A&O SHEARMAN

Global antitrust *enforcement report*

MARCH 2025

Contents

Foreword

2024 saw a significant increase in overall global fines for antitrust enforcement, with total penalties for the jurisdictions surveyed in our report at USD6.7 billion, over double that of 2023 (USD2.9bn) and substantially higher than 2022 (USD3.5bn). Notably, this increase was largely due to a marked uptick in abuse of dominance fines (USD4.3bn in total), with the bulk of these coming from European Commission (EC) decisions (USD3.4bn). However, while vertical (and other non-cartel) conduct fines were also up year-on-year (USD1.8bn, up from USD195 million in 2023), fines for cartel enforcement saw a marked decrease (USD602.5m, compared to USD1.9bn in 2023), reflecting a continued downward trend.

Although we always caution against drawing significant inferences from year-on-year changes, the impact of the wider scrutiny of digital markets on this year's dataset is impossible to miss. Fines on Big Tech alone amounted to approximately USD3bn, nearly 50% of the overall fine total.

Contrary to initial expectations, the introduction of sweeping ex ante enforcement regimes in the digital sector has not dissuaded regulators from continuing to enforce against digital firms using their traditional antitrust armory—in fact, quite the opposite. Abuse of dominance cases against Big Tech in 2024 bucked a trend of recent decline, with the EC leading the charge in reaching several significant decisions notwithstanding the entry into force of its Digital Markets Regulation (DMA). In doing so, the EC has sent a clear signal that the old and new regimes are intended to sit alongside each other. It remains to be seen whether this approach is followed in other jurisdictions as regulators consider and implement their own ex ante digital regulation.

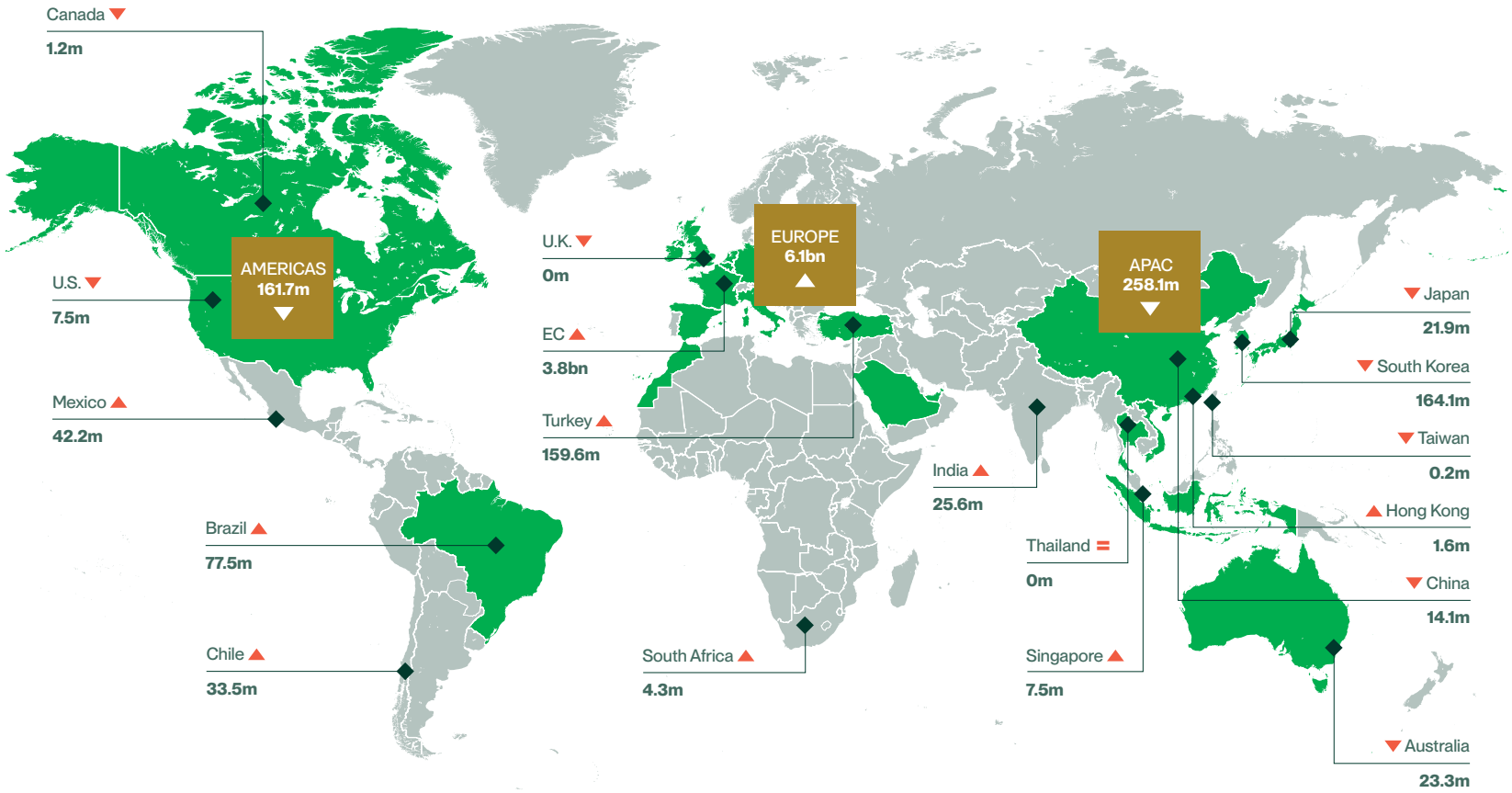
Relatedly, 2024 saw regulators continue to grapple with the risks posed by the meteoric rise of generative AI. Assessment and debate will no doubt continue apace in 2025, with regulators conscious in particular to prevent the entrenchment of AI strength with a small number of powerful firms. However, it may be some time before we see material enforcement activity in this space given the pace of change and the complexity of the assessment required.

In stark contrast to abuse of dominance enforcement, fines for cartel enforcement were the lowest recorded for several years, with no landmark decisions of note. With immunity and leniency applications remaining muted, reflecting an increased reluctance of businesses to come forward given the ever-growing threat of follow-on damages actions, regulators continued to focus on other parts of their detection toolkit to beef up enforcement. Dawn raid activity has been consistently high since the end of the pandemic; 2024 was no different, and we expect that trend to continue.

The proliferation of private enforcement activity that we have observed in recent years continued throughout 2024, most notably in the continued extraordinary rise of collective actions in the U.K. Consistent with public enforcement, abuse of dominance cases continued to make up the vast majority of recently-filed collective actions, with novel theories of harm articulated and Big Tech a focus for claimant firms and proposed class representatives. It will be interesting to see whether activity in this space is impacted by the dismissal of the first claim to reach trial (in December 2024), by the judgments in several other leading cases which are expected in 2025, or indeed by the ongoing wider review into the litigation funding market.

Looking ahead more generally, 2025 may mark a significant turning point in the directional travel of antitrust enforcement globally. The recent shifts in political power have the potential to have significant repercussions, with newly appointed leaders and regulator heads in both the U.S. and the U.K. already seeking to redefine the approach to antitrust enforcement strategies. While the renewed focus on "economic growth" arguably has a more immediate connection to regulators' enforcement of the merger control rules, it will be interesting to see the extent to which policy shifts also filter through into the behavioral antitrust enforcement environment. We may see a more lenient approach in the digital sector where new powers have only recently come into force. Conversely, consumer-facing and public sector industries are likely to come under greater scrutiny. Similarly, the start of 2025 has already seen the potential for antitrust investigations to be used as a tool in the context of rising geopolitical trade tensions—although it remains to be seen the extent to which those will be followed through in practice.

Global antitrust enforcement fines in 2024 were USD6.7bn, *a notable increase from 2023*

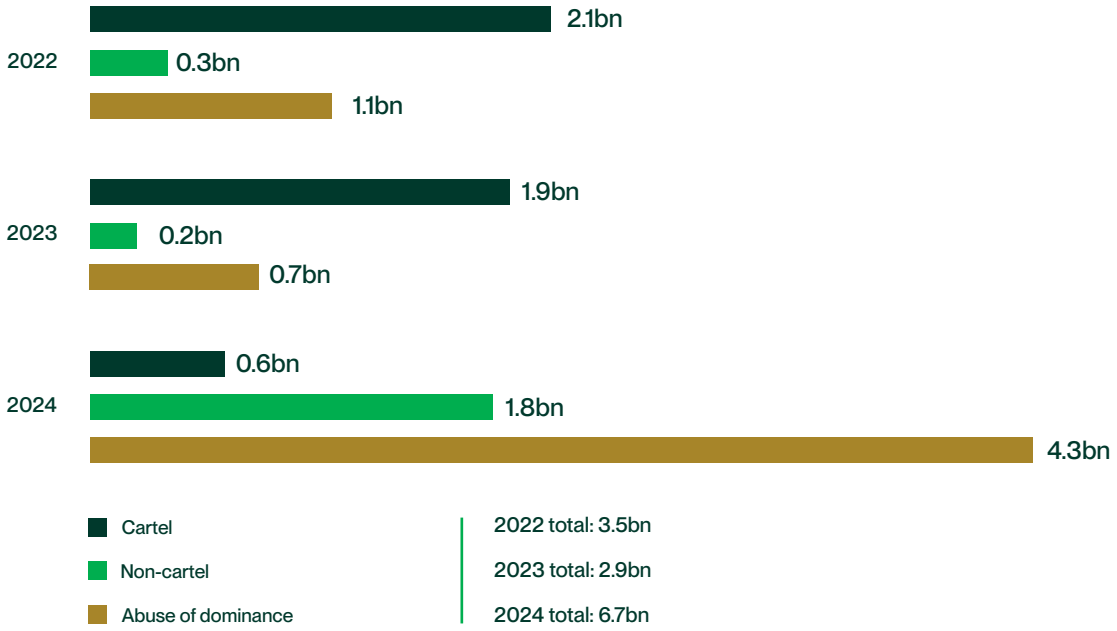


All figures are in U.S. dollars (USD).

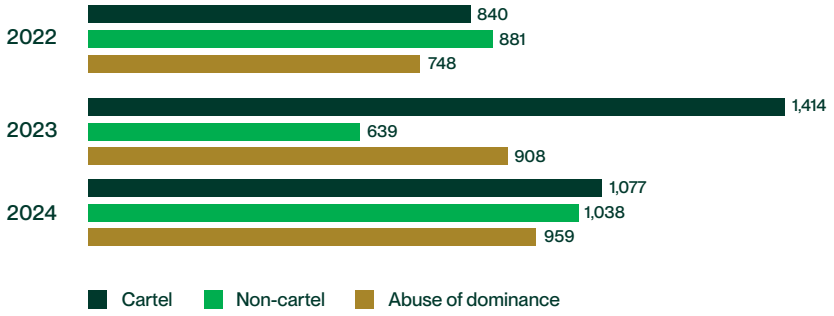
Statistics relate to the 2024 calendar year and reflect levels calculated using an average exchange rate for 2024.
Statistics are approximate and may not be exhaustive.

- A&O Shearman office locations
- ▲ Increase from 2023 fines
- ▼ Decrease from 2023 fines
- = No change

TOTAL GLOBAL FINES BY CONDUCT TYPE, 2022–2024



AVERAGE LENGTH OF INVESTIGATION (CALENDAR DAYS), 2022–2024



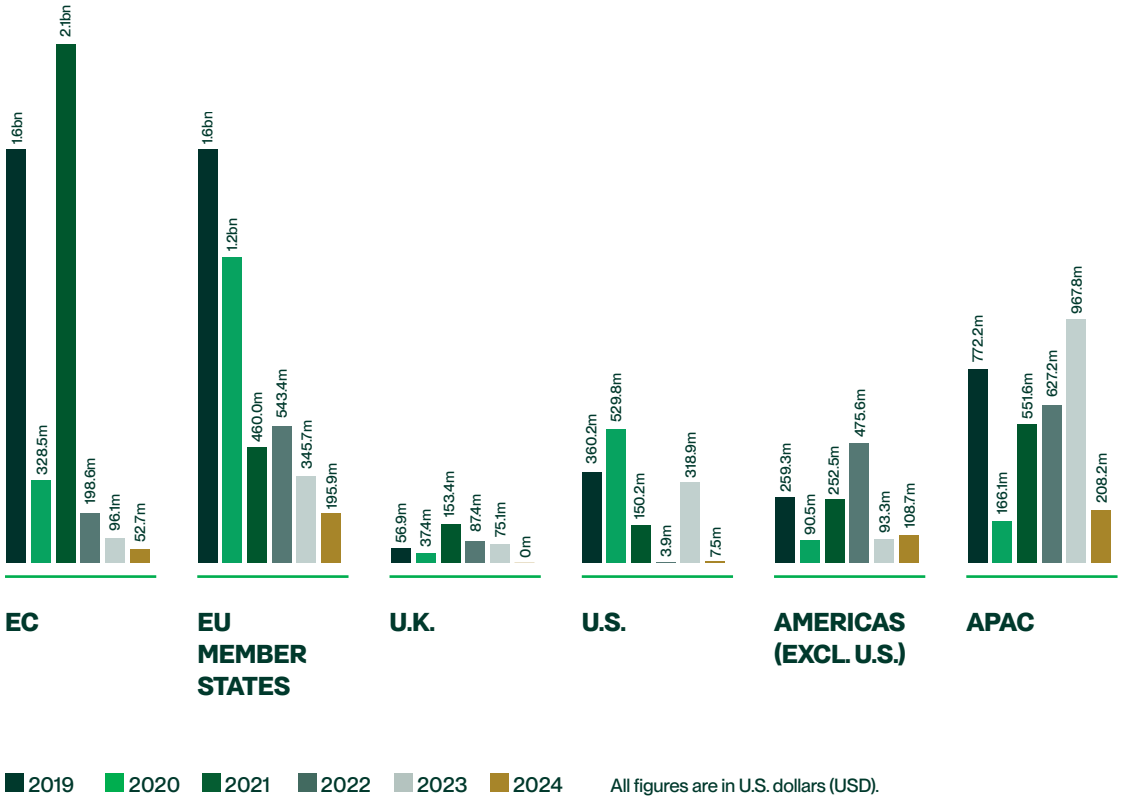
MODE OF INITIATION OF ENFORCEMENT ACTION, 2024

Global cartel fines *see dramatic drop*

REGIONAL CARTEL FINE COMPARISON (2024 TOTAL: USD602.5M)

Overall, global fines for cartel activity in 2024 (USD602.5m) were the lowest recorded for several years, and significantly lower than the 2023 total (USD1.9bn). Unlike in previous years, 2024 saw relatively few 'landmark' decisions, with no individual fines exceeding USD100m. However, the total number of cartel enforcement decisions remained broadly steady, with 170 decisions issued in 2024 compared with 163 decisions in 2023.

