dynamic alluded above regarding NMR obtainment when private antitrust litigation is pending to better achieve longer-term competition improvements.

Implications for Private Enforcement. Private plaintiffs' longer-lasting contributions may lie in challenging conducts not targeted by governments. In

those instances, private enforcement could be the only realistic avenue to redress violations and secure competition-enhancing remedies. Additionally, we highlight the following insights: (i) including NMR requests in complaints should be encouraged; (ii) parties should avoid collectively deprioritizing NMR efforts under the assumption that another plaintiff group will secure such relief benefiting all of them; and (iii) compliance programs face stronger defendant resistance, suggesting that obtaining them can require negotiating priority.

Limitations and directions for future research. Expanding data coverage is essential to increase analytical power available and to potentially enable cross-context comparisons. Several research questions raised during presentations to our clients suggest lines of inquiry that an adequately resourced and maintained database can systematically support. Subsequent work applying quasi-experimental methods could strengthen the potential for causal interpretation.

The prior chapters addressed our initial findings on the use of NMRs in antitrust conduct litigation. We move next to address one final question: what do NMRs reveal about the antitrust enforcement landscape and the respective roles of public and private enforcement?

8.1. NMRs Are Negotiated, Not Simply Imposed

Contrary to what one might expect, courts played a marginal role in the design of NMRs in both public and private litigation. Instead, settlements were the main avenue through which parties obtained non-monetary relief. In these instances, judges displayed a high degree of deference to negotiated non-monetary relief.

Judicial intervention in negotiated NMRs was uncommon. In class settlements, for instance, we identified only a small number of cases in which courts required modifications to the proposed remedies. Likewise, judicial intervention was rare in Tunney Act proceedings reviewing government consent decrees. Although public comments on proposed non-monetary reliefs were common, courts often approved the negotiated remedies after considering the DOJ's responses to those comments. Across both private and public settlements, therefore, courts played only a limited role in changing the substance of negotiated remedies.

Courts also exercised little visible scrutiny over negotiated NMRs. Judicial decisions approving settlements often provided very brief substantive reasoning as to why the negotiated NMRs were appropriate. The absence of meaningful analysis further suggests that courts generally defer to the parties' choices in designing these remedies.

Courts played a somewhat more visible role in cases involving contested requests for permanent and preliminary injunctions (i.e., the litigated-order category). In those instances, most judicial decisions imposed a single type of NMR, which represents a narrower remedial package than that of settlements. In addition, the number of court-imposed remedies was small, reinforcing the argument that they have played a small role in the design of non-monetary relief.

Accordingly, this research showed that parties, not courts, have mostly designed NMRs through settlements. Limited judicial involvement in the substance of such remedies is not necessarily undesirable, though. The parties may be better positioned than courts to design measures that effectively address the effects of anticompetitive conduct, considering different aspects of the market in which they operate. However, some degree of judicial scrutiny remains important, especially to ensure that the negotiated remedies truly serve the public interest and, in class settlements, adequately protect the interests of absent class members. Further qualitative research would help clarify the specific level of judicial interference and what may inform such an approach by courts.

8.2. Government Enforcers Were the Main Driver of NMRs

Our data clearly indicate that public enforcers were the dominant users of NMRs. Not only did they request these remedies more frequently than private plaintiffs, but they also achieved a higher success rate. This fact was particularly true for injunctions, information-sharing bans, and divestitures. Importantly, this advantage was not limited to a single procedural setting. Instead, government enforcers outperformed private plaintiffs across enforcement contexts, with no significant differences between state and federal agencies. Government lawsuits had over 80% success rates, compared with 36% for private plaintiffs in cases with NMR requests. But why were public enforcers so successful?

The main explanation for this high success rate lies in settlement dynamics rather than court decisions. Public enforcers secured most NMRs through negotiated settlements, while courts granted comparable relief through litigated court orders in only three sampled cases. Their greater success, therefore, stemmed from their ability to negotiate these remedies more frequently than private parties. We observed this bargaining power both when the government acted as an enforcer and when it appeared as a plaintiff seeking compensation for injuries suffered by public agencies. Frequently, parties completed these negotiations before filing the lawsuit, and the complaint served primarily to obtain judicial approval and satisfy the Tunney Act's requirements. In other cases, however, parties reached settlements during the litigation. This bargaining advantage persisted regardless of whether the parties negotiated before filing suit or during the litigation.

Our dataset further revealed a striking difference in the breadth of the negotiated remedial package. Although government settlements and class settlements both had a median of three distinct types of NMRs, their distributions differed substantially. Government settlements exhibited a wider interquartile range, indicating that public enforcers negotiated more varied remedial packages than private plaintiffs. More specifically, at least 75% of the government settlements included two or more distinct NMR types, and 25% included five or more. These numbers suggest that public enforcers exercised greater bargaining power not only in securing non-monetary relief but also in negotiating broader, more comprehensive remedial packages.

While public enforcement was the primary vehicle for obtaining NMRs in antitrust cases, private plaintiffs likewise sought this form of relief. Indeed, the request rates of indirect purchasers and competitors were comparable to those of government enforcers. The evidence then raises an important question: if private plaintiffs seek NMRs at relevant levels, why do they obtain them less frequently?

The lower success rate of private plaintiffs is unlikely to stem from a single factor but from a combination of factors. First, public and private enforcers may have different objectives. Most private enforcement observations with visible remedy outcomes in our dataset stem from MDL class settlements, in which monetary compensation appears to be the primary objective. This emphasis may reflect strategic choices by plaintiffs' counsel, but it may result as well from practical constraints that make it difficult to pursue both monetary and structural relief simultaneously. Government enforcers, by contrast, frequently pursue both monetary and NMRs and routinely negotiate settlements that combine the two. Their enforcement strategy, therefore, appears to extend beyond compensation and towards changing market behavior.

Second, private plaintiffs may need to negotiate NMRs less frequently as discussed in the prior section. Consider the case of indirect purchasers. On the one hand, this group requested NMRs at high rates but obtained them less frequently than government enforcers. On the other hand, they relied more often on follow-on actions than on standalone suits. The lower obtention rates, therefore, may be associated with a lower need for these remedies. Indeed, regression analysis indicated that follow-on cases displayed a lower likelihood of obtaining an NMR. There are therefore indicia that in follow-on actions, private settlements place greater emphasis on monetary compensation. If so, lower obtainment rates among follow-on plaintiffs may reflect a reduced need to negotiate potentially overlapping remedies rather than an inability to obtain them.

Third, procedural outcomes differed across public and private litigation. As mentioned earlier, a considerable share of private cases in our dataset ended in court dismissals. In contrast, dismissals were rare in public enforcement. Because we coded dismissed cases as not obtaining an NMR (as plaintiffs indeed do not obtain remedies in these instances), these dismissals reduced the observed obtainment rate for private plaintiffs.

Fourth, differences in bargaining power may also explain the observed gap. Chapter 7's analysis revealed that the monetary value predicts whether a settlement included at least one monetary remedy, but it does not explain the breadth of the negotiated remedies once the parties cross that threshold. This pattern suggests that bargaining dynamics, rather than the settlement value alone, play an important role in shaping NMRs.