While the lower fine totals may therefore at least in part be indicative of the nature of the cases that reached decision in 2024, as opposed to reflecting a broader reduction in cartel enforcement activity, there remains a view that the proliferation of private enforcement across the U.S., U.K. and EU is having a chilling effect on immunity/leniency applications, and consequently on cartel enforcement. However, regulators have typically been keen to signal that this is not the case. Significantly, a senior official at the EC confirmed in January 2025 that the EC expects to issue more cartel decisions this year, with a particular focus on unlawful information exchanges and collusion facilitated by new technologies and tools.



All figures are in U.S. dollars (USD).

KEY STATISTICS	
EC	The EC recorded its lowest total fine value (EUR48.7m) in recent memory, finalizing just a single cartel enforcement decision in 2024—in the second-hand rolling stock case. The EC also issued just a single statement of objections, to six Norwegian companies in the farmed Atlantic salmon case.
EU MEMBER STATES	Enforcement at the national level by EU member states continued its downward trend. France was the top enforcer in terms of the level of fine imposed (EUR91.2m, three decisions), followed by Belgium (EUR49.3m, two decisions), and Austria (EUR16.9m, 13 decisions).
U.K.	The U.K. saw a historically low level of enforcement in 2024, with no cartel enforcement decisions being adopted by the Competition and Markets Authority (CMA) or any of the concurrent antitrust regulators. However, the CMA has been progressing cases and, in February 2025, reached a settlement in its financial services sector cartel investigation (see further details below).
U.S.	U.S. cartel enforcement remained at historically low levels—2023 was an outlier, with the increased fine total in that year largely attributable to two settlements (USD305m) in a long-running generic pharmaceuticals price-fixing investigation.
AMERICAS (EXCL. U.S.)	Elsewhere in the Americas, Brazil (USD70.3m, 14 decisions), and Mexico (USD37.0m, three decisions) both saw material enforcement activity.
APAC	In APAC, fines saw a significant downtick, although the 2023 total was largely attributable to the Japan Fair Trade Commission (JFTC) issuing its highest-ever antitrust fine (USD717.3m) to a cartel involving three electricity companies. In 2024, South Korea continued to be one of the most active authorities, with the Korea Fair Trade Commission (KFTC) issuing fines of USD152.0m across 36 decisions. In Australia, a USD22.2m fine issued by the Federal Court against two waste management companies for fixing prices over a three-month period in 2019 is the second-largest fine imposed for criminal cartel offenses pursuant to the Competition and Consumer Act 2010. The companies' former CEOs were also convicted and sentenced to intensive correction orders, fined, and banned from managing corporations for a period of five years.

CARTEL DECISIONS BY SECTOR

Consumer and retail	7%
Energy and natural resources	6%
Financial services	6%
Industrial and manufacturing	34%
Life sciences	2%
TMT	5%
Transport and infrastructure	18%
Other	21%

Industrial and manufacturing: Hotspot for cartels

Industrial and manufacturing industries were a particular area of cartel enforcement activity in 2024, accounting for 34% of decisions (an increase from 27% of decisions in 2023). Fines for price-fixing were issued in relation to the manufacture of newspaper paper in South Korea, waterproofing products in Mexico, ready-mix concrete in Turkey, and welding technology in Austria. Further discussion of the key bid-rigging enforcement decisions in the construction sector is set out below.

Financial services: Further enforcement on the horizon

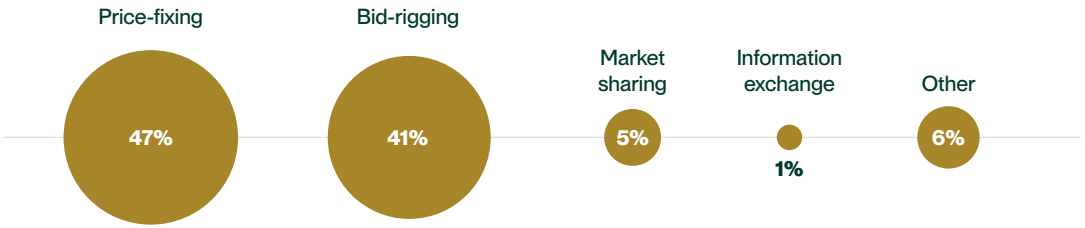
The financial services sector has been a consistent area of focus for cartel enforcement over recent years. However, in 2024 there were just 11 enforcement decisions in the 31 jurisdictions surveyed.

In Japan, the JFTC issued cease and desist orders and surcharge payment orders totaling USD13.7m against four non-life insurance companies and a non-life insurance agent for collusive price-fixing and bid-rigging practices in relation to insurance contracts with nine policyholders.

In South Africa, there were a number of developments in the Competition Commission's case against 28 banks accused of manipulating the USD/ZAR foreign exchange rate between 2007 and 2013. In January 2024, the Competition Appeal Court dismissed the charges against most of the banks, leaving just five banks to face trial. The Commission announced in February 2024 that it had approached the Constitutional Court for leave to appeal the decision.

Despite the lull in enforcement decisions, financial markets look set to remain on antitrust authorities' radars, and a key enforcement priority in certain jurisdictions in 2025—including the EC, where unannounced antitrust inspections were carried out in September 2024 at the premises of financial services companies in two member states in relation to financial derivatives. Indeed, in February 2025, the U.K. CMA fined four banks a total of over GBP100m following settlements in its U.K. government bonds investigation. A fifth bank benefited from full immunity from fines. The CMA found that individual traders at the banks took part in private one-to-one chatrooms in which they shared sensitive information relating to buying and selling U.K. government bonds on specific dates.

FORMS OF CARTEL CONDUCT



> "For the first time in several years, price-fixing was the most commonly enforced type of cartel conduct in 2024"

Price-fixing: Fuel pricing acts as catalyst for antitrust intervention

For the first time in several years, price-fixing was the most commonly enforced type of cartel conduct in 2024 (47% of decisions, increasing from 38% of decisions in 2023), narrowly ahead of bid-rigging conduct (which has typically been the most prevalent in recent years).

The fuel sector has been a specific area of focus for antitrust authorities in recent years—particularly in Europe—where road fuel market studies have been conducted in Germany, Italy, Poland, and the U.K. In terms of enforcement, significant fines were issued in the Americas in 2024 in relation to cartels concerning the retail sale of fuel at gas stations: Brazil's Administrative Council for Economic Defense (CADE) issued fines totaling USD46.2m in decisions against two separate cartels, while Mexico's Federal Economic Competition Commission (COFECE) issued a fine of USD23.9m (including on executives/individuals) in a single decision.

Several agencies have also raised concerns over algorithmic collusion. In March 2024, the U.S. Department of Justice (DOJ) and the U.S. Federal Trade Commission (FTC) filed a statement of interest in a case in the hotel sector, warning that rival companies' use of the same algorithm-based pricing software to determine room prices risked breaching antitrust laws. The U.S. agencies have filed similar statements in real estate algorithmic price-fixing cases. In November 2024, Brazil's CADE launched an investigation into the use of an algorithmic pricing tool at petrol stations in a number of Brazilian cities, and Canada's Competition Bureau confirmed that it had launched a preliminary probe into real estate pricing algorithms. More generally, the competitive impact of AI remains a focus for antitrust authorities—see our section below on digital enforcement for more details.

Bid-rigging: Construction industry remains the focus

Bid-rigging remained a key area of cartel enforcement in 2024 (41% of decisions), with investigations progressed and concluded in a number of jurisdictions.

The construction industry continued to be the sector of focus in Europe. In France, the antitrust authority sanctioned four cartels in the pre-cast concrete products sector, fining 11 companies a total of EUR76.6m. In Austria, further fines were imposed in relation to an ongoing cartel probe, targeting more than 40 construction companies; over EUR192.7m in fines have now been levied to date. In Germany, the Federal Cartel Office (FCO) fined a construction company EUR2.8m for collusive tendering in relation to the renovation of Cologne's Zoobrücke bridge; the investigation was triggered by an anonymous tip-off made via the FCO's whistleblowing hotline.

The EC also had coordination of sales processes in its crosshairs. České dráhy (ČD) and Österreichische Bundesbahnen (ÖBB), the Czech and Austrian rail incumbents, were fined a total of EUR48.7m for colluding to prevent a new entrant, RegioJet, from accessing used wagons, thus restricting competition on the rail passenger transport market. In particular, the EC found that ČD and ÖBB had collusively timed wagon sales so that RegioJet could not buy ÖBB's used wagons; rigged ÖBB's used wagon sales procedures so that ČD could buy the wagons instead of RegioJet; agreed on a suitable buyer other than RegioJet for ÖBB's used wagons that ČD was not interested in; and exchanged confidential information about the bids and degree of interest of other bidders participating in the sales. ÖBB received a 45% fine reduction for cooperating with the EC under the leniency program.

Significant fines were also issued elsewhere. In South Korea, the KFTC fined 31 furniture manufacturers USD65.1m for bid-rigging tenders floated by construction companies to procure built-in furniture, six companies USD35.7m for bid-rigging a tender for the sale of a ski resort in Pyeongchang, and 13 semiconductor-related equipment manufacturers USD9.0m for bid-rigging tenders for a semiconductor monitoring and control system. Penalties were imposed in Brazil in relation to cardiac pacemakers, in Singapore in relation to non-residential interior fit-outs, and in the U.S. in relation to asphalt-paving services.

Perhaps most notably in the construction sector, individuals have also been sanctioned alongside their firms. In Canada, for example, executives have been sentenced to months-long house arrest in relation to bid-rigging contracts for paving- and engineering-consulting services. In Australia, the Federal Court penalized a company and its sole director for an ultimately unsuccessful attempt to rig a tender at the National Gallery of Australia.

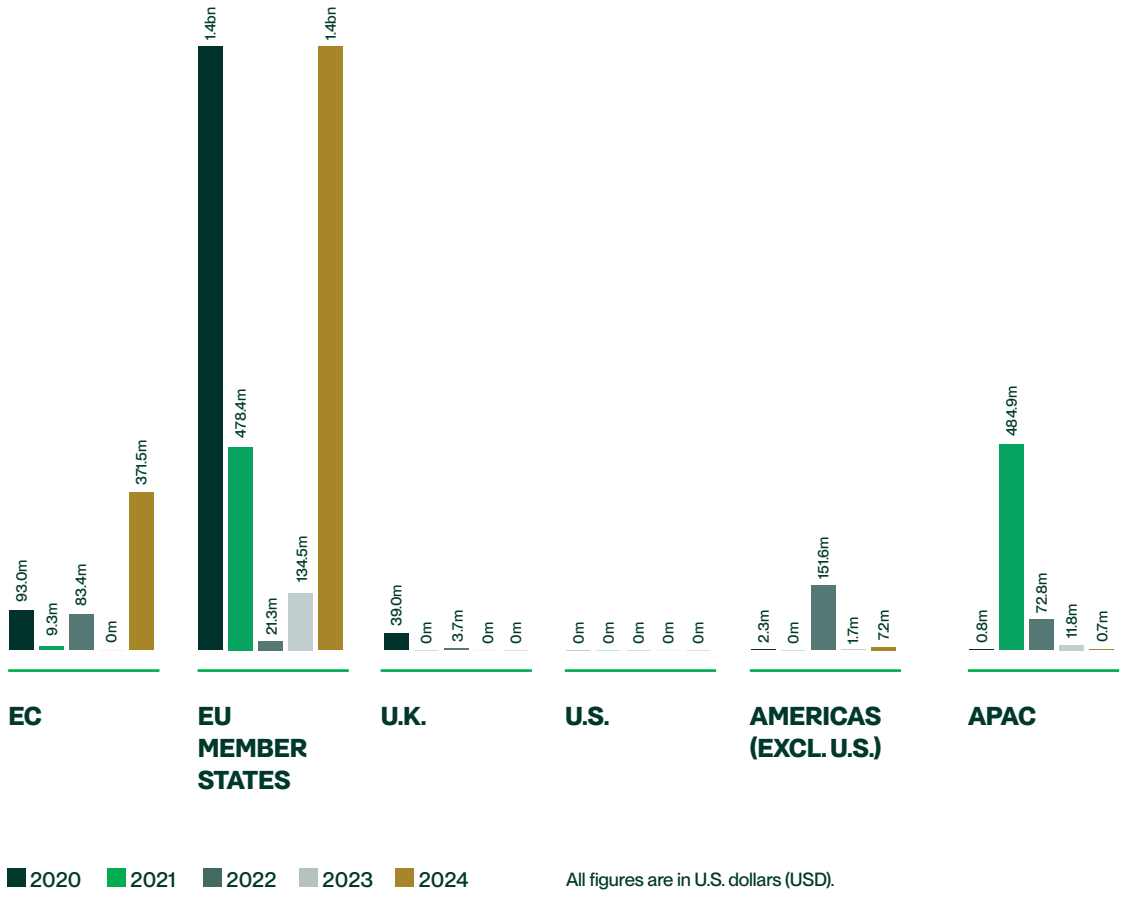
Fines and director disqualification are not the only risks. Infringing businesses can also be banned from bidding on public contracts in the future—including in the U.K., which introduced a new debarment regime in February 2025.

EU penalizes RPM and *other vertical conduct violations*

REGIONAL NON-CARTEL FINE COMPARISON (2024 TOTAL: USD1.8BN)

The level of fines imposed for infringements relating to vertical and other non-cartel conduct increased ten-fold in 2024, reversing a trend of decline in recent years. This rise can be attributed in part to the overall number of decisions recorded in our dataset (101) being the highest in recent years.

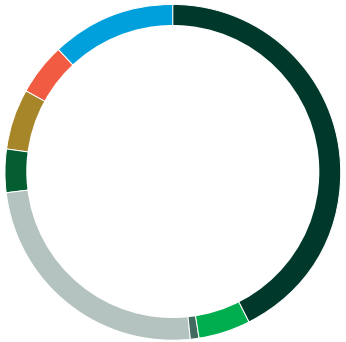
The uptick in fines has coincided with authorities taking a less conciliatory approach when penalizing infringements—just 38% of decisions in 2024 involved settlement or other forms of cooperation (down from 61% in 2023 and 42% in 2022).



All figures are in U.S. dollars (USD).

KEY STATISTICS	
EC	The EC recorded its highest level of fines against vertical and other non-cartel conduct in 2024 for over four years, in stark contrast to 2023 where the EC did not record any decisions. The most significant fine, of over EUR330m, was imposed on Mondelēz International (the producer of Oreo cookies, Cadbury's Dairy Milk, and Toblerone) for hindering the cross-border trade of chocolate, biscuits, and coffee products between EU member states. The EC found that Mondelēz limited the territories or customers to which wholesalers could resell products and prevented distributors from replying to sale requests from customers located outside their exclusive territory.
EU MEMBER STATES	National authorities in EU member states continued to be the most active enforcers, accounting for over 78% of overall fines. The French antitrust authority was responsible for the two largest fines in any jurisdiction—a EUR611m fine on ten manufacturers and two distributors of household appliances and a EUR470m fine on two leading low-voltage electrical equipment manufacturers and two major distributors, both for resale price maintenance (RPM). The Polish antitrust authority was also active in 2024, with two fines of greater than EUR50m each.
AMERICAS (EXCL. U.S.)	Brazil's CADE issued the highest fine in the Americas—a USD6.9m fine for entities, including an industry association, after finding that they had coordinated on medical fees. This decision was initiated by a complaint to CADE, and the entities fined have announced their intention to appeal.
APAC	In contrast to other regions, APAC saw a significant decrease in the number and level of fines in 2024 compared to recent years. Japan's JFTC recorded 14 decisions, but these were resolved with the imposition of remedies or the agreement of commitments rather than fines. South Korea's KFTC imposed three fines, all of which were under USD1m.

NON-CARTEL DECISIONS BY SECTOR



Consumer and retail	43%
Energy and natural resources	5%
Financial services	1%
Industrial and manufacturing	25%
Life sciences	4%
TMT	6%
Transport and infrastructure	5%
Other	12%

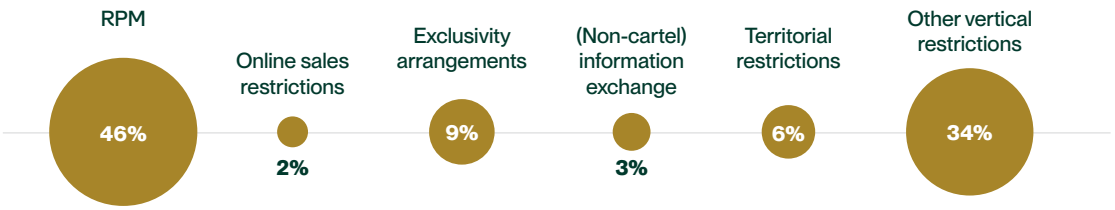
Authorities home in on the consumer and retail sector

The consumer & retail sector was the target of both the highest number of decisions (43) and the largest volume of fines (over USD1bn) relating to vertical and other non-cartel conduct. There were three decisions which saw authorities impose fines of more than USD100m each. The investigations that led to these three decisions lasted between two and nine years—significantly longer than the median duration of investigations (one year and seven months) that concluded in 2024—indicating that authorities may take a prolonged period to build evidence in cases that incur high fines.

Authorities wield the axe on infringements in the industrial and manufacturing sector

Authorities recorded 25 decisions in the industrial & manufacturing sector, with a total fine volume of over EUR500m. RPM was responsible for over 75% of these decisions, while 28% of the decisions resulted in parties agreeing commitments with authorities. Notably, the Turkish antitrust authority recorded 17 decisions, the most significant of which was a USD10.5m fine on Nestlé's Turkey arm. Following a complaint, the Turkish antitrust authority found Nestlé liable for RPM and the imposition of regional and customer restrictions on distributors.

FORMS OF NON-CARTEL CONDUCT



RPM maintains its predominance within forms of vertical conduct infringement

RPM accounted for 46% of vertical and other non-cartel conduct infringements. Compared to 2023, there were fewer RPM decisions, but the total fine volume increased over ten-fold. This was primarily due to two RPM fines imposed by the French antitrust authority that totaled over EUR1bn. The means by which proceedings were initiated for RPM decisions were evenly split between authorities launching investigations on their own initiative and in response to complaints.

The potential value of complaints to enforcers was demonstrated in a German case: an anonymous tip-off via the whistleblowing hotline of the FCO and further tip-offs from the market led to an investigation and a EUR16m fine for a leading telecommunications manufacturer that had allegedly engaged in RPM.

Multiple decisions find infringements against more than one form of vertical conduct

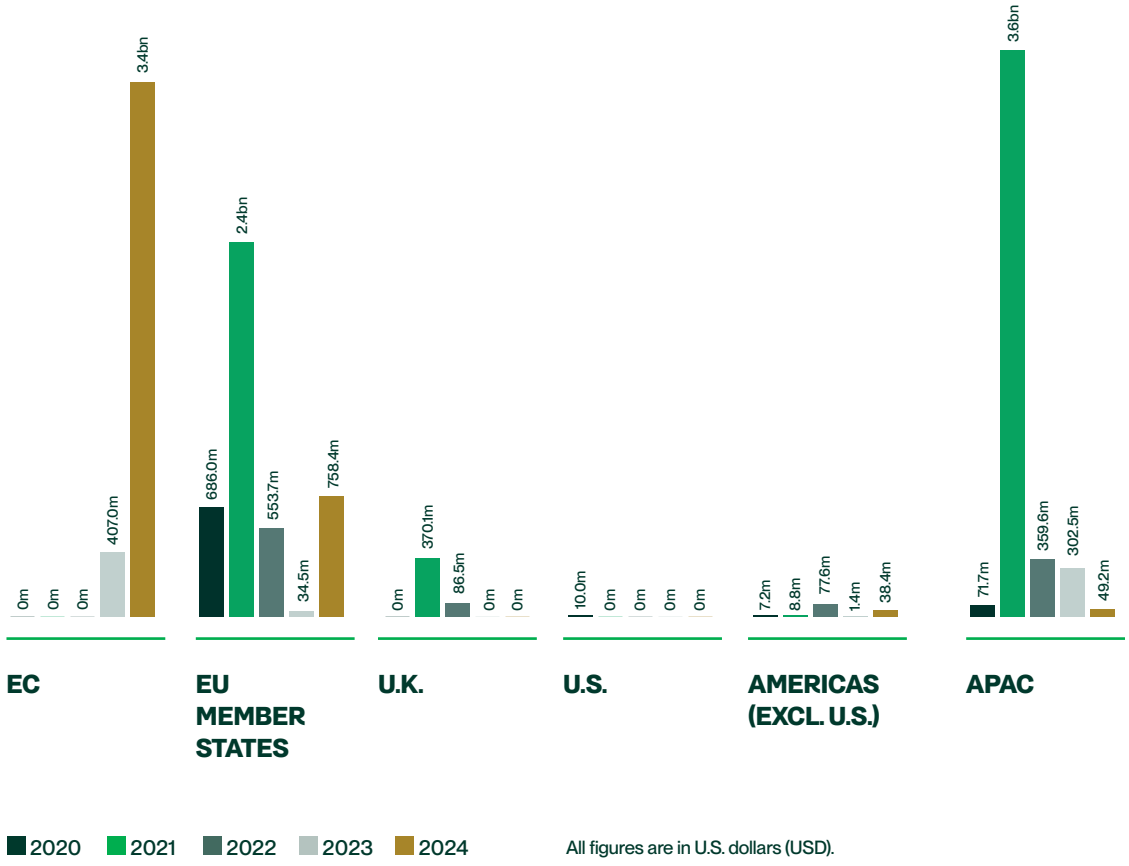
There were seven decisions in which entities were found liable for engaging in more than one type of vertical conduct. This is a reminder of the potentially wide and evolving scope of investigations.
All seven decisions involved RPM, together with simultaneous restrictions on either territories or customers. A notable example is the Turkish antitrust authority's probe of a leading battery manufacturer. In opting to settle the RPM allegations, the manufacturer's EUR230,000 administrative fine was reduced by 25%.
The manufacturer also proposed commitments which successfully addressed the authority's concerns over limitations of online sales as well as territorial and customer restrictions.

EU leads global charge as *abuse of dominance cases target Big Tech*

REGIONAL ABUSE OF DOMINANCE FINE COMPARISON (2024 TOTAL: USD4.3BN)

2024 saw a significant increase in the total fines imposed in abuse of dominance cases compared to 2023, reversing a trend of decline in recent years. The rise in fine volumes was spread across all regions of the world, with the exception of APAC.

While in previous years we have observed an increasing trend towards authorities resolving abuse of dominance cases through commitments, in lieu of fines, 2024 saw some reversal of this trend, with a notable decrease in the percentage of cases involving commitments (26% in 2024, down from 41% in 2023).
In addition, overall fine levels rose despite an uptick in settlement proceedings (11% in 2024 compared to 2% in 2023).



All figures are in U.S. dollars (USD).

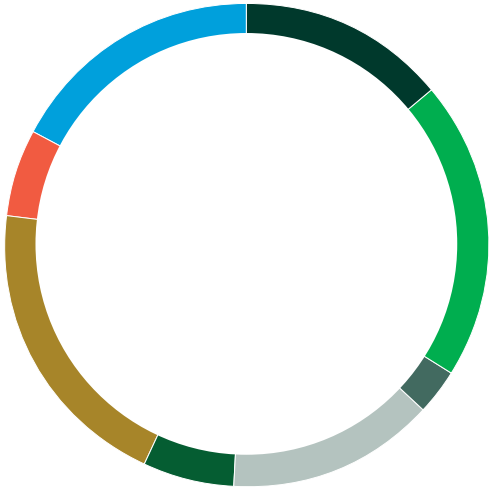
KEY STATISTICS

EC	Abuse of dominance decisions by the EC accounted for over 75% of the overall global fine volume in 2024. The six EC decisions comprised three fines of almost or over EUR500m, including against Apple and Meta (see further details below), and three decisions where parties avoided fines by agreeing commitments. The EC also fined Mondelēz International over EUR330m for a number of breaches of competition law, including abuse of its dominant position by refusing to supply a trader in Germany in order to prevent the resale of chocolate tablet products in certain jurisdictions where prices were higher.
EU MEMBER STATES	Fines across the EU member states in 2024 were at their highest level since 2021. This was primarily due to two significant fines. First, the Spanish antitrust authority imposed a record EUR413m fine on Booking.com for abusing its dominant position on the Spanish market of online booking intermediation services to hotels by online travel agencies. The authority found exploitative and exclusionary abuse and also imposed behavioral measures on Booking.com. Booking.com is appealing the decision. Second, the French antitrust authority fined Alphabet and its Google subsidiaries EUR250m for failing to abide by commitments made in 2022.
AMERICAS (EXCL. U.S.)	The Chilean antitrust authority levied a record-breaking USD28.1m fine on the Chilean football channel Canal del Futbol for abusing its dominant position in the live football match transmission market by enforcing anticompetitive practices on pay-TV operators such as minimum guaranteed payments, tied selling, promotion limitations, and minimum resale prices. This is the highest-ever fine imposed by the Chilean antitrust authority and accounted for over 75% of the overall fine volume in the Americas.
APAC	APAC was the only region to oversee a decrease in abuse of dominance fines. India was the standout enforcer in 2024. The Competition Commission of India (CCI) imposed a USD25.6m fine on Meta after finding that an update to WhatsApp's privacy policy in 2021 constituted an abuse by forcing users to consent to the sharing of their data, without offering any choice to opt out. In addition to the fine, the CCI imposed behavioral remedies, ordering WhatsApp to stop sharing its user data with other Meta companies for advertising purposes for five years and issuing directives in relation to the sharing of user data for purposes other than advertising. China was the second most prolific enforcer in APAC, with a fine total of USD12.3m over seven decisions.

ABUSE OF DOMINANCE DECISIONS BY SECTOR

Big fines for Big Tech

The EC set its third ever highest fine with its EUR1.84bn fine on Apple. The EC concluded that Apple had abused its dominant position on the market for distributing music-streaming apps on iOS devices by implementing restrictions that prevented app developers from informing users about alternative or cheaper subscription options available outside the App Store (so-called anti-steering provisions). In a rare move, the EC significantly increased Apple's fine—adding an additional lump sum of EUR1.8bn to the standard fine of EUR40m—to ensure deterrence.



Consumer and retail	14%
Energy and natural resources	20%
Financial services	3%
Industrial and manufacturing	14%
Life sciences	6%
TMT	20%
Transport and infrastructure	6%
Other	17%

Apple has appealed the decision, but continues to face scrutiny elsewhere. In the U.S., the DOJ filed a civil antitrust lawsuit against Apple, alleging that it illegally maintains a monopoly over smartphones by selectively imposing contractual restrictions on, and withholding critical access points from, developers.

The EC also turned its attention to Meta, with a EUR792.7m fine for abusing its dominance in the market for personal social networks. The EC found that Meta tied its online classified ads service Facebook Marketplace to its personal social network Facebook and imposed unfair trading conditions on other online classified ads service providers. Meta has appealed and, like Apple, has multiple court dates on the horizon.

In February 2025, China's State Administration for Market Regulation (SAMR) announced that it had initiated an inquiry into U.S.-based Alphabet and its Google subsidiaries for a suspected violation of China's anti-monopoly law (but without details as to what the violations entail), shortly after the U.S. introduced a 10% additional tariff on all imports from China.