Several factors may influence negotiation dynamics. Public enforcers may benefit from greater institutional authority and credibility before courts, thereby strengthening their negotiating position. At the same time, procedural constraints (e.g., stricter standing rules and heightened standards of proof and demonstration) may have weakened private plaintiffs' bargaining power. In recent years, for instance, courts have increased their gatekeeping role by setting higher standards to certify a class under Rule 23. If it became harder to certify a damages class, it became even more challenging to obtain certification for a class that mixes injunctive and monetary relief. Faced with a higher risk of dismissal, private plaintiffs may accept narrower reliefs or prioritize larger monetary recoveries over NMRs during settlement negotiations. This mechanism could help explain both their lower rates of obtaining NMRs and the more limited scope of those remedies when they are obtained.

Distinguishing among these competing explanations lies beyond the scope of this study. To be sure, our analysis does not identify the causal mechanism underlying the lower obtainment rates observed in private enforcement. However, the evidence suggests that differences in litigation goals, procedural constraints, dismissal risks, and bargaining dynamics all merit further investigation.

8.3. Statutory Patterns Led Private Plaintiffs to Different NMRs

Government enforcers enjoyed an advantage across all statutory bases. Different statutory provisions, however, resulted in different likelihoods of obtaining non-monetary relief for private plaintiffs. Private plaintiffs specifically experienced a higher likelihood of obtaining an NMR under Section 2 (alone or combined with other provisions) than under Section 1-only claims (baseline).

We found a statistically significant association between Section 2 and obtaining non-monetary relief. Private plaintiffs asserting Section 2 claims were approximately 30 percentage points more likely to obtain an NMR than plaintiffs litigating cases without such claims. Once they obtained non-monetary relief, they also secured broader remedial packages. Accordingly, although Section 2 accounted for a smaller share of antitrust claims than Section 1, it played an important role in supporting non-monetary relief.⁴⁶

This finding is particularly surprising because plaintiffs proceeding under Section 2 face higher burdens of proof and are generally subject to the rule-of-reason analysis. What may explain this pattern?

The clearest explanation may lie in the nature of Section 2 violations. These cases may be more amenable to non-monetary relief than price-fixing conspiracies, for example. The broader range of antitrust violations encompassed by Section 2 may require more tailored remedies, increasing the likelihood that plaintiffs obtain non-monetary relief when asserting these claims.

Another explanation is that most Section 2 cases did not follow a government investigation. The absence of a previously government-negotiated remedy may increase the need for including such remedies in private settlements. Defendants may also have stronger incentives to negotiate such remedies in these settings. Because these cases often involve more specific remedies, the prospect that a court could impose such measures may encourage defendants to negotiate them rather than risk judicial intervention.

Cases combining Section 1 and Section 2 claims also exhibited a higher likelihood of obtaining an NMR. These claims were considerably less common than Section 1 cases; only 22% of plaintiffs relied on both provisions. Yet approximately 80% of these cases included NMR requests, particularly remedies classified in the residual "other" category (20%, the highest concentration across all plaintiff groups). Because these cases include a Section 2 claim, private plaintiffs also experience a higher likelihood of obtaining NMR.

8.4. Behavioral Remedies Predominated Over Structural Remedies

We next turn to patterns across different types of non-monetary relief. The evidence revealed a predominance of behavioral remedies over structural remedies. Across both our complaint and outcome datasets, plaintiffs overwhelmingly favored remedies aimed at regulating future market conduct, rather than changing market structure. Injunctions, information-sharing bans, and monitoring mechanisms

⁴⁶ These results, however, mainly represent behavioral remedies.

accounted for most requested and obtained NMRs across both public and private enforcement.

By contrast, structural remedies remained exceptional. Our dataset directly captured the frequency of divestiture remedies. Government enforcers were the primary actors seeking these measures, and every successful divestiture identified in the outcome dataset resulted from a government settlement. The evidence, therefore, suggests that structural relief remained primarily a tool of public enforcement, although still exceptional.

These findings are consistent with the broader antitrust literature. Behavioral remedies have long predominated in antitrust conduct cases, whereas structural remedies have been more frequent in merger cases.⁴⁷ Government enforcers have historically succeeded more often in obtaining structural remedies when asserting Section 7 claims.⁴⁸ Private plaintiffs, in turn, have rarely sought or secured structural remedies in antitrust litigation. Both public and private enforcers have also infrequently pursued structural remedies under Section 2 of the Sherman Act.⁴⁹

Our dataset includes evidence consistent with these patterns. Government enforcers brought most cases that resulted in divestitures under either Section 7 of the Clayton Act alone or in combination with Section 1 of the Sherman Act. We did not identify any government-filed Section 2 case seeking divestiture. This finding is expected as public enforcers have brought relatively few Section 2 cases.

Private plaintiffs, in turn, have sought structural remedies less frequently than government enforcers. Our complaint dataset identified five competitor-filed cases requesting divestiture and one consumer case seeking the same remedy. Although the coding effort for competitor-led cases is ongoing, a preliminary analysis revealed that two resulted in a court-imposed structural remedy, two ended in dismissal or judgment against the plaintiff, and one settled without an apparent structural remedy.

The two successful cases illustrate the exceptional circumstances under which private plaintiffs obtained structural relief. In *Saint Alphonsus Medical Center – Nampa*

⁴⁷ Joshua M. Goodman & Ryan Hoak, US Antitrust Agencies' Approach to Structural Remedies Continues to Evolve, GLOBAL COMPETITION REVIEW (GCR) (Oct. 31, 2025), <https://globalcompetitionreview.com/guide/the-guide-merger-remedies/sixth-edition/article/us-antitrust-agencies-approach-structural-remedies-continues-evolve>; Edward Cavanagh, *Antitrust Remedies Revisited*, 84 OR. L. REV. 147, 190 (2005).

⁴⁸ See e.g., Edward Cavanagh, *supra* note 47, at 180.

⁴⁹ See e.g., Herbert Hovenkamp, *Structural Antitrust Relief Against Digital Platforms*, 7 J. L. & INNOVATION 57 (2024) (mentioning that structural remedies are rare in monopolization cases).

et al v. St Luke's Health System Ltd,⁵⁰ private and public plaintiffs sought to reverse an acquisition and stop a wave of acquisitions in the health care market. A group of health care providers (i.e., competitors) first filed a suit alleging violations of Section 7 of the Clayton Act and Section 1 of the Sherman Act.⁵¹ The FTC and the State Attorney General's Office of Idaho later filed their own action seeking the same relief.⁵² After consolidation, the court ordered divestiture together with additional behavioral remedies,⁵³ illustrating how structural and behavioral relief may operate together. Likewise, in *Steves and Sons, Inc. v. Jeld-Wen, Inc.*,⁵⁴ a jury awarded monetary damages to plaintiffs, and the district court ordered divestiture. In its opinion, the district court observed that "this is, after all, the first privately brought action under Section 16 of the Clayton Act to have gone to verdict and in which a private party has sought divestiture."⁵⁵ Rather than demonstrating a broader trend, these cases underscore how exceptional privately obtained divestitures remain.