Surge in number of decisions in energy and natural resources sector

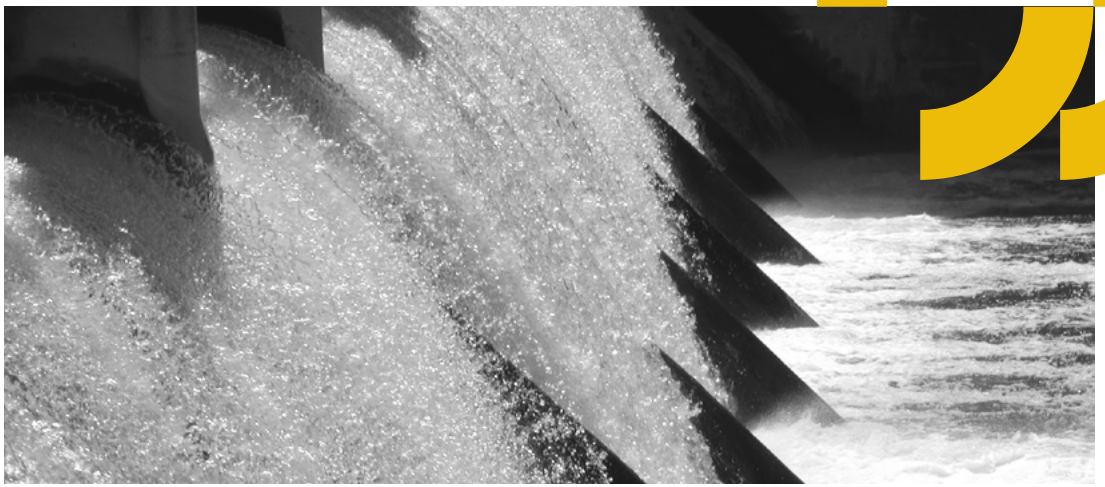
There were 14 abuse of dominance decisions in the energy and natural resources sector, the joint highest with TMT. However, none of these fines were above USD10m, with the largest fine (USD9.1m) being imposed by the Chinese antitrust authority on a water supplier for abusing its dominant position in an urban public-water-supply service market. The low fine volumes across the 14 decisions in this sector is likely reflective of the national, rather than multinational, status of the infringing parties.

Divisional game ruled offside in life sciences sector

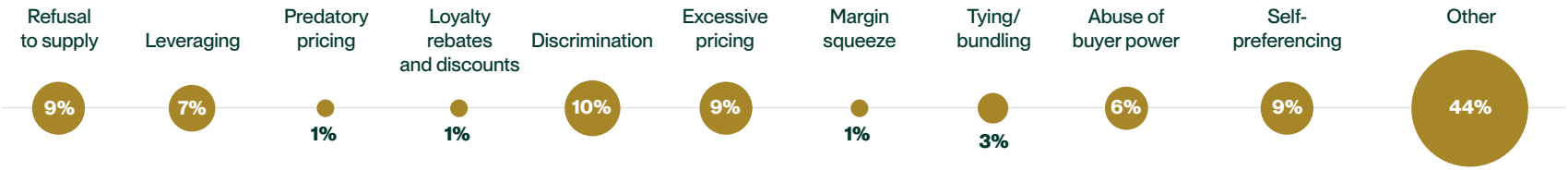
The EC imposed a EUR462.6m fine on Teva Pharmaceuticals for abusing its dominant position in the market for the treatment of multiple sclerosis. The EC found that the company misused patent procedures through "playing the divisionals game"—that is, filing multiple divisional patent applications in a staggered way, enforcing these patents against competitors to obtain interim injunctions, and strategically withdrawing the patents to avoid a formal invalidity ruling. The EC also found that Teva engaged in a disparagement campaign against a generic competitor. This conduct had the effect of repeatedly forcing competitors to start new lengthy legal challenges and hindering new entry into the multiple sclerosis market.

2025 may see the life sciences sector further under the microscope. Already, in January 2025, the Romanian antitrust authority announced that it had fined a pharmaceutical company EUR25.81m for abusing its dominant position on the market for drugs used to treat chronic obstructive pulmonary disease. The authority alleges that the company operated a promotion strategy to influence doctors to prematurely prescribe their more complex and expensive medicine over cheaper generics.

We may also see further developments in the EC's unprecedented probe into animal health company Zoetis. Opened in March 2024, the EC alleges that Zoetis may have prevented the market launch of a competing novel biologic medicine used to treat chronic pain in dogs. It is the EC's first formal investigation into a potential abuse relating to the exclusionary termination of a pipeline product which was to be commercialized by a third party.



FORMS OF ABUSE OF DOMINANCE



Discrimination the dominant form of abuse

2024 saw multiple abuse of dominance decisions involving discrimination, across both Europe and the Americas. The majority of investigations were initiated by complaints. In one example, the Austrian antitrust authority found that Austrian Post had engaged in discriminatory practices in relation to its discount policy for Info.Mail by providing certain customers with limited discount tiers, lower discounts, or annual bonuses. Austrian Post cooperated with the authority, resulting in a reduced fine of EUR9.2m.

Discrimination looks set to remain in the frame in the U.S. in 2025; for the first time in nearly 25 years the FTC has asserted a claim under the Robinson-Patman Act in two separate cases. It is suing Southern Glazer—the largest U.S. distributor of wine and spirits—for allegedly discriminating in the prices it charges its retail customers, as well as PepsiCo for allegedly providing one customer—a large, big box retailer—with key advantages, including promotional payments and advertising tools.

Self-preferencing under scrutiny in online sphere

The Turkish antitrust authority imposed a USD79.3m fine on Alphabet and its Google subsidiaries for allegedly self-preferencing its own supply-side platform (SSP) service. Further, Google was ordered to ensure within six months that competitors were not disadvantaged and to provide third-party SSPs under similar conditions to its own services. Meanwhile, four self-preferencing decisions across Italy, Slovakia and South Africa did not result in any fines as parties agreed commitments with the authorities to remedy the issues caused by their conduct.

Increasing enforcement against "disparagement" abuses

During 2024, both the EC and the U.K.'s CMA looked into disparagement practices. The EC wrapped up an investigation into pharmaceutical company Vifor with commitments. As part of the commitments, Vifor agreed to launch a "multi-channel communication campaign" to rectify and undo the effects of potentially misleading messages it had disseminated regarding the safety of an iron deficiency treatment marketed by its closest rival in Europe. The CMA is also due to conclude its investigation into Vifor in 2025. Interestingly, the commitments offered by Vifor to the CMA include a GBP23m payment to U.K. healthcare systems, an approach which we have seen adopted by the CMA in other healthcare investigations.

The EC also found that Teva Pharmaceuticals abused its dominance by implementing a systematic disparagement campaign against a competing multiple sclerosis treatment by spreading misleading information about its safety, efficacy and therapeutic equivalence with Teva's own drug, and targeting key stakeholders. This played a role in the imposition of the EUR462.6m fine discussed above.

As disparagement becomes a less novel form of abuse, we expect future infringements to face further enforcement and potentially higher fines.

LOOKING FORWARD—DEVELOPMENTS IN ABUSE OF DOMINANCE

EC opts for presumption-based approach to exclusionary conduct

In August 2024, the EC published its draft guidelines on abusive exclusionary conduct by dominant companies, confirming a shift from an effects-based approach to a more legalistic one based on case law presumptions. The guidelines propose a two-step test for exclusionary abuse: first, determining if the conduct departs from competition on the merits, and second, assessing if the conduct is capable of having exclusionary effects. Though non-binding, the guidelines will influence EC decision-making and national competition authorities, impacting companies doing business in the EU.

The guidelines are due to be finalized in the course of 2025. Margrethe Vestager, the Executive Vice-President in charge of competition policy at the EC from 2019-2024, stated "Exclusionary abuses harm both businesses and consumers. They lead to higher prices, less innovation and poorer quality of goods and services. So the rules of the game need to be clear for our intervention against such abuses to be effective. Our draft guidelines seek to present a predictable, coherent and workable framework to assess abusive conduct."

Wider prohibition: abuse of economic dependence

The abuse of economic dependence is a variation of traditional abuse of dominance rules. It prohibits similar types of abusive practices as those targeted by the abuse of dominance prohibition. However, instead of applying to companies that hold an absolute dominant position, it applies to companies holding a relative dominant position vis-à-vis companies that are economically dependent on them, such as their customers or suppliers.

While abuse of economic dependence is prohibited in various EU member states—including France, Germany, Italy, Belgium, and Romania—not all have an enforcement record. The Belgian antitrust authority is yet to conclude its first investigation after announcing a probe in the agricultural sector in late 2023. Also in the pipeline is a probe by the Romanian antitrust authority, kick-started by a dawn raid in June 2024 at a company active in the supply of liquid medicinal oxygen.

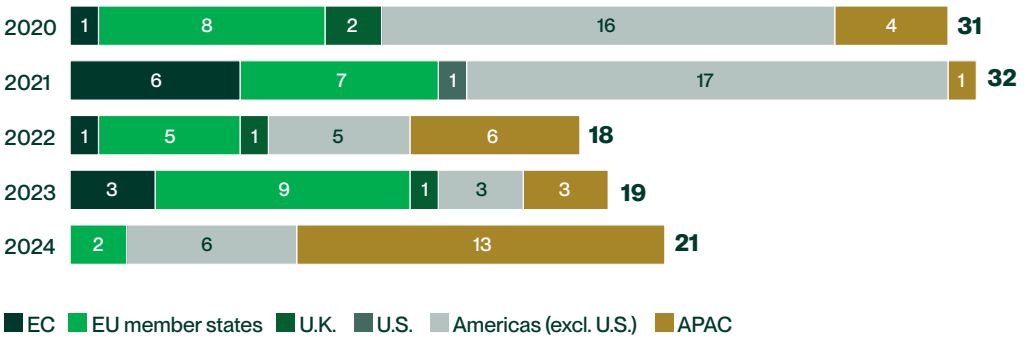
Global immunity and leniency activity *sees little uptick in 2024*

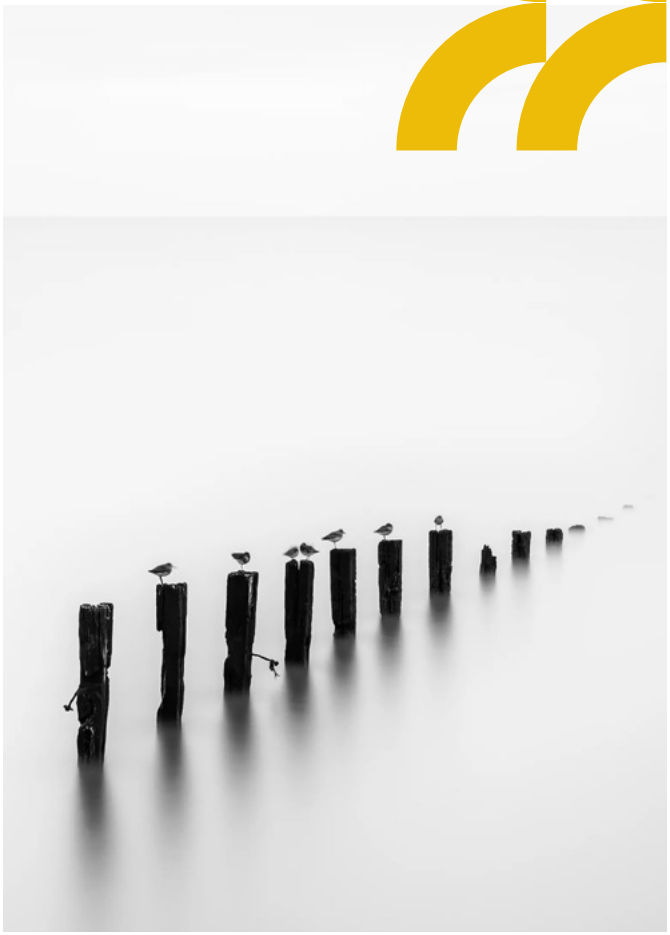
Overall, the number of immunity/leniency cases decided in 2024 (21) was broadly in line with 2023 (19) and 2022 (18). While certain antitrust authorities anecdotally continue to highlight the impact of leniency programs on cartel detection and deterrence, the costs and uncertainty associated with seeking leniency—including increasingly the prospect of follow-on private litigation and exposure to liability in other jurisdictions—have greatly reduced the leniency pipeline across many jurisdictions globally.

Regulators have continued their efforts to encourage immunity applications and leniency submissions by increasing the attractiveness of their policies. In February 2024, India's new "leniency plus" framework, designed to incentivize companies already under investigation to report other cartels, came into effect. In March 2024, the DOJ published an update to its leniency policy and procedures to implement a safe harbor for companies that discover wrongdoing by the acquired business in an M&A transaction. In June 2024, the Competition Bureau of Canada updated its immunity and leniency programs to include the Competition Act's new wage-fixing and no-poaching provisions. In December 2024, the Australian Competition & Consumer Commission (ACCC) updated its immunity and cooperation policy for cartel conduct, increasing transparency and certainty about how the immunity program is administered and clarifying the requirements for applicants.