Several procedural factors explain why private plaintiffs rarely pursue and obtain structural remedies. Competitors were more active than other plaintiff groups in litigating Section 7 claims, yet they faced demanding standing requirements and judicial skepticism toward their suits. Consumers, in turn, largely depend on class actions, but increasingly demanding certification standards may have made structural claims impracticable. Private plaintiffs face even greater obstacles under Section 2 of the Sherman Act, where courts have historically been reluctant to impose structural remedies. The longstanding debate over structural relief in monopolization cases, together with the complexity of designing effective divestiture remedies, likely contributed to this pattern.

This research therefore identified a clear predominance of behavioral over structural remedies. This pattern likely reflects more than plaintiffs' remedial preferences. It also suggests institutional constraints surrounding structural relief. Divestitures remained concentrated in government enforcement, particularly in cases brought under Section 7 of the Clayton Act. We identified only one case in which a private plaintiff obtained a divestiture measure without a parallel government action. These findings suggest that behavioral remedies constitute the principal mechanism through which antitrust plaintiffs seek to reshape market

⁵⁰ *Saint Alphonsus Medical Center – Nampa et al v. St Luke's Health System Ltd*, No. 1:12-cv-00560 (D. Idaho, filed Nov. 12, 2012).

⁵¹ *Id.*

⁵² *Federal Trade Commission et al v. St Luke's Health System, Ltd. et al*, No. 1:13-cv-00116 (D. Idaho, Mar. 12, 2013).

⁵³ Findings of Fact and Conclusions of Law, *Saint Alphonsus Medical Center – Nampa et al v. St Luke's Health System Ltd*, No. 1:12-cv-00560, ECF No. 464 (D. Idaho, 2012).

⁵⁴ *Steves and Sons, Inc. v. Jeld-Wen, Inc.*, No. 3:16-cv-00545 (E.D.Va., filed Jun. 29, 2016).

⁵⁵ Memorandum Opinion, *Steves and Sons, Inc. v. Jeld-Wen, Inc.*, No. 3:16-cv-00545, ECF No. 1783, (E.D.Va., 2016) at 51.

conduct, while structural remedies remain exceptional tools largely reserved for public enforcement.

8.5. NMRs and the Antitrust Enforcement System

We now turn to what NMRs reveal about the antitrust enforcement landscape, particularly the relationship between public and private enforcement and their respective roles.

8.5.1. The Complex Relationship between Public and Private Enforcement

To begin with, public and private enforcers exhibited a complex relationship that goes beyond solely complementing or substituting for one another. Scholars have long debated this issue, with some commentators arguing that each “focus[] on what each is best positioned to do.”⁵⁶ Our data, however, revealed that rather than operating as purely complementary or substitutive mechanisms, the two systems performed both functions. They complemented one another by expanding the overall scope of antitrust enforcement, yet they may also have substituted for one another.

First, public and private enforcement complemented one another by expanding the range of challenged anticompetitive conduct. Many cases were standalone actions in which private plaintiffs pursued conduct that government agencies had not previously investigated or litigated. Even among follow-on cases, the two systems remained complementary in different respects. Government enforcers obtained NMRs more frequently than private plaintiffs. This prevalence was especially true for structural remedies. Still, private litigants continued to pursue parallel claims arising from the same underlying conduct, increasing the costs of infringing the law. Both systems therefore contributed to antitrust enforcement by serving different institutional roles.

Second, our data suggest a potential degree of substitution in the negotiation of NMRs. In the absence of prior government investigation, private plaintiffs more frequently sought tailored remedial provisions to address violations that the government had not already pursued. Conversely, in follow-on litigation, private plaintiffs secured NMRs less frequently, suggesting weaker incentives to negotiate such remedies in these settings. A similar pattern may explain why private plaintiffs have a higher likelihood of obtaining an NMR under Section 2 than Section 1. Government enforcers frequently pursued cartel claims first, whereas most private monopolization actions did not follow a public investigation. Public enforcement

⁵⁶ Competition Committee, *supra* note 11.

may therefore reduce the need for private plaintiffs to pursue overlapping forms of non-monetary relief.

Taken together, these findings therefore suggest that public and private enforcement performed different but interconnected functions within the antitrust enforcement system. Private plaintiffs expanded the scope of antitrust enforcement by challenging additional conduct, while public enforcement played a key role in securing NMRs designed to shape market behavior. At the same time, both systems seem to have occasionally substituted for one another: private plaintiffs sought tailored NMRs when government enforcement was absent, whereas private plaintiffs' lower likelihood of obtaining NMRs might have resulted from remedies that government enforcers may have already obtained, thereby reducing the need for overlapping non-monetary relief.

8.5.2. Implications for State Antitrust Enforcement

Our findings also carry important implications for State AGs. The data suggests that these actors are already highly effective NMR enforcers. Still, state antitrust law could further enhance their role by removing constraints from federal doctrine.

Our regression analysis indicated that State AGs are at least 37 percentage points more likely to obtain any NMRs than direct plaintiffs, and at least 46 percentage points more likely to secure each specific requested remedy type. The difference between State AGs' and Federal enforcers' obtainment rates is modest, especially compared to the gap between any government plaintiff and private plaintiff. This is consistent with State enforcement playing a key role in securing structural and behavioral remedies.

Modifications to State Antitrust Statutes could further enhance their role. Our results indicate that private plaintiffs asserting Section 2 claims (alone or together with other legal theories) perform substantially better at obtaining NMRs. However, such claims do not provide *additional* benefit to State and Federal enforcers regarding the obtainment rate conditional on a case being brought because they already obtain NMRs at near-top rates (intensive margin).

That said, a state law provision aimed at conduct subject to Section 2 could benefit the Attorney General's Office to the extent it provides substantive enforcement advantages beyond what the federal law provision currently offers.

This is particularly relevant as California’s legislature is currently considering enacting a provision focused on conduct that falls under Section 2.⁵⁷

While State AGs can bring cases under Section 2, federal case law has considerably constrained its enforcement, and state law could fill this gap. Specifically, a state provision with broader definitions of exclusionary practices or lower evidentiary thresholds could expand the scope of conduct that State enforcers can challenge (extensive margin). In addition, a state-law basis would enable the Attorney General’s Office to litigate such claims in state court under potentially different procedural rules and case law less restrictive to enforcement.

⁵⁷ As embodied in the California Assembly Bill 1776, which is pending at California’s State Senate. The current version of such bill’s provisions reads as follows:

“SEC. 2. Section 16731 is added to the Business and Professions Code, to read:

16731. (a) It is unlawful for every person to monopolize or monopsonize, attempt to monopolize or monopsonize, maintain a monopoly or monopsony, or combine or conspire with another person to monopolize or monopsonize any part of trade or commerce.

(b) Procompetitive justifications of the challenged conduct shall be evaluated within the market as the conduct that is alleged to be unlawful.

(c) Courts adjudicating a claim brought under this section shall use the analytical framework and guidance of the California Supreme Court in the manner described in *In re Cipro Cases I & II* (2015) 61 Cal. 4th 116, 146–147.

(d) A plaintiff bringing an action pursuant to this section shall be required to allege and, to prevail at trial, prove substantial market power, either through direct or indirect evidence.

(e) Section 16731 shall not apply to any small business, meaning an independently owned and operated business, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees and average annual gross receipts of ten million dollars (\$10,000,000) or less over the three years prior to the filing of the complaint.

(f) (1) This section does not prevent, limit, or prohibit:

(A) Any exclusive franchise, contract, license, or permit that is granted and supervised by a local, state, or federal governmental agency.

(B) Conduct required or authorized pursuant to state or federal law that is granted and supervised by a local, state, or federal governmental agency.

(2) This section does not impose any liability on a person or entity for conduct within the scope of authority granted by one or more such exclusive franchises, contracts, licenses, or permits.

(3) For purposes of this subdivision, “local governmental agency” includes a city, county, special district, sanitation district, or joint powers agency.

SEC. 3. Section 16732 is added to the Business and Professions Code, to read:

16732. Courts shall liberally interpret California’s antitrust laws to best promote free and fair competition and be mindful that California favors “maximizing” effective deterrence of antitrust violations (*Clayworth v. Pfizer, Inc.* (2010) 49 Cal.4th 758).”

Cal. Legis. A.B. 1776. Reg. Sess. 2025-2026 (2026).
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260AB1776.

Thus, a state law provision could benefit California's AG mainly by making new cases viable that current federal law constrains (extensive margin), instead of improving its NMR obtainment in cases it can already bring (intensive margin).

Implications for how State AGs should coordinate with private enforcement. As discussed in Chapter 7, MDL cases preceded by government antitrust investigations are substantially less likely to result in NMRs, suggesting that public and private enforcement are functional complements to a certain extent. The California Attorney General's Office may want to consider this dynamic when deciding whether to pursue NMRs when private antitrust litigation is pending. The shift in private parties' incentives to seek NMRs following government investigations may require either: (i) continuing to pursue non-monetary relief (if the State AG has opened the investigation); or (ii) initiating a standalone action if federal enforcers are unlikely to seek adequate NMRs.

8.5.3. Implications for Private Antitrust Enforcement

Our findings also bring insights for the private enforcement ecosystem:

Including NMR requests in complaints should be encouraged. The strength and consistency of the NMR-request association suggest that omitting this kind of request may severely lower plaintiffs' odds of securing this relief. Even generic requests are associated with substantially higher NMR obtainment. Our data is consistent with the complaint being a key tool to set the NMR agenda, such that when relief is not included therein, it is more likely to remain off the table, particularly in settlement negotiations.

The lower NMR obtainment in MDLs with direct and indirect plaintiffs deserves attention. This sizeable decrease in the likelihood of securing non-monetary relief related to the concurrent presence of direct and indirect plaintiffs (36-41 percentage points less for each group) is among the largest we find. This suggests that MDL leadership structures and settlement processes may need mechanisms to ensure that NMRs are actively pursued. The objective would be to avoid parties collectively deprioritizing such efforts under the assumption that another plaintiff will secure relief benefiting all of them. To mitigate this risk, MDL transferee judges could factor in whether at least one plaintiff group is pursuing NMRs when reviewing class settlements.

Compliance programs face stronger defendant resistance. Among the requested NMRs, compliance programs are the least likely to be obtained. For counsel who value durable behavioral change over time-limited injunctions, this finding suggests that compliance programs require negotiating priority, as defendants will not concede them as readily as other remedy types.

Indirect plaintiffs are more effective at securing NMRs than direct plaintiffs. At the remedy level (Model 3), indirect plaintiffs are 7-16 percentage points more likely to obtain each requested remedy type than direct plaintiffs. This may reflect indirect plaintiffs' greater strategic emphasis on NMRs because of the higher bar that their damages claims face, thus making non-monetary relief a more important component of their relief package.

Private enforcement's contribution to the vitality of antitrust. Taking a broader perspective, private parties' longer-lasting contributions to competitive markets may lie in actions brought against practices not targeted by governments. As examined in Chapter 7, follow-on actions are related to a lower likelihood of securing any NMRs (including those requested in complaints) and fewer NMR types. Thus, private plaintiffs seem more apt to contribute to competition through securing NMRs when enforcing antitrust law against practices not subject to public enforcement. In those instances, private enforcement could be the only realistic avenue to redress antitrust violations, especially considering governments' limited resources and different enforcement priorities over time. Also, private parties' on-the-ground knowledge may bring useful insights for designing tailored remedies better suited to each market's characteristics.

8.6. Limitations and Directions for Future Research

Our analysis at this stage faces a set of relevant limitations. That said, they point directly to high-value extensions that a fully developed, publicly accessible resource would support.

The estimation sample for Models 1 and 2 in Chapter 7 is constrained by the number of observations with monetary awards, limiting the power of multivariate analysis. Expanding data coverage is a priority for the next release and would greatly increase the analytical power available to researchers and practitioners.

The current settlement/orders and remedies datasets cover MDLs and government-led actions. Extending coding to Rule 42 consolidations and individual private actions (the latter for remedies obtained through litigated orders) would provide a more complete picture of the private enforcement landscape, potentially enabling cross-context comparisons. Complaint-level data for 27 Rule 42 consolidation proceedings and 344 individual standalone actions have been collected and can serve as a foundation for this extension.

Several research questions raised during presentations to the California Attorney General's Office and the American Antitrust Institute suggest directions in which a more developed dataset could be useful. These include: (i) differentiating government cases filed with a pre-negotiated stipulation from those where public

enforcers had to litigate for NMRs; (ii) tracking outcomes of prior government investigations to refine the substitution mechanism analysis; (iii) examining NMR efficacy through proxies such as subsequent enforcement motions and monitor reports; and (iv) exploring differences between cases including *per se* and Rule of Reason claims. Each of these extensions would require additional data collection and coding that this policy lab's timeline did not permit. However, an adequately resourced and maintained database could systematically support these lines of inquiry.

Finally, the associations documented here are not causal claims. Selection into settlement, unobserved case characteristics, and strategic behavior by litigants all present identification challenges that the current observational design cannot fully resolve. Subsequent work applying quasi-experimental methods could strengthen the potential causal interpretation of these findings.

9. Conclusion

We started this research seeking to answer three main questions: what NMRs do private parties seek in antitrust litigation? What do they actually obtain? And how does it compare with public lawsuits? During five months, we reviewed over one-third of the antitrust cases filed in federal courts between 2009 and 2019 by public and private enforcers. Our three novel datasets map antitrust requests for such remedies, identify case outcomes, and compare obtained and requested NMRs. Together, they allow us to address such questions.

Beginning with what parties request, our dataset suggests that public and private enforcers mostly seek behavioral remedies, especially injunctions. Government enforcers, in particular, request structural remedies mostly in cases asserting Section 7 of the Clayton Act. Private parties, by contrast, rarely request such remedies. Difficulties in litigating structural remedies may justify the focus on behavioral measures.

Government enforcers (State AGs, DOJ, and FTC) requested non-monetary relief more frequently than private parties. Still, competitors and indirect purchasers exhibited very similar levels of NMR requests. This finding is particularly striking given the high bar both groups face for antitrust standing. Competitors, on the one hand, must face skeptical courts and prove that they suffered an antitrust injury. Indirect purchasers, on the other hand, have standing to sue only under state antitrust laws that repealed *Illinois Brick*. Even so, the data suggest that their claims most frequently include requests for non-monetary relief. We offer two possible accounts for this pattern. First, competitor cases typically involve intellectual property rights and monopolization claims. Injunctions and compulsory licensing are particularly frequent in these cases. Second, NMRs may operate as bargaining chips in the settlement negotiations of indirect plaintiffs.