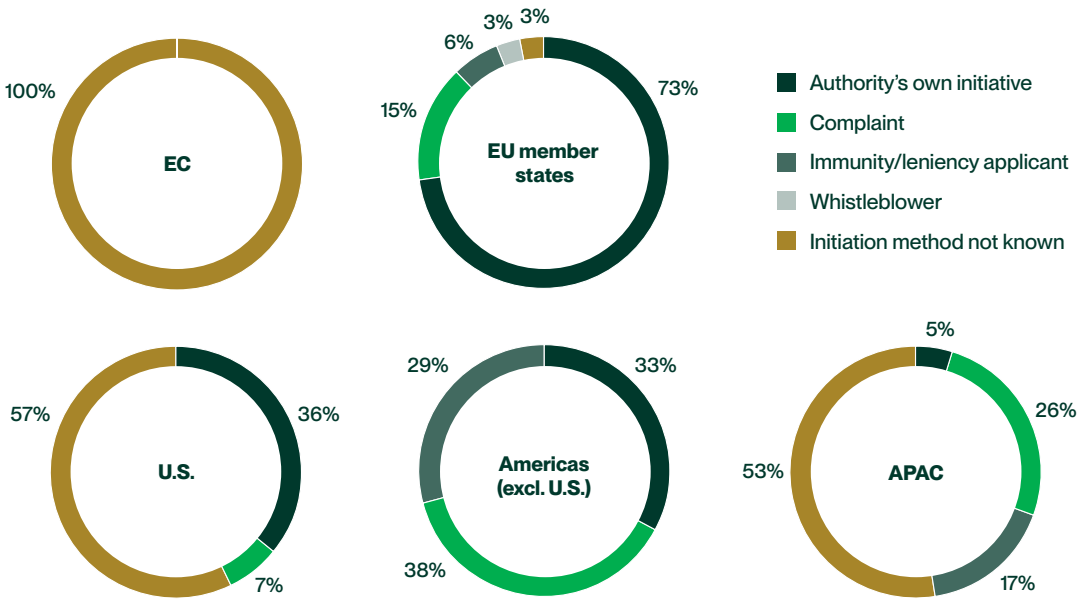
In contrast to the widely reported worldwide decline in leniency applications over recent years, in October 2024, a senior EC enforcer reported that the number of cartel leniency applications received by the EC had increased for the fourth year running in 2024. In April 2024, cartel enforcers in France, Germany, and Austria similarly signaled healthy leniency pipelines. Whether this reported uptick in leniency applications will translate into an increase in successful enforcement actions is yet to be seen. We expect authorities globally to continue to build in-house expertise, improve whistleblowing programs, and invest in tech tools to detect anticompetitive conduct.

COMPARISON OF CASES INITIATED BY IMMUNITY/LENIENCY BY REGION (INCLUDES CARTEL, NON-CARTEL AND ABUSE OF DOMINANCE), 2020–2024





MODE OF INITIATION OF CARTEL CASES



U.K. court confirms appealing CMA decision rescinds settlement discount

In December 2024, the Competition Appeal Tribunal (CAT) handed down its judgment in respect of an appeal by one of the settling parties in a construction services cartel. In dismissing the appeal, the CAT increased the penalty payable from GBP16m to GBP18m. The judgment confirms that companies that settle but subsequently appeal a CMA decision will lose the discount they received for settling.

Surge in dawn raid activity signals *stricter antitrust scrutiny*

2024 saw a continued trend of heightened dawn raid activity by antitrust authorities across the globe. Of the 31 jurisdictions surveyed, 24 (77%) confirmed that the regulator had carried out dawn raids during the course of 2024, conducting in total more than 70 raids.

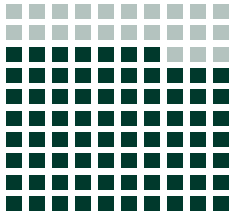
Within Europe, the EC carried out unannounced antitrust inspections in several member states at the premises of companies active in various sectors, including new replacement tires, financial derivatives, and data center construction. The inspections were conducted in conjunction with relevant national antitrust authorities. In the U.K., the CMA launched an investigation into suspected bid-rigging in relation to a government fund for improving the condition of school buildings, carrying out unannounced inspections at several business premises in December 2024. In October 2024, the EU and the U.K. government announced the conclusion of technical negotiations for a future competition cooperation agreement that is expected to allow the EC, EU member state antitrust authorities, and the CMA to cooperate directly in antitrust investigations.

In the U.K., provisions in the Digital Markets, Competition and Consumers Act 2024 (DMCC), the new U.K. consumer, antitrust and digital markets regime, which took effect on January 1, 2025, provide the CMA with greater evidence-gathering powers. These include the ability to obtain any information stored electronically and accessible from business and domestic premises (e.g., in the cloud) during dawn raids executed under a warrant, "seize and sift" powers when carrying out dawn raids at domestic premises, and the power to require companies and individuals to produce documents and information held outside the U.K. (clarifying an issue that was recently subject to appeal before the U.K. courts).

Obstruction of antitrust inspections also triggered several enforcement actions in 2024. In June 2024, the EC fined a fragrance manufacturer EUR15.9m for obstructing a dawn raid in 2023; during the inspection, a senior employee intentionally deleted WhatsApp messages exchanged with a competitor containing business-related information, which was subsequently detected by the EC's forensic experts after the mobile phone was submitted for review. In October 2024, the French antitrust authority fined a charcuterie company EUR900,000 for providing inaccurate information about the whereabouts of the group head during the preliminary phase of dawn raids carried out in 2023.

Obstructing a dawn raid can also lead to sanctions for individuals. In August 2024, the Hong Kong Competition Commission sought its first-ever criminal prosecution of an individual for failing to comply with its investigative powers. The individual allegedly attempted to delete documents and information from computers during inspections of the offices of cleaning service companies suspected of a price-fixing cartel. In February 2025, the individual was convicted and sentenced to imprisonment for two months.

2024 also saw significant penalties for procedural breaches during later stages of antitrust investigations. The Polish antitrust authority fined a technology company USD1.5m for providing false and misleading information during its investigation into the company's sales practices (which ultimately ended in commitments). Similarly, the French antitrust authority imposed an additional fine of EUR75,000 on one of the participants in the pre-cast concrete products cartel for obstructing the investigation, as the company had provided incorrect information in response to a request for information and only corrected this error after the statement of objections had been sent.
Finally, and unusually, the Slovak Antimonopoly Office fined a third-party hosting and domain services firm EUR60,000 for refusing to hand over emails that had been deleted by a medical hazardous waste company under investigation by the authority.



77%

of regulators conducted dawn raids in 2024

Global labor market restrictions *prompt new antitrust challenges*

Continuing the trend from 2023, 2024 saw an increase by regulators across the globe in activity in relation to labor markets, with new investigations being opened in all sectors of the economy, enforcement action, and updates to legislation and guidelines.

Global interest in labor markets continues

In Europe, most enforcement of anticompetitive labor market agreements—primarily taking the form of wage fixing and no-poach provisions—is still currently taking place at EU member state level, as well as in Turkey. However, EC enforcement is on the cards: the EC formally initiated its first no-poach investigation in July 2024 in the online food delivery sector, and in November announced it had conducted dawn raids in the data center construction sector over possible no-poach collusion. At the national level, the Belgian antitrust authority secured a settlement of over EUR47m with private security firms in its first-ever case involving no-poach arrangements; the sanctioned conduct also including price-fixing minimum hourly rates for security guards. Slovakia launched its first labor market cartel probe focusing on whether a national trade association restricted competition when hiring through a provision in its code of ethics, and a no-poach case was opened in the forestry sector in Czechia. The Portuguese antitrust authority sanctioned companies in the technology consultancy sector for entering into no-poach agreements.

No-poach agreements were also a focus in the U.S. and the U.K. The U.S. DOJ announced that it had a healthy pipeline of investigations and leniency applications, and the FTC has taken enforcement action against building service contractors to stop them enforcing no-hire agreements that limited the ability of employees to negotiate higher wages, better benefits, and improved working conditions. The U.K.'s CMA has also been continuing its investigation into the consumer fragrances industry, in January 2024 widening its scope to cover suspected unlawful no-poach agreements. The investigation is ongoing and an update is expected in April 2025.

Some uncertainty on regulatory approach

In the U.S., the FTC's nationwide prohibition on employers imposing non-compete restrictions on their employees was permanently blocked by a Texas federal judge four months after its introduction. The court found the FTC's prohibition to be "capricious and arbitrary." The FTC's appeal of the decision has been stayed as of early 2025, leaving the future of non-competes in the balance for now. In the meantime, early in 2025, the DOJ and FTC jointly released new antitrust guidelines on business practices that impact workers. The FTC also launched a Joint Labor Task Force to, amongst other things, prioritize investigation and prosecution of deceptive, unfair, or anticompetitive labor market conduct and coordinate work across its competition and consumer protection bureaus. In addition, an FTC policy statement has affirmed that independent contractors, including gig workers, are protected from antitrust liability when engaging in collective bargaining and organizing activities aimed at improving wages and working conditions.

Several other regulators have also acknowledged the blurred boundaries between antitrust and employment law. The CMA, for example, has noted that, given their prevalence across all types of industries, non-competes potentially merit further attention and—in the same way as no-poach agreements—are capable of reducing worker mobility and the reallocation of labor towards more efficient firms. However, it has also indicated that such clauses are typically a matter for employment law. The EU has set a clear line that no poach agreements (and wage-fixing) are by object infringements under EU antitrust law.

Similarly, Brazil's CADE stated it would approach issues in labor markets with caution and ensure that its actions remain within its jurisdiction. Where investigations have been initiated which appear labor-market-focused—including three investigations involving the potential exchange of sensitive information on salaries and benefits between competitors' HR departments—CADE has been explicit that these are focused on antitrust law as a form of unlawful information exchange or price-fixing, and not employment law.

Further legislation and guidance on the way

The increasing amount of legislation and guidelines introduced by governments and regulators indicates that antitrust authorities will continue to keep labor markets in their sights.

In Australia, the government has been considering whether to give the ACCC power to clamp down on no-poach agreements, a review that is potentially being extended to cover co-worker non-solicitation clauses and wage-fixing agreements.

Canada's Competition Bureau also updated its leniency regime in June 2024 to include wage-fixing and no-poach cartels, building on 2023 legislation that created these new offenses (see last year's report for further detail).

Also in APAC, Japan's JFTC has announced plans to issue guidelines in 2025. Its work in labor markets has been prompted by a study that found that talent agencies often employ anticompetitive practices such as restricting performers from switching managers or becoming independent.

The Turkish Competition Authority (TCA) ended an active year—in which several no-poach probes in the pharmaceuticals and education sectors, concluded in fines and settlement agreements—by finalizing its labor market guidelines in December 2024. The guidelines clarify that the TCA will treat no-poach and wage-fixing agreements as particularly egregious "by object" infringements as well as how the risk of anticompetitive exchange of employment-related information can be mitigated.

Finally, the U.K. CMA has described labor markets as one of its four "areas of focus" for 2025 which, alongside developments in other jurisdictions, suggests that antitrust authorities are unlikely to be turning their attention away from labor markets any time soon.

Antitrust authorities intensify digital market *regulation and enforcement*

Digital regulation continues to be at the forefront of regulator concerns, as authorities focus on technology companies through traditional antitrust tools and new digital markets regimes. Further legislation and guidance is on the cards for 2025, including with respect to artificial intelligence.

ENFORCEMENT HITS TECH TITANS IN EUROPE

2024 fired the starting gun on a new era of global digital markets enforcement, spearheaded by the EC and European authorities taking significant action against Big Tech.

First, the EC exhibited a willingness to move quickly in the designation of gatekeepers under the EU DMA and in the enforcement of their compliance with obligations under the regime. After designating 22 core platform services in 2023, the EC designated two further gatekeepers through the course of 2024 and successfully defended Bytedance's appeal of its designation decision. Significantly, 2024 saw the EC open several investigations into gatekeepers' compliance with steering and self-preferencing rules. In June 2024, the authority preliminarily found that Apple's steering rules for the App Store breach the DMA. How events unfold in 2025 will clarify the EC's resolve in this area.

In addition, as noted in the Abuse of Dominance section above, 2024 was punctuated by multiple mammoth fines in Europe against tech corporations under traditional antitrust rules. Abuse of dominance fines in the tech sector—imposed by the EC and Spanish and French authorities alone—exceeded USD4bn. Besides these fines, other investigations into Big Tech concluded with extensive commitments. For example, in July 2024, the EC accepted Apple's expanded commitments to open up rivals' access to "tap and go" technology on its iPhones. These EC decisions and probes together with action taken by other bodies in Europe, including the Italian and Spanish antitrust authorities, show that while the EC wishes to avoid "multiple investigations into the very same conduct," authorities will continue to engage in rigorous antitrust enforcement alongside the new EU digital markets regime.

NEW LEGISLATION AND GUIDANCE ON THE HORIZON

Regulators outside the EU have also continued to show dynamism in their approach to antitrust enforcement in digital markets throughout 2024. Some have sought to follow, to a greater or lesser extent, the approach taken by the DMA, with the U.K.'s CMA and the JFTC in Japan signing dedicated digital markets regimes into law during 2024. The EC and the U.S. also held their fourth Joint Technology Competition Dialogue with the purpose of strengthening cooperation to ensure and promote fair competition in the digital economy.

The U.K.'s regime, introduced by the DMCC, took effect on January 1, 2025, and the CMA quickly set to work. Within weeks it had commenced designation investigations in relation to search and search advertising, and mobile ecosystems. Another is set to follow before the summer. Designated firms will be subject to binding but tailored conduct requirements, potentially taking the form of, e.g., prohibition of self-preferencing or restrictions on interoperability. Non-compliance will risk fines of up to 10% of global turnover. It will be interesting to see how the outcomes of these investigations tie in with the U.K. government's push for the CMA to use the new rules "proportionately and collaboratively" and, more generally, for its work to drive growth and innovation.

In APAC, Japan's Smartphone Software Competition Promotion Act (SSCPA) also seeks to target the establishment of potentially anticompetitive digital ecosystems by mirroring the DMA with gatekeeper-style designations for certain Big Tech players. The new regime will become effective in 2025, with the cost of violation at 20% of their domestic sales generated by the relevant products (up to 30% for repeat offenses).

Several jurisdictions are following a slower path, possibly waiting to see how enforcement of the EU's DMA pans out. The Brazilian regulator, for example, is still considering if and how to implement ex ante regulation for digital markets. Brazilian congress debates on a DMA-equivalent regime are taking place against the backdrop of the imposition of a significant injunction order and the opening of new investigations into Apple and Google in relation to the iOS and Android ecosystems respectively.

Regulators in Australia and India have also taken initial steps towards the introduction of dedicated DMA-style digital markets regimes. We expect the scope of any such regimes to start to take shape during the course of 2025.

However, other regulators have opted for a different approach. In 2024, South Korea's KFTC amended its merger review guidelines to clarify how merger control regulations apply to the digital market. In particular, the revisions alter the procedure by which the KFTC treat "killer acquisitions" by online platforms and update approaches to market definition, the competitive assessment, and the analysis of efficiencies for mergers in the digital sector. The KFTC is also seeking to curb monopolistic practices by digital platforms and emerging technologies through amending Korean antitrust law to prohibit self-preferencing, tying services, restricting multi-homing and demanding most-favored-nation treatment, and raise maximum fines.

Authorities also sought to re-calibrate and allocate more resources to digital market enforcement. For example, Singapore's antitrust authority established a new Data and Digital Division, tasked with tackling digital market enforcement generally, as well as monitoring relevant data science and digital regulatory developments globally.

More broadly, 2024 also provided valuable insights into how traditional theories of antitrust enforcement may develop to become digitally compatible. Former Italian Prime Minister Mario Draghi produced a two-volume report which contained various policies and strategies aimed at bringing about a paradigm shift in antitrust enforcement in preparation for a new era of digital innovation. These proposals included a "New Competition Tool" for antitrust investigations which would involve start-ups and legally recognized "Innovative European Companies" proposing their own solutions in EC investigations, as well as an "innovation defense" in antitrust and merger investigations. While the feasibility of such measures has been scrutinized, the radical nature of these proposals could be used as a blueprint by authorities seeking to equip themselves with new tools to regulate the constantly evolving digital environment. The increased focus of regulators, armed with an expanding arsenal of resources and enforcement options at their disposal, mean that 2024 has set the scene for increased scrutiny of digital markets enforcement into 2025 and beyond.

ARTIFICIAL INTELLIGENCE—A FUTURE FOCUS FOR DIGITAL ENFORCEMENT

Although yet to materialize by way of significant enforcement action, authorities globally are also increasingly focused on the impact of the rapidly developing AI market. The U.K.'s CMA has arguably been at the forefront of considering and explaining how the misuse of AI and other algorithmic systems, such as pricing algorithms and personalized offers, creates real potential for antitrust harm, as well as expressing concerns about the market power of incumbents across the AI foundation models value chain. Benefiting from dedicated in-house capability in technology, data, and AI, it published an AI strategic update and AI Foundation Models update paper. Notably, the CMA has mooted critical inputs for developing Foundation Models, such as compute, as another potential activity for designation under the U.K.'s digital markets regime.

Reports into innovation and generative AI also headlined the antitrust agenda in Australia, with the Digital Platform Regulators Forum examining generative AI as part of a wider digital markets inquiry by the ACCC. Other APAC antitrust authorities, including those in India, Japan, and South Korea, have also been studying the competitive impact of AI. In France, the authority issued a detailed opinion on generative AI markets and made a number of recommendations, including to consider the possibility of designating as gatekeepers under the DMA companies providing services giving access to generative AI models in the cloud.

In the U.S., the DOJ's challenge of a property management software company's use of AI-powered algorithms to allegedly facilitate systematic coordination between competing landlords has also been a notable development. The DOJ's Deputy Attorney General noted "Make no mistake: Training a machine to break the law is still breaking the law." There are separate ongoing investigations into major players in the AI value chain. In addition, in January 2025, the FTC issued a report on the partnerships and investments between the largest cloud service providers and two generative AI developers. The report outlines key aspects of the structure of cloud service providers and AI developer partnerships, and potential competition implications that may develop over time relating to the impact these partnerships have on access to certain inputs, key resources, increased switching costs, and access to sensitive information. More generally, given the international nature of digital markets and AI-related issues, we expect certain antitrust authorities to deepen their cooperation on the issues in step with the global AI race heating up.

Global regulators diverge on antitrust *treatment of sustainability initiatives*

In 2024, regulators across the globe increasingly acknowledged the need for a nuanced enforcement approach to balancing support for sustainability initiatives against traditional antitrust enforcement and countering the risk of "greenwashing." There was significant progress on clarifying the antitrust assessment of sustainability agreements: guidelines were published and stress tested. However, among the suite of further guidance and decisions issued, there continues to be divergence in the scope of collaborations covered and benefits that could be taken into account, as well as in the time taken for authorities to provide guidance. In addition, the U.S. remained a notable outlier. With political pressures to prioritize economic growth potentially trumping green agendas, 2025 could be a pivotal year in this area.

In the EU, the Dutch antitrust authority (ACM) has been particularly active in providing informal guidance for individual sustainability initiatives. First, it approved a Dutch e-commerce trade association's plan to launch a new sector-wide, non-profit sustainability standard for businesses that wish to reduce their environmental impact in areas such as product selection, packaging, and delivery. Second, it allowed the Dutch certifying organization Stichting Milieukeur to introduce a sustainability fee for farmers, referencing its revised January 2024 guidelines on collaborations between farmers. Then, in the second half of 2024, the ACM permitted in principle three separate collaborations. These were between: coffee capsule producers—including joint investments in sorting machines—to improve the recycling of coffee capsules; banks to increase comparability of their ESG reports; and asphalt producers to facilitate switching to lower, more sustainable production temperatures.

Most recently in February 2025, the EC published a roadmap on a Clean Industrial Deal for competitiveness and decarbonisation with proposals to revise guidelines to ensure that sustainability benefits are better integrated into the competition analysis, provide informal guidance on the compatibility of co-operation projects with antitrust rules, and investigate whether European companies could actually benefit from more co-operation between industry players in the recycling of raw materials.

There has also been a number of developments in other parts of Europe. In France, hot on the heels of its publication of a "flexible" framework to submit requests for guidance on sustainability initiatives and its commitment to an "open door" policy, the French antitrust authority published its first informal guidance in July 2024. This was prompted by a request from organizations representing operators in the animal nutrition sector and provided clarity on principles for a standardized methodology for calculating a product's environmental footprint when assessing sustainability objectives. Meanwhile, in May, Germany's FCO found that the introduction of a shared reuse system in the plant trade sector to reduce plastic waste that involved coordination and exchange of information through a neutral third party was in principle compatible with antitrust law. The FCO noted that participation would be voluntary and open to all market participants at the different levels of the value chain, irrespective of whether they are members of the trade association introducing the reuse system. Portugal also joined the debate in May 2024, with the Portuguese antitrust authority consulting on a draft best practices guide on sustainability agreements.

In the U.K., the CMA published its second informal opinion following its 2023 "Green Agreements Guidance." The CMA provided guidance on a proposal by supermarkets to reduce greenhouse gas emissions in their supply chains by increasing the number of suppliers setting science-based, net zero targets—a full year after informal guidance was sought.

Beyond Europe, South Korea's KFTC issued self-compliance guidelines that outline where antitrust law covering cartels and unfair practices, such as refusal to deal, could be relaxed for eco-friendly initiatives aimed at reducing greenhouse gas emissions, waste and pollution, or promoting recycling. While, in an indication of the evolving nature of policy in this area, Japan's JFTC revised its Green Guidelines, adding further clarity to the actions businesses are able to take without breaching Japanese antitrust laws. Right at the end of 2024, Australia's ACCC also published its final guidance for businesses on the principles underpinning sustainability collaboration and where exemptions to antitrust law prohibitions may be appropriate. Notably, the ACCC explained that it can authorize proposed conduct where the likely public benefits—including for social issues such as antislavery and governance as well as environmental issues—outweigh any public detriment. In Singapore, at the start of 2025, we saw the first positive guidance for collaboration to pursue sustainability objectives issued under a new streamlined review process. The review was completed within 30 working days, in line with the expedited timeline, and related to the recycling of beverage containers. Finally, the South African antitrust authority issued block exemptions for certain categories of agreements or practices among small-, micro- and medium-sized enterprises which expressly could cover environmental performance and are designed in part to support the more efficient delivery of sustainability outcomes.

In contrast, the U.S. remains dogged in its resistance to any sustainability exemptions to antitrust laws. In April 2024, the then Chair of the FTC, Lina Khan, stressed the lack of an ESG exemption in a speech to the American Bar Association. We do not envisage a change in approach under the FTC's new leadership. In fact, investigating and prosecuting collusion through ESG initiatives could become a top priority for the new FTC Chair, Andrew Ferguson, according to prior documents supporting his bid for the position. The potential for antitrust authorities to take real and often significantly diverging approaches to the assessment of sustainability projects means that those that span multiple jurisdictions will need to be managed carefully.

Private damages activity escalates *across key jurisdictions*

In the EU, the surge in private damages actions following the transposition of the Private Damages Directive (PDD) at member state level has brought to the fore several novel legal questions, prompting national courts to regularly seek guidance from the European Court of Justice (ECJ). In seeking to strike a balance between facilitating claims and promoting legal certainty, the ECJ has tended to favor the former. However, there is a concern that, if the threshold for obtaining damages in the EU is set too low, partly in response to the frequent inequality of arms between individual plaintiffs and well-funded corporate defendants, it could undermine incentives to apply for leniency, to the detriment of public enforcement. It is hoped that, as more member states introduce collective redress mechanisms, this will support a robust approach by courts to burden and standard of proof, including in relation to evidence of quantum by plaintiffs.

In the U.K., the extraordinary rise of collective actions continues. Not only were many applications to bring new and high-value claims issued and (with one exception) granted in the last year, but several cases also reached trial, and one case produced the trial judgment (resulting in a dismissal of a claim against BT). The various procedural, interlocutory, and trial judgments associated with the dozens of ongoing collective actions (and several individual claims) in the CAT have developed the law and practice relating to several key issues, including experts and their evidence, settlements, the duties of and choice between class representatives, and litigation funding.

Antitrust damages also continue to be a hot topic in the U.S. In the last year, courts have given rigorous scrutiny to antitrust damages in both the litigation and settlement context. This has included reversing a multi-billion-dollar jury verdict that was premised on flawed expert analysis and rejecting a sizable class action settlement because the class members were not fairly treated relative to one another. U.S. courts have also continued to refine the rules on when antitrust claims accrue in different contexts for purposes of applying the statute of limitations.

NAVIGATING PROCEDURAL ISSUES—BALANCING FACILITATION OF CLAIMS AND LEGAL CERTAINTY

The procedural landscape for antitrust damages claims is still evolving in the EU. National courts continue to call upon the ECJ to address a number of unprecedented legal questions, which all require balancing the interests of plaintiffs against those of defendants. Similar issues also remain the subject of important court decisions in the U.S.

Forum shopping

Regarding jurisdiction, despite the harmonization introduced by the PDD, significant differences in national rules persist. The expansive way in which the Brussels I *bis* Regulation on jurisdiction (the Regulation) has been interpreted by the ECJ in recent years has opened up new opportunities for plaintiffs in most European cross-border cases to choose the most advantageous forum.

Most recently, the ECJ interpreted Article 8(1) of the Regulation, which allows the bringing of a claim in the jurisdiction in which one dependent is domiciled (referred to as the "anchor defendant") in respect also of other defendants where the claims are so closely connected that there is a risk of "irreconcilable judgments" arising from separate adjudications. In *Greek Beer,* the ECJ ruled that a parent company and its subsidiary can be sued in the jurisdiction where the former is domiciled. This is the case even where the claim relates to a national abuse of dominance committed solely by the subsidiary in another member state, provided a presumption of decisive influence by the parent over the subsidiary arises and is not otherwise rebutted by the defendant(s). Other pending preliminary rulings in *Power Cable* and *Cardboard* are also expected to shed light on the interpretation of Article 8(1) of the Regulation in the context of follow-on damages actions. These upcoming rulings will be crucial in determining whether plaintiffs will have even more strategic options when choosing where to bring a claim.

Time limitation rules

Regarding time limitation rules, the ECJ has also offered guidance on resolving temporal conflicts between the (generally more generous) national rules transposing the PDD and the pre-existing national rules.

- In *Volvo* and *DAF*, the ECJ held that rules relating to time limitation periods are substantive in nature and, therefore, national provisions transposing them cannot be applied retroactively. However, the ECJ clarified that, where national limitation periods were still running on the day when the PDD transposition deadline expired, the national transposition rules would nonetheless apply. The ECJ considered that this would not infringe the principle of non-retroactivity.
- In *Heureka*, the ECJ considered that, even before the transposition deadline of the PDD, EU law required that, for the limitation period to commence, the infringement of competition law must have come to an end and the injured party must have known also of the fact that the behavior concerned constituted such an infringement.

While these rulings have provided further clarity on the application of time limitation rules in antitrust damages cases, further guidance is expected from the ECJ in relation to certain other aspects of the time limitation rules (e.g., in *Nissan Iberia*). We expect the ECJ to continue to play a key role in clarifying the legal framework.

Although relatively more developed compared to the EU, courts in the U.S. continue to issue important decisions regarding the statute of limitations applicable to antitrust cases.

- In *Sidibe v Sutter Health*, the Ninth Circuit Court of Appeals reversed a jury verdict in favor of the defendant and ordered a new trial because the district court had excluded evidence pre-dating the limitations period from being presented to the jury. While there was no dispute that the four-year statute of limitations period began in 2008, the Ninth Circuit held it was a reversible error to exclude pre-2008 evidence from the jury because it deprived the factfinder of context necessary to understand the defendant's market power and strategic intentions. The *Sutter* case does not support either blanket admission or exclusion of evidence pre-dating the limitations period during trials, and we expect that courts will continue to refine the circumstances in which pre-limitations period evidence is permissible in antitrust trials.
- In *CSX Transportation*, the Fourth Circuit affirmed the district court's grant of summary judgment on the ground that an overt act committed in or around 2009 or 2010 may not be the basis for an antitrust suit filed by a competitor in 2018. Plaintiff CSX accused defendant Norfolk Southern of conspiring to exclude it from competing in the international shipping market by imposing an effectively exclusionary "switch rate" for on-dock rail access needed to conduct its business at Norfolk International Terminal beginning in 2010. CSX argued that, under the continuing violation exception, the statute of limitations restarted each day that Norfolk Southern and alleged conspirator Belt Line imposed the exclusionary rate. The Fourth Circuit reasoned that CSX's claim accrued at the time the switch rate was put into place, and the defendants' decision to keep the switch rate in place did not inflict new harm causing new injury to CSX within the limitations period.