Moving to what plaintiffs obtain, this research showed that one-third of cases for which we could determine the outcome included at least one NMR provision. Public enforcers outperformed private plaintiffs in obtaining non-monetary relief. Indirect plaintiffs, in turn, performed better than direct plaintiffs. Most competitors' lawsuits belong to the subset of cases for which coding is still ongoing (i.e., standalone actions and Rule 42 consolidated cases). Therefore, at this time, we cannot draw any meaningful conclusion regarding their NMR obtainment rates.

We found slight variation in the NMR spectra obtained across enforcement contexts and plaintiff groups. Non-monetary relief is predominantly the result of settlements. Courts have rarely imposed such remedies.

The data also suggest that NMRs generally complement rather than replace monetary relief. Most settlements containing NMRs also include monetary compensation. Regression analysis further indicated that monetary compensation levels predict whether an NMR is secured (at certain thresholds), but not how broadly it appears.

What plaintiffs specifically obtain varies across NMR types. Our analysis suggests that monitoring mechanisms are always obtained. Divestitures, on the other hand, are obtained at a rate 32-41 percentage points higher than injunctions requested in their complaints. We did not find sufficient evidence to conclude that the rates of obtaining information-sharing bans and injunctions requested at the pleading stage differ; the results were not statistically significant. Complaint programs requested in plaintiffs' complaints, in turn, are 27-31 percentage points less likely to be secured than injunctions. Compliance programs are therefore the most resisted type of non-monetary relief among those studied.

A comparison between requested and obtained NMRs revealed a bundling dynamic, under which plaintiffs obtain remedies not included in their pleadings. Monitoring mechanisms and compliance programs are examples of such remedies. Both are rarely requested, but they still integrate the remedial packages of multiple cases. That aspect led us to conclude that these two remedies are auxiliary to primary reliefs, such as injunctions or divestitures.

Not only did NMRs vary in terms of obtainment rates, but their design and implementation features also differ within each NMR type. Generally, remedy types are systematically different in their duration, geographic scope, reporting obligations, monitoring mechanisms, and compliance structures. Oversight provisions are present in most NMRs at different rates. This specific aspect indicates that both private and public enforcers seek to monitor the defendant's compliance with such remedies.

Variation also exists regarding the statutory basis for private plaintiffs. Particularly, Section 2 (alone or jointly with other theories) boosts a private plaintiff's likelihood of obtaining an NMR, especially for securing specific requested remedies. One caveat is relevant, though. Because most observations relate to behavioral remedies, this finding may not hold for divestiture. The same provision, however, does not provide *additional* benefit to government enforcers who already operate at near-top-obtainment rates.

All these findings indicate that government-led cases are the fundamental vehicle for obtaining an NMR. However, the relationship between public and private enforcement is complex. In our data, they complemented one another by expanding the overall scope of antitrust enforcement, yet they may also have

substituted for one another with respect to certain forms of NMRs. Follow-on cases, for instance, are 26-32 percentage points less likely to result in an NMR. Because most of these remedies are negotiated rather than litigated, this result may suggest a substitution dynamic. Plaintiffs may drop the requests for non-monetary relief when an antitrust agency has already secured them.

Our datasets therefore provide a comprehensive picture of MDLs and government enforcement. But important questions remain unanswered. Extending the outcome- and remedy-level datasets to Rule 42 consolidations and individual private actions would provide a more complete picture of the private enforcement landscape, potentially enabling cross-context comparisons. In addition, several new research questions emerged during presentations to the California Attorney General's Office and the American Antitrust Institute that suggest directions in which a more developed dataset could be useful. These include: (i) differentiating government cases filed with a pre-negotiated stipulation from those where public enforcers had to litigate for NMRs; (ii) tracking outcomes of prior government investigations to refine the substitution mechanism analysis; (iii) examining NMR efficacy through proxies such as subsequent enforcement motion and monitor reports; and (iv) exploring differences between cases including *per se* and Rule of Reason claims. Each of these extensions would require additional data collection and coding that this policy lab's current timeline did not permit. However, an adequately resourced and maintained database could systematically support these lines of inquiry.

Appendix A. Selected Methodological Notes and Regression Tables

Selected Methodological Notes

As discussed in Chapter 7, we employ three complementary regression-based models. Model 1 (logistic regression) predicts whether any non-monetary relief is obtained in a given settlement or litigated court order. Model 2 (count model) predicts how many types of NMRs are obtained. Model 3 (logistic regression) predicts whether a specific requested remedy is obtained. All models use cluster-robust standard errors to account for non-independence of observations within the same government-led action or MDL (Models 1 and 2) and within the same settlement or order (Model 3).

We use locally weighted smoothing (lowess)⁵⁸ to visualize the relationship between log-transformed monetary compensation and NMR obtainment without imposing parametric assumptions. We identify three regimes: a low-tier category (less than \$15,000, including zero-dollar awards), a mid-range tier (between \$15,000 and \$750,000), and a high-range tier (more than \$750,000). As a result, the amount of monetary relief enters the models through a piecewise linear specification to address non-linearity in the relationship between monetary value and NMR obtainment.⁵⁹

For Model 2, we present results from a zero-inflated Poisson (ZIP) model for the main specification (R1, preferred based on AIC/BIC comparison), and standard Poisson models for the remaining specifications (R2–R8, as the ZIP did not converge for these). The ZIP model separates the zero-generating process (some settlements/orders are structurally unlikely to include any NMR) from the count process (among settlements/orders that could include NMR, how many types appear).

⁵⁸ See, e.g.: William G. Jacoby, *Loess: a nonparametric, graphical tool for depicting relationships between variables*, 19(4) Electoral Studies 577 (2000).

⁵⁹ See, e.g.: Frank E. Harrell Jr., *Regression Modeling Strategies* (2nd ed., Springer 2015); Lawrence C. Marsh & David R. Cormier, *Spline Regression Models* (Sage Publications 2002).