QUANTIFICATION OF HARMS

Quantifying the degree of damage a plaintiff allegedly incurred is a challenge in antitrust cases. In turn, an economically reliable quantification of damages has increased in importance in both the U.S. and the U.K. Indeed, in a landmark decision in the U.S., a district court reversed a jury verdict that had been in favor of the plaintiffs and granted judgment to defendants because it considered that the damages methodology proffered by the plaintiffs' experts was insufficiently reliable and was the only supposed proof of damages in the case.

In a U.S. class action lawsuit, a class of subscribers to the National Football League (NFL)'s "Sunday Ticket" alleged that the NFL's practices of licensing live broadcasts of local games to CBS and FOX while licensing all live broadcasts of out-of-market games to DirecTV, and requiring fans who want to watch out-of-market games to choose Sunday Ticket, violated the antitrust laws. In particular, the plaintiffs alleged that the NFL's Sunday Ticket product was an overpriced package of games that many plaintiffs did not want to purchase, and the NFL's refusal to sell games of only the teams that a customer may want to watch violated Section 1 of the Sherman Act. Following a three-week trial, the jury returned a USD4.7bn verdict in favor of the plaintiffs. However, after a post-trial motion by the NFL challenging the verdict, the district court reversed the jury's decision and granted judgment to the NFL, ruling the testimony of two key expert witnesses for the subscribers, on which the jury's damages award was based, had flawed methodologies and should have been excluded. The judge found that plaintiffs had "failed to provide evidence from which a reasonable jury could make a finding of injury and an award of actual damages that would not be erroneous as a matter of law, be totally unfounded and/or be purely speculative." The court took issue with expert modeling of what would occur without the relevant competitive restraints at issue in the case. It reasoned excluded experts: (i) lacked a sound economic methodology to explain how, absent alleged restraints, relevant out-of-market telecasts would have been available on cable and satellite television without an additional subscription; and (ii) failed to offer evidence that a distributor other than DirecTV could have provided live streaming of Sunday Ticket. While the plaintiffs have appealed the judge's decision to reverse the jury verdict, the Sunday Ticket decision underscores the need for reliable expert methodologies to calculate damages and the potential consequences of not providing such methodologies.

In the U.K., the role played by experts was a key area of development in 2024 in the context not only of the assessment of causation and quantification of damages, but also in determining liability and driving procedural decision-making:

Application of the broad axe

In *Le Patourel v BT*—an abuse of dominance claim brought as opt-out collective proceedings on behalf of over 3.7 million BT customers—the CAT was required to assess whether BT's prices were "excessive" and "unfair" (and therefore abusive). Extensive expert evidence was deployed (principally economic modeling) to assess whether BT's prices were excessive compared with a competitive benchmark. BT's expert's evidence was that its prices were less than the benchmark; whereas the class representative's expert asserted that the prices were excessive by up to approximately 96%. Like the approach in *Royal Mail v DAF* and *Granville v Chunghwa*, the CAT decided that both experts' methodologies contained problems but adopted a "broad axe" approach,

by giving different weight to each element of the experts' respective analysis, to arrive at what it considered the most appropriate assessment. On this basis, the CAT reached a near mid-point between the two positions, finding that BT's prices were up to approximately 50% above the benchmark. However, the claim ultimately failed, with the CAT finding that, while excessive, BT's prices were not unfair since they bore a reasonable relationship to the value of the services supplied.

One expert for all

The Court of Appeal affirmed in *Stellantis* that there is no presumption or "established practice" that defendants in multi-party antitrust litigation should be able to rely individually on different economic experts (despite such arrangements commonly arising). An important decision for new, prospective claims, the court confirmed it has a wide discretion to direct that a joint expert be appointed, to ensure proceedings are dealt with justly and at proportionate cost, having regard to the evidence reasonably required to resolve the issues and their complexity. While defendants may seek to rely on rights of defense or conflicts of interest to justify individual instructions, this will not necessarily be determinative.

An "expert-led approach"

In certain long-running multi-party proceedings such as the *Trucks* and *Interchange* litigation, experts have become increasingly pivotal to case management. The CAT has diverted from more traditional approaches to disclosure and evidence (typically grounded in the parties' pleaded claims) by adopting an "expert-led" approach. Experts have been given a wide berth to identify the material required to conduct and implement their proposed analyses. Regular, more informal "case management meetings" have also seen the CAT place heavy reliance on experts' views over legal submissions when making decisions about the scope of evidence.

In the EU, economists frequently serve as experts in antitrust litigation to help determine liability, causation, and quantum. However, the degree to which courts engage with expert evidence varies by member state. Recognizing that assessing harm involves complex factual and economic analysis, the PDD allows national courts to estimate quantum and, if relevant, passing on, where it is "practically impossible or excessively difficult precisely to quantify the harm suffered on the basis of the evidence available." National courts in some member states have arguably adopted an expansive interpretation of when judicial estimation is legitimate. We anticipate that the ECJ will be asked to provide guidance on the scope of this power in the future.

COLLECTIVE ACTIONS—OPPORTUNITIES AND CHALLENGES

Class or collective actions, by saving time, cost, and valuable resources, incentivize private enforcement. Courts in the U.S. and the U.K. are tasked with rigorously evaluating settlements to ensure the terms of each settlement are appropriate and fair to the class before they will approve them. U.S. courts have recently rejected antitrust settlements where they did not believe the settlement treated all class members fairly relative to one another.

Most prominently, a proposed antitrust class action settlement of an equitable relief class, which the plaintiffs class valued at approximately USD30bn in fee reductions and rule changes, was rejected primarily due to concerns over the adequacy of release terms and equitable treatment of class members relative to one another. The settlement agreement between plaintiffs, a class of merchants bound by Visa and Mastercard rules, and defendants, Visa and Mastercard (and the member banks in Visa's and Mastercard's networks prior to their respective IPOs), provided for changes to Visa and Mastercard's rules governing merchant practices and dictated that Visa and Mastercard would abide by the modified rules for five years in exchange for a release of related claims arising in the same five-year period. The court rejected the proposed settlement because it did not treat the class members equitably relative to one another and would not lower interchange rates or "swipe fees" below what experts had previously described in the litigation as an "upper limit" to the level of the fees absent the challenged competitive restraints, among other reasons. This decision reflects the rigorous scrutiny courts apply to settlements seeking to resolve complex multiparty disputes even when defendants are willing to settle for a substantial amount of money.

In contrast, the U.K.'s collective action regime has continued to produce many high-value claims. Eleven distinct sets of collective proceedings were issued in 2024 (an increase on 2023), together claiming aggregate damages in excess of GBP13bn. Abuse of dominance cases continue to make up the vast majority of claims brought (see chart). Various claims have now reached trial, for example, the *BT Landlines* litigation (where judgment dismissing the case has been given), the Interchange litigation and *Kent v Apple*. Several further trials are listed in 2025.

Several claims were certified, providing further evidence of the low threshold test for certification which had been affirmed by decisions of the CAT and Court of Appeal in 2023. On top of traditional antitrust enforcement and ex ante regulation mentioned above, Big Tech continues to be a focus for claimant firms and prospective class representatives, with claims against Google, Apple, and Microsoft certified.

There were several other important developments in the U.K.'s regime in 2024, the key ones of which we highlight below:

- In *Christine Reifa v Apple*, exceptionally the CAT refused an application for certification outright; a divergence from prior decisions where class representatives who did not meet the threshold were given a chance to reformulate their application. The CAT held Reifa was not suitable to act as a class representative, in contrast to most prior certification decisions where the focus was on whether the claim itself was appropriate to be certified. The funding arrangements agreed by Reifa raised concerns for the CAT (including terms that presented potential conflicts of interest between herself, the funder, her instructing solicitors, and the class). Following cross-examination of Reifa, the CAT determined that it could not be satisfied that Reifa would execute her role fairly and adequately in the interests of the class. It serves as a reminder of the "high standard" expected of class representatives who are not "merely a figurehead" but must engage critically with their funders and advisors and make informed, independent decisions.

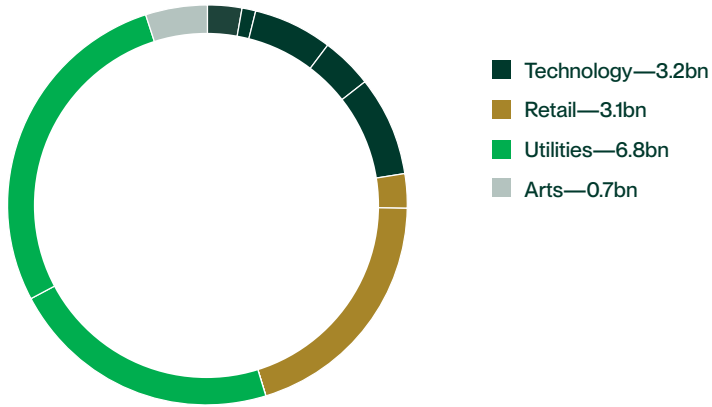
- *Le Patourel v BT* was the first collective proceeding to reach trial on issues of liability and quantum with a judgment issued in December 2024. The class representative failed to establish that BT's prices were both excessive and unfair (see above). Although brought on a standalone basis, the class relied on existing non-binding regulatory findings (of a regulator), an approach taken by other "quasi follow-on claims" in 2024 (such as *Spottiswoode v Airwave & Motorola*). The CAT placed little weight on these findings, not least because the CAT determined that the evidence before it was more extensive and robust than had been available to the regulator.
- Since the first collective proceedings settlement in *McLaren v MOL*, the CAT has considered (and approved) a further three collective settlement applications: one in *Gutmann v First MTR South West Trains* and two in *McLaren v MOL* (which the CAT considered together). Unlike the first *McLaren v MOL* application, these applications were made at a relatively late stage (after disclosure and factual and expert evidence) and represented the settlement of a large proportion of the claim. The decisions illustrate the CAT's reliance on evidence that the settlement is "just and reasonable," including evidence from experts and independent lawyers.
- In December 2024, the parties in *Merricks v Mastercard* announced a provisional settlement of GBP200m (against an original claim value of around GBP10bn). The class representative's funder opposed the settlement, on the basis it was too low, and has brought arbitration proceedings against the class representative and applied for permission to intervene in the settlement application, which the CAT approved. It remains to be seen what, if any, standing and influence a funder has to challenge an agreed settlement. If approved, it will be the first all-party collective proceedings settlement.
- Funders have moved to alternative funding structures following the Supreme Court's ruling in *R (PACCAR) v CAT* (which rendered agreements that calculate a funder's return by reference to the amount of damages awarded unavailable in opt-out collective proceedings). These alternatives have so far withstood legal challenge, for instance, where the funder's fee is based on a multiple of the amount invested by the funder (*Neill v Sony*), and where that fee is capped by the proceeds of the claim, provided that the cap does not in substance create a success fee (*Commercial and Interregional Card Claims I Limited ('CICC I') v Mastercard Incorporated & Others* and *Kent v Apple (AppStore)*). These decisions are under appeal. Despite the previous U.K. government's commitment to introduce legislation to address the implications of *PACCAR*, the current U.K. government has indicated that it intends to wait for the conclusion of a wider review into the litigation funding market being undertaken by the Civil Justice Council before deciding what, if any, legislative response to adopt. That review is not expected to conclude before summer 2025.

Despite growing interest, collective actions in the EU remain relatively limited compared to the U.K. or the U.S. This is partly due to the lack of an EU-wide collective redress framework specifically designed for antitrust damages actions. Initially, the PDD was considered the appropriate legal framework to introduce collective redress mechanisms. However, this idea was eventually abandoned for political reasons. As for the Representative Actions Directive, which sets a minimum standard legal framework for representative actions aimed at protecting consumers' collective interests, it does not expressly cover antitrust law. Only some member states have chosen to extend their implementing provisions to cover this area of law.

Although there is no mandatory common framework at EU level, a clear trend towards facilitating collective redress has recently emerged. Some member states have implemented collective dispute mechanisms, while others have provided for the possibility of aggregating or bundling individual antitrust damages claims through specialized claim vehicles. Nevertheless, the recent ECJ ruling in *ASG 2* clarified that the PDD does not require member states to introduce collective redress models for the enforcement of EU antitrust rules. It is hoped that, as more member states introduce collective redress mechanisms, this will serve to support a robust approach by courts to burden and standard of proof.