Regression Tables

Model 1

Table A.1. Model 1: likelihood of obtaining any non-monetary relief

	(R1)	(R2)	(R3)	(R4)	(R5)	(R6)	(R7)	(R8)
Enforcement Context	3.20 (4.37)		1.10 (1.57)	0.54 (0.99)	1.30 (1.49)	a	a	a
Indirect Plaintiff	0.47 (0.28)	2.80 (1.93)	0.49 (0.29)	0.71 (0.35)	0.76 (0.39)	0.76 (0.55)	1.009 (0.66)	7.10** (5.71)
Govt. Plaintiff	20.90*** (19.91)	28.30** (40.69)						
Fed. Enforcer (DOJ/FTC)			67.20*** (89.68)	172.30*** (309.45)	120.80*** (160.78)	b	b	b
State AG			26.10*** (26.97)	27.90*** (30.15)	33.20*** (37.25)	99.00*** (122.63)	100.00*** (125.60)	34.80*** (43.63)
Time to Resolution	1.01 (0.009)	1.02 (0.009)	1.01 (0.009)	1.009 (0.008)	1.009 (0.008)	1.009 (0.009)	1.006 (0.009)	1.02 (0.008)
NMR Requested	7.05*** (3.91)	11.85*** (7.61)	6.70*** (3.69)	7.20*** (4.14)	7.50*** (4.48)	5.20*** (2.66)	6.30*** (4.01)	14.30*** (7.58)
Low-Tier (<\$15,000)	1385*** (1669.13)	398*** (832.22)	932*** (1095.76)	1073*** (1451.89)	978*** (1209.02)	767*** (1022.28)	764*** (1066.64)	1528*** (3267.08)
Mid-Tier (\$15-750,000)	5.03*** (1.54)	5.09*** (2.12)	5.30*** (1.60)	5.80*** (2.05)	6.40*** (2.26)	6.20*** (2.05)	6.90*** (2.49)	4.30*** (1.16)
High-Tier (> \$750,000)	0.83 (0.20)	0.55* (0.18)	0.85 (0.22)	0.65* (0.15)	0.62* (0.15)	0.75 (0.22)	0.62* (0.17)	0.33*** (0.11)
Section 2				8.50** (8.19)	12.50** (12.62)		6.30* (6.64)	3.70 (4.15)
State AG * Section 2					0.07 (0.13)		c	c
Fed. Enforcer * Section 2					0.04** (0.06)		d	d
Prior Govt. Investigation						0.06*** (0.05)	0.10*** (0.08)	0.04** (0.05)

	(R1)	(R2)	(R3)	(R4)	(R5)	(R6)	(R7)	(R8)
Direct & Ind. Plaintiff		0.03*** (0.04)						0.01*** (0.01)
Direct/Ind. & Competitor		0.39 (0.68)						0.008*** (0.01)
Priv. Plaintiff & Govt.		0.96 (1.07)						3.40 (4.36)
Observations	1,159	1,005	1,132	1,132	1,132	995	952	952

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Logistic regression, coefficients in odds ratios. SE in parentheses (clustered by case id).

Notes:

- a. Enforcement Context (R6, R7, R8): omitted (collinearity)
- b. Plaintiff Category Federal Enforcer (R6-R8): omitted (predicts success perfectly)
- c. Interaction State AG * Section 2 (R7-R8): omitted (predicts success perfectly)
- d. Interaction Federal Enforcer * Section 2 (R7-R8): omitted (collinearity)
- e. Plaintiff Category Other (R2-R8): omitted (predicts failures perfectly)
- f. Plaintiff Category Competitor (R1-R8): omitted (zero observations in the sample)

Table A.2. Model 1: likelihood of obtaining any non-monetary relief

	(R1)	(R2)	(R3)	(R4)	(R5)	(R6)	(R7)	(R8)
Enforcement Context	0.15 (0.19)		0.01 (0.18)	-0.07 (0.24)	0.03 (0.13)	a	a	a
Indirect Plaintiff	-0.12 (0.09)	0.14* (0.09)	-0.11 (0.09)	-0.05 (0.07)	-0.04 (0.07)	-0.02 (0.07)	0.0009 (0.06)	0.20*** (0.07)
Govt. Plaintiff	0.48*** (0.11)	0.46** (0.20)						
Fed. Enforcer (DOJ/FTC)			0.61*** (0.12)	0.65*** (0.10)	0.66*** (0.11)	b	b	b
State AG			0.54*** (0.12)	0.53*** (0.11)	0.56*** (0.12)	0.64*** (0.09)	0.65*** (0.09)	0.37** (0.15)
Time to Resolution	0.001 (0.001)	0.002*** (0.0007)	0.001 (0.001)	0.001 (0.001)	0.001 (0.0009)	0.001 (0.001)	0.0007*** (0.001)	0.002*** (0.0008)
NMR Requested	0.26*** (0.07)	0.27*** (0.05)	0.25*** (0.06)	0.24*** (0.06)	0.24*** (0.06)	0.20*** (0.04)	0.22*** (0.05)	0.24*** (0.03)
Low-Tier (<\$15,000)	0.97*** (0.26)	0.65** (0.27)	0.91*** (0.28)	0.85*** (0.26)	0.82*** (0.27)	0.80*** (0.28)	0.79*** (0.29)	0.67*** (0.18)
Mid-Tier (\$15-750,000)	0.21*** (0.06)	0.17*** (0.06)	0.22*** (0.06)	0.21*** (0.06)	0.22*** (0.06)	0.22*** (0.06)	0.23*** (0.06)	0.13*** (0.03)
High-Tier (> \$750,000)	-0.02 (0.03)	-0.06* (0.03)	-0.02 (0.03)	-0.05** (0.02)	-0.05** (0.02)	-0.03 (0.03)	-0.05** (0.02)	-0.10*** (0.02)
Section 2				0.26*** (0.09)	0.30*** (0.09)		0.22* (0.11)	0.11 (0.09)
State AG * Section 2					-0.31* (0.17)		c	c
Fed. Enforcer * Section 2					-0.37** (0.18)		d	d
Prior Govt. Investigation						-0.32*** (0.07)	-0.26*** (0.08)	-0.28*** (0.05)
Direct & Ind. Plaintiff		-0.36*** (0.13)						-0.41*** (0.14)

	(R1)	(R2)	(R3)	(R4)	(R5)	(R6)	(R7)	(R8)
Direct/Ind. & Competitor		-0.10 (0.18)						-0.43*** (0.13)
Priv. Plaintiff & Govt.		-0.003 (0.12)						0.11 (0.11)
Observations	1,159	1,005	1,132	1,132	1,132	995	952	952

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Logistic regression, Average Marginal Effects. SE in parentheses (clustered by case id).

Notes:

- a. Enforcement Context (R6-R8): omitted (collinearity)
- b. Plaintiff Category Federal Enforcer (R6-R8): omitted (predicts success perfectly)
- c. Interaction State AG * Section 2 (R7-R8): omitted (predicts success perfectly)
- d. Interaction Federal Enforcer * Section 2 (R7-R8): omitted (collinearity)
- e. Plaintiff Category Other (R2-R8): omitted (predicts failures perfectly)
- f. Plaintiff Category Competitor (R1-R8): omitted (zero observations in the sample)

Model 2

Table A.3. Model 2: non-monetary relief count

	(R1)	(R2)	(R3)	(R4)	(R5)	(R6)	(R7)	(R8)
Enforcement Context	0.71 (0.14)		0.61** (0.12)	0.58** (0.13)	0.63** (0.13)	a	a	a
Indirect Plaintiff	0.32 (0.24)	1.50 (1.004)	0.36 (0.23)	0.39 (0.23)	0.69 (0.28)	0.39 (0.24)	0.68 (0.31)	2.20 (1.31)
Govt. Plaintiff	1.60 (0.64)	7.04** (6.14)						
Fed. Enforcer (DOJ/FTC)			4.68*** (1.88)	4.52*** (1.80)	9.99*** (4.15)	3.003*** (1.11)	5.33*** (2.16)	2.20 (2.69)
State AG			3.94*** (1.50)	3.73*** (1.36)	8.21*** (3.29)	4.52*** (1.69)	17.45*** (8.37)	9.57** (8.95)
Time to Resolution	0.99*** (0.002)	1.01*** (0.003)	0.99 (0.003)	0.99 (0.003)	0.99 (0.002)	0.99 (0.003)	0.99** (0.002)	1.009** (0.004)
NMR Requested	4.70*** (1.14)	4.58*** (0.44)	4.58*** (0.92)	4.51*** (0.87)	4.39*** (0.79)	5.30*** (1.34)	5.37*** (1.40)	4.44*** (0.45)
Low-Tier (<\$15,000)	-37.01*** (1.46)	4.23* (3.52)	6.40* (6.96)	5.18 (5.74)	8.42* (9.48)	6.31 (7.29)	11.65** (13.89)	7.04** (6.02)
Mid-Tier (\$15-750,000)	0.97 (0.06)	1.48* (2.12)	1.56 (0.43)	1.48 (0.43)	1.75* (0.50)	1.47 (0.45)	1.83* (0.57)	1.43* (0.27)
High-Tier (> \$750,000)	1.16* (0.09)	0.90 (0.08)	1.10 (0.12)	1.05 (0.08)	0.95 (0.03)	0.06 (0.12)	0.94* (0.02)	0.82*** (0.04)
Section 2				1.53* (0.37)	6.88*** (3.26)		4.42*** (1.66)	2.25 (1.17)
State AG * Section 2					0.13*** (0.06)		0.05*** (0.02)	0.52 (0.45)
Fed. Enforcer * Section 2					0.14*** (0.07)		0.45 (0.35)	3.77 (4.13)
Prior Govt. Investigation						0.53** (0.14)	0.21*** (0.11)	0.33* (0.21)

	(R1)	(R2)	(R3)	(R4)	(R5)	(R6)	(R7)	(R8)
Direct & Ind. Plaintiff		0.17*** (0.06)						0.19*** (0.09)
Direct/Ind. & Competitor		1.15 (0.33)						0.56 (0.33)
Priv. Plaintiff & Govt.		0.85 (0.74)						1.49 (1.25)
Observations	1,152	1,024	1,152	1,152	1,152	1,024	1,024	1,024

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Poisson model, coefficients in incidence rate ratios. SE in parentheses (clustered by case id).
Notes:

a. Enforcement Context (R6-R8): omitted (collinearity)

b. R2-R8: results from Standard Poisson Model because ZIP did not converge.

c. Plaintiff Category Competitor (R1-R8): omitted (zero observations in the sample)

Table A.4. Model 2: non-monetary relief count

	(R1)	(R2)	(R3)	(R4)	(R5)	(R6)	(R7)	(R8)
Enforcement Context	-0.57 (0.37)		-0.82** (0.38)	-0.91** (0.13)	-0.77** (0.37)	a	a	a
Indirect Plaintiff	-0.62 (0.46)	0.29 (0.43)	-0.46 (0.34)	-0.44 (0.32)	-0.16 (0.14)	-0.42 (0.31)	-0.13 (0.14)	0.52 (0.48)
Govt. Plaintiff	1.76*** (0.51)	3.10 (2.05)						
Fed. Enforcer (DOJ/FTC)			2.67*** (0.54)	2.58*** (0.61)	4.24*** (1.28)	1.35*** (0.32)	1.79** (0.78)	0.53 (1.07)
State AG			2.13*** (0.35)	2.00*** (0.29)	3.40*** (0.96)	2.45*** (0.60)	6.81** (2.77)	3.77 (2.71)
Time to Resolution	-0.01*** (0.003)	0.02*** (0.004)	-0.004 (0.006)	-0.007 (0.006)	-0.005 (0.005)	-0.008 (0.006)	-0.008** (0.003)	0.01** (0.006)
NMR Requested	2.69*** (0.59)	2.48*** (0.23)	2.59*** (0.50)	2.57*** (0.49)	2.52*** (0.41)	2.72*** (0.48)	2.74*** (0.35)	2.43*** (0.23)
Low-Tier (<\$15,000)	10.01* (5.60)	2.35* (1.29)	3.17* (1.66)	2.81* (1.70)	3.63** (1.72)	3.008* (1.62)	4.006** (1.64)	3.18** (1.31)
Mid-Tier (\$15-750,000)	-0.04 (0.11)	0.64* (0.35)	0.76* (0.43)	0.67 (0.45)	0.96** (0.44)	0.63 (0.46)	0.99** (0.44)	0.59** (0.29)
High-Tier (> \$750,000)	0.26* (0.13)	-0.16 (0.14)	0.16 (0.19)	0.09 (0.14)	-0.08 (0.07)	0.13 (0.18)	-0.09* (0.05)	-0.30*** (0.07)
Section 2				0.72 (0.47)	3.29*** (0.90)		2.42*** (0.67)	1.32 (0.84)
State AG * Section 2					-3.43*** (0.98)		-4.79*** (1.05)	-1.05 (1.44)
Fed. Enforcer * Section 2					-3.34*** (1.02)		-1.26 (1.26)	2.16 (1.77)
Prior Govt. Investigation						-1.005* (0.52)	-2.47*** (0.88)	-1.75 (1.08)
Direct & Ind. Plaintiff		-2.82*** (0.46)						-2.65*** (0.62)

	(R1)	(R2)	(R3)	(R4)	(R5)	(R6)	(R7)	(R8)
Direct/Ind. & Competitor		0.23 (0.47)						-0.93 (0.97)
Priv. Plaintiff & Govt.		-0.25 (1.42)						0.65 (1.35)
Observations	1,152	1,024	1,152	1,152	1,152	1,024	1,024	1,024

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Poisson model, Average Marginal Effects. SE in parentheses (clustered by case id).

Notes:

a. Enforcement Context (R6-R8): omitted (collinearity)

b. R2-R8: results from Standard Poisson Model because ZIP did not converge.

c. Plaintiff Category Competitor (R1-R8): omitted (zero observations in the sample)

Model 3

Table A.5. Model 3: likelihood of obtaining the requested remedy type

	(R9)	(R10)	(R11)	(R12)	(R13)	(R14)
Enforcement Context	1.89** (0.59)	1.07 (0.33)	0.61 (0.23)	0.80 (0.28)	a	a
Indirect Plaintiff	1.63** (0.37)	1.72** (0.40)	2.22*** (0.67)	2.53*** (0.87)	3.66*** (1.001)	5.61*** (2.48)
Govt. Plaintiff	9.49*** (1.43)					
Fed. Enforcer (DOJ/FTC)		23.90*** (10.53)	37.00*** (20.34)	85.95*** (53.11)	26.78*** (13.53)	50.30*** (30.71)
State AG		10.49*** (1.66)	16.97*** (3.05)	20.93*** (4.11)	49.99*** (13.45)	117.23*** (51.01)
Time to Resolution	1.0002 (0.002)	1.002 (0.002)	0.99 (0.002)	0.99 (0.002)	0.99 (0.002)	0.98*** (0.003)
Information Sharing Ban	1.12 (0.36)	1.02 (0.32)	1.70 (0.59)	1.02 (0.44)	b	b
Divestiture	7.05* (7.17)	10.05** (11.24)	15.67** (17.07)	9.84** (10.85)	c	c
Compliance Program	0.14*** (0.05)	0.13*** (0.05)	0.12*** (0.05)	0.10*** (0.04)	0.06*** (0.03)	0.05*** (0.02)
Other	39.57*** (20.71)	35.35*** (18.30)	34.43*** (12.12)	7.91*** (3.76)	88.39*** (67.48)	15.04*** (0.06)
Section 2			15.17*** (4.87)	34.43*** (12.12)		38.40*** (14.15)
State AG * Section 2				0.03*** (0.02)		d
Fed. Enforcer * Section 2				0.003*** (0.002)		0.02*** (0.02)
Prior Govt. Investigation					0.15*** (0.04)	0.12*** (0.05)
Observations	1,582	1,551	1,551	1,551	1,383	1,382

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Logistic regression, coefficients in odds ratios. SE in parentheses (clustered by settlement/order id).