APPLICATIONS FOR COLLECTIVE PROCEEDINGS IN THE U.K., 2023–2024

APPLICATIONS FOR COLLECTIVE PROCEEDINGS IN THE U.K., 2024

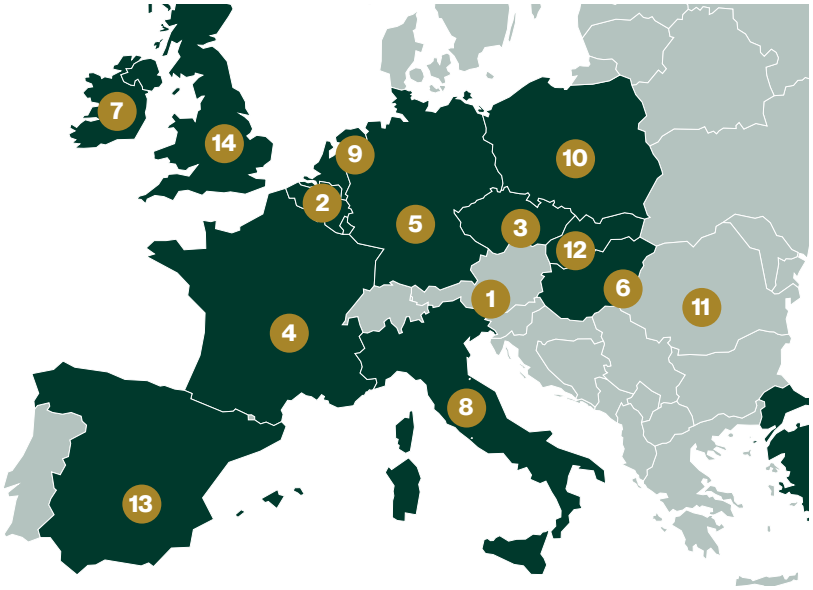


Regional snapshots for antitrust *enforcement fines in 2024*

Europe

At the country level, antitrust enforcement fines in Europe were USD2.3bn, *a significant increase from 2023.*

Antitrust enforcement fines in 2024



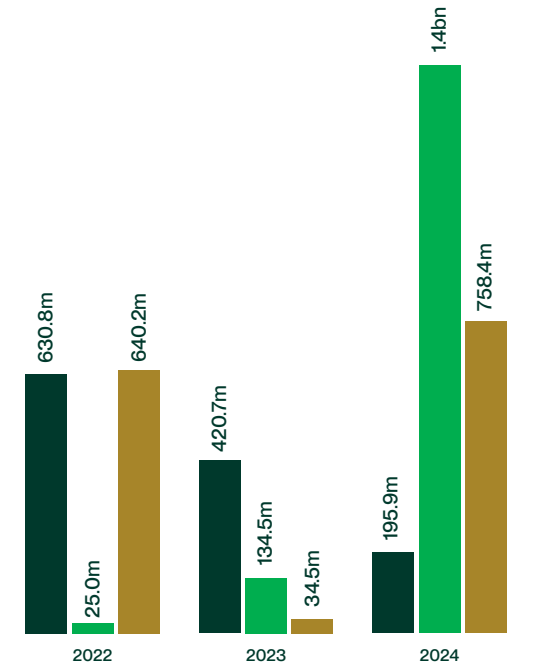
1. Austria—**44.5m** ▼
2. Belgium—**53.4m** ▲
3. Czech Republic—**14.4m** ▲
4. France—**1.5bn** ▲
5. Germany—**21.2m** ▲
6. Hungary—**6.8m** ▲
7. Ireland—**0m** =
8. Italy—**10.3m** ▼
9. Netherlands—**8.7m** ▼
10. Poland—**164.5m** ▲
11. Romania—**0.5m** ▼
12. Slovakia—**7.8m** ▼
13. Spain—**457.7m** ▲
14. U.K.—**0m** ▼

All figures are in U.S. dollars (USD)

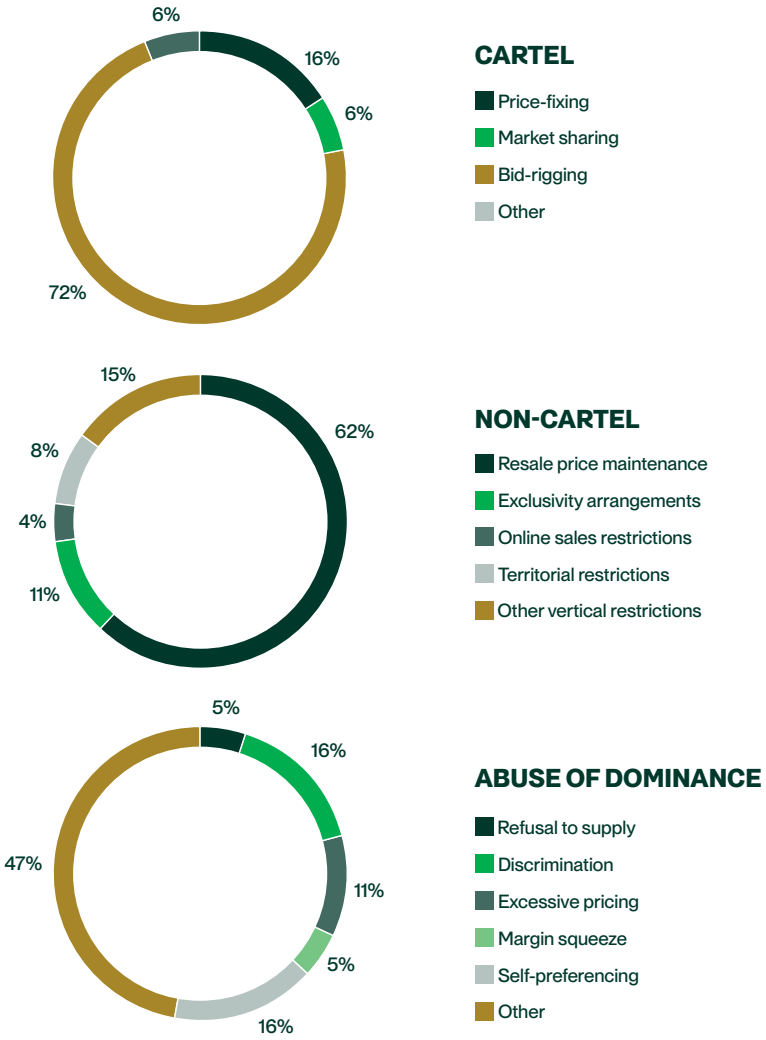
- ● A&O Shearman office locations
- ▲ Increase from 2023 fines
- ▼ Decrease from 2023 fines
- = No change

Europe

TOTAL FINES BY CONDUCT TYPE 2022–2024



BREAKDOWN BY CONDUCT 2024



CARTEL

- Price-fixing
- Market sharing
- Bid-rigging
- Other

NON-CARTEL

- Resale price maintenance
- Exclusivity arrangements
- Online sales restrictions
- Territorial restrictions
- Other vertical restrictions

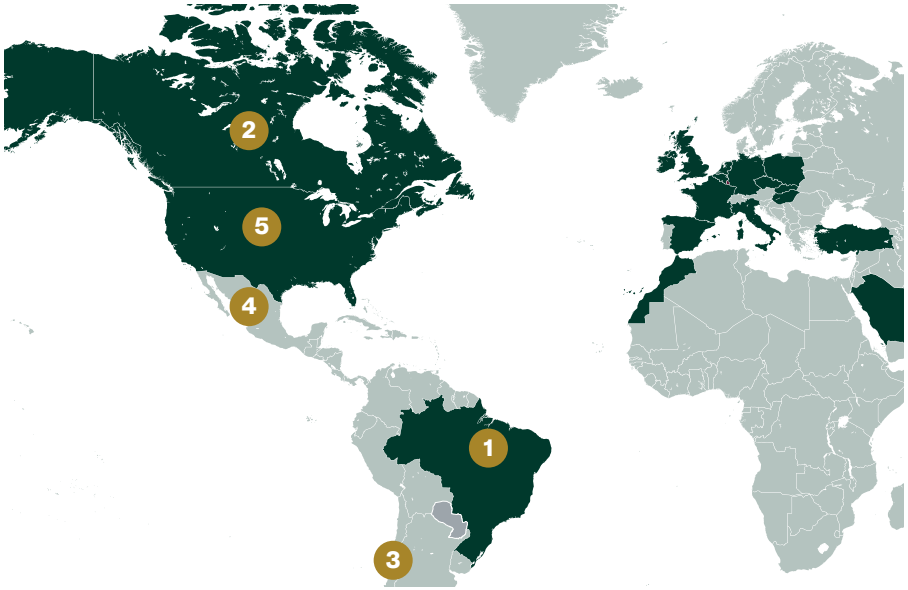
ABUSE OF DOMINANCE

- Refusal to supply
- Discrimination
- Excessive pricing
- Margin squeeze
- Self-preferencing
- Other

Americas

Antitrust enforcement fines in the Americas were USD162m, *a decrease from 2023.*

Antitrust enforcement fines in 2024



1. Brazil—**77.5m** ▲

2. Canada—**1.2m** ▼

3. Chile—**33.5m** ▲

4. Mexico—**42.2m** ▲

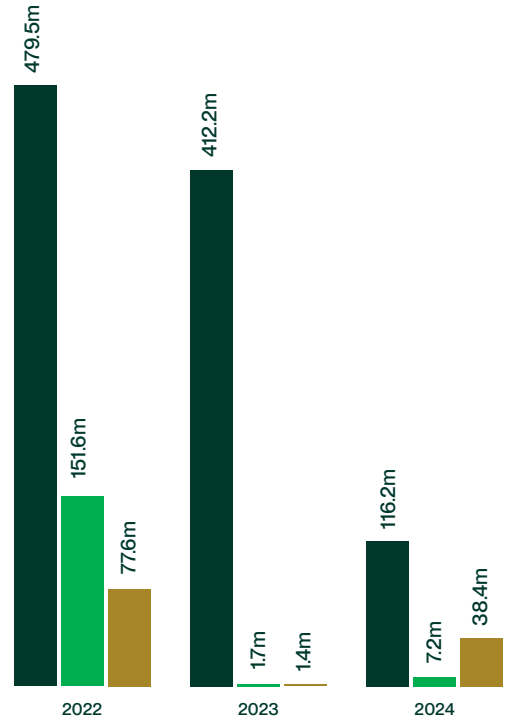
5. U.S.—**7.5m** ▼

All figures are in U.S. dollars (USD)

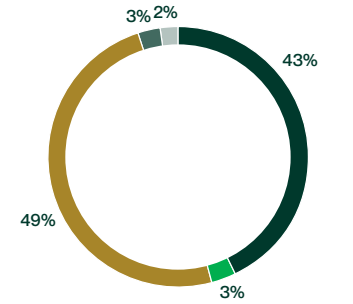
- ● A&O Shearman office locations
- ▲ Increase from 2023 fines
- ▼ Decrease from 2023 fines

Americas

TOTAL FINES BY CONDUCT TYPE 2022–2024

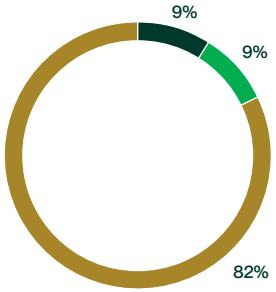


BREAKDOWN BY CONDUCT 2024



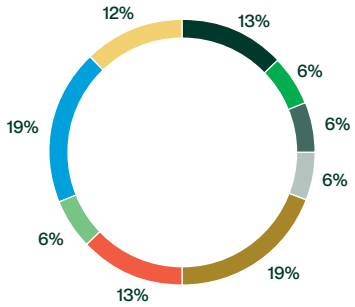
CARTEL

- Price-fixing
- Market sharing
- Bid-rigging
- Information exchange
- Other



NON-CARTEL

- Territorial restrictions
- (Non-cartel) information exchange
- Other vertical restrictions



ABUSE OF DOMINANCE

- Refusal to supply
- Leveraging
- Predatory pricing
- Loyalty rebates and discounts
- Discrimination
- Excessive pricing
- Tying/bundling
- Abuse of buyer power
- Other

APAC

Antitrust enforcement fines in APAC were USD258m, *a decrease from 2023.*

Antitrust enforcement fines in 2024

1. Australia—**23.3m** ▼
2. China—**14.1m** ▼
3. Hong Kong—**1.6m** ▲
4. India—**25.6m** ▲
5. Japan—**21.9m** ▼
6. Singapore—**7.5m** ▲
7. South Korea—**164.1m** ▼
8. Taiwan—**0.2m** ▼
9. Thailand—**0m** =

All figures are in U.S. dollars (USD)

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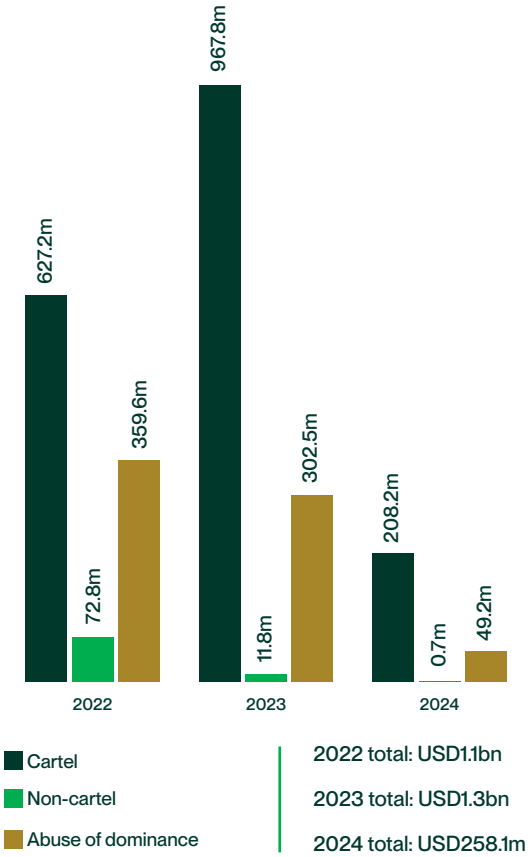
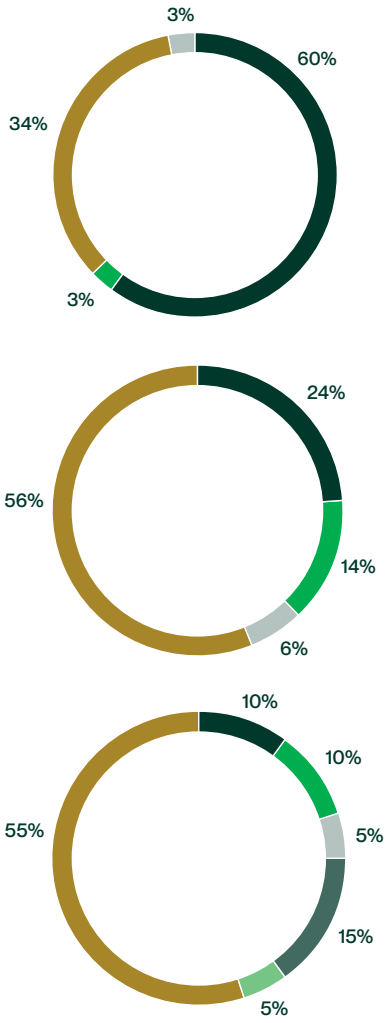
- = No change

APAC

TOTAL FINES BY CONDUCT TYPE 2022–2024



BREAKDOWN BY CONDUCT 2024



CARTEL

- Price-fixing
- Market sharing
- Bid-rigging
- Other

NON-CARTEL

- Resale price maintenance
- Exclusivity arrangements
- Territorial restrictions
- Other vertical restrictions

ABUSE OF DOMINANCE

- Refusal to supply
- Leveraging
- Predatory pricing
- Excessive pricing
- Abuse of buyer power
- Other

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