Notes:

- a. Enforcement Context (R13-R14): omitted (collinearity)
- b. NMR Type Information-Sharing Ban (R13-R14): omitted (predicts failure perfectly)
- c. NMR Type Divestiture (R13-R14): omitted (zero observations in the subsample)
- d. Interaction State AG * Section 2 (R14): omitted (predicts success perfectly)
- e. NMR Type Monitoring (R9-R14): omitted (predicts success perfectly)
- f. Plaintiff Category Competitor (R9-R14): omitted (predicts failure perfectly)
- g. Plaintiff Category Other (R9-R14): omitted (predicts failure perfectly)

Table A.6. Model 3: likelihood of obtaining requested remedy type

	(R9)	(R10)	(R11)	(R12)	(R13)	(R14)
Enforcement Context	0.10** (0.05)	0.01 (0.05)	-0.07 (0.05)	-0.02 (0.04)	a	a
Indirect Plaintiff	0.07** (0.03)	0.08** (0.03)	0.10** (0.04)	0.10** (0.04)	0.16*** (0.03)	0.16*** (0.04)
Govt. Plaintiff	0.44*** (0.02)					
Fed. Enforcer (DOJ/FTC)		0.60*** (0.06)	0.62*** (0.07)	0.71*** (0.05)	0.52*** (0.08)	0.52*** (0.09)
State AG		0.46*** (0.02)	0.49*** (0.02)	0.51*** (0.02)	0.62*** (0.02)	0.64*** (0.02)
Time to Resolution	0.0002 (0.003)	0.0002 (0.003)	-0.001 (0.0003)	-0.001 (0.0003)	-0.002 (0.0004)	-0.001*** (0.0003)
Information Sharing Ban	0.02 (0.05)	0.004 (0.05)	0.08 (0.05)	0.004 (0.06)	b	b
Divestiture	0.35** (0.16)	0.41*** (0.14)	0.41*** (0.13)	0.32** (0.15)	c	c
Compliance Program	-0.27*** (0.03)	-0.27*** (0.03)	-0.27*** (0.03)	-0.29*** (0.06)	-0.30*** (0.02)	-0.31*** (0.02)
Other	0.54*** (0.03)	0.53*** (0.03)	0.37*** (0.06)	0.29*** (0.06)	0.58*** (0.03)	0.37*** (0.09)
Section 2			0.39*** (0.03)	0.47*** (0.03)		0.46*** (0.03)
State AG * Section 2				-0.45*** (0.09)		d
Fed. Enforcer * Section 2				-0.77*** (0.09)		-0.47*** (0.13)
Prior Govt. Investigation					-0.28*** (0.03)	-0.27*** (0.04)
Observations	1,582	1,551	1,551	1,551	1,383	1,382

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Logistic regression, Average Marginal Effects. SE in parentheses (clustered by settlement/order id).

Notes:

- a. Enforcement Context (R13-R14): omitted (collinearity)
- b. NMR Type Information-Sharing Ban (R13-R14): omitted (predicts failure perfectly)
- c. NMR Type Divestiture (R13-R14): omitted (zero observations in the subsample)
- d. Interaction State AG * Section 2 (R14): omitted (predicts success perfectly)
- e. NMR Type Monitoring (R9-R14): omitted (predicts success perfectly)
- f. Plaintiff Category Competitor (R9-R14): omitted (predicts failure perfectly)
- g. Plaintiff Category Other (R9-R14): omitted (predicts failure perfectly)

Model 3 – Not Conditional on Remedy Being Requested in Complaint

Table A.7. Model 3: likelihood of obtaining specific remedy type

	(R9)	(R10)	(R11)	(R12)	(R13)	(R14)
Enforcement Context	1.44 (0.36)	0.94 (0.26)	0.62 (0.32)	0.61 (0.18)	a	a
Indirect Plaintiff	2.18*** (0.47)	2.28*** (0.49)	3.07*** (0.84)	3.61*** (1.10)	4.62*** (1.31)	6.83*** (2.80)
Govt. Plaintiff	13.65*** (1.98)					
Fed. Enforcer (DOJ/FTC)		24.77*** (9.40)	34.23*** (16.15)	80.57*** (41.42)	24.47*** (10.21)	33.64*** (15.28)
State AG		14.98*** (2.25)	20.98*** (3.62)	25.81*** (4.99)	67.12*** (21.29)	109.60*** (50.15)
Time to Resolution	1.0005 (0.002)	1.002 (0.002)	0.99* (0.002)	0.99** (0.002)	0.99 (0.002)	0.99*** (0.002)
Information Sharing Ban	8.18*** (1.88)	8.33*** (1.94)	10.48*** (2.30)	10.39*** (2.31)	9.92*** (2.68)	13.15*** (3.21)
Divestiture	12.22** (12.19)	14.00*** (14.03)	19.52*** (19.81)	15.42*** (15.84)	b	b
Compliance Program	3.89*** (0.65)	3.84*** (0.64)	4.46*** (0.79)	4.27*** (0.76)	2.97*** (0.50)	3.29*** (0.60)
Other	98.79*** (47.81)	94.08*** (45.41)	30.43*** (14.51)	26.80*** (13.21)	251.55*** (189.18)	81.86*** (76.59)
Section 2			16.66*** (5.26)	33.79*** (11.77)		35.70*** (12.71)
State AG * Section 2				0.18*** (0.10)		c
Fed. Enforcer * Section 2				0.005*** (0.003)		0.03*** (0.03)
Prior Govt. Investigation					0.14*** (0.04)	0.15*** (0.06)
Observations	2,383	2,352	2,352	2,352	2,091	2,005

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Logistic regression, coefficients in odds ratios. SE in parentheses (clustered by settlement/order id).

Notes:

- a. Enforcement Context (R13-R14): omitted (collinearity)
- b. NMR Type Divestiture (R13-R14): omitted (predicts success perfectly)
- c. Interaction State AG * Section 2 (R14): omitted (predicts success perfectly)
- d. NMR Type Monitoring (R9-R14): omitted (predicts success perfectly)
- e. Plaintiff Category Competitor (R9-R14): omitted (predicts failure perfectly)
- f. Plaintiff Category Other (R9-R14): omitted (predicts failure perfectly)