

Linklaters

Global Antitrust Enforcement Index 2024



Introduction

Global antitrust enforcement has rocketed post-pandemic, with steep rises in investigations, dawn raids and fines in recent years. But as cost-of-living concerns continue to feature, enforcement priorities have shifted, with changes in how investigations are conducted, the sectors being investigated and the impact this will have on companies (including penalty types, leniency options and risk of private enforcement).

Our publication looks at enforcement data from 2021-2023 and distils **five key trends**, based on the experience of our market-leading practices in Asia, Europe and the US, to help companies protect their business and respond to new risk areas.

01

Investigation numbers have soared

But while fines are higher than ever for some jurisdictions, sanctions are becoming more varied, as more enforcers look to criminal and personal sanctions or consider settlement options for less egregious offences. Businesses will need to factor this into their risk analysis.

02

Dawn raids are booming

With advanced technology on their side, authorities are increasingly able to detect infringements and conduct ex officio investigations. Digital evidence is increasingly crucial. Factor this into digital retention and dawn raid policies, in addition to compliance training.

03

Topical areas of enforcement

These include employment and HR issues, digital markets, vertical agreements and sustainability. Industry associations remain a focus. Raising awareness in these areas remain key for compliance teams.

04

Sectors most at risk

In the coming years, these will include (inevitably) tech, consumer products (both essentials such as groceries and luxury items) and healthcare. Those active in these sectors should be especially focused on compliance and ensure board time is devoted to risk areas.

05

Private enforcement is in growth mode globally

While the US remains the standout forum for private enforcement, there is significant growth in the UK and Europe (especially those jurisdictions with opt-out class actions regimes) as well as South Korea and China. The growth of private enforcement will impact leniency strategies for both businesses and authorities.

“Enforcers are broadening the focus of their investigations to new types of conduct and concerns. Ensure that you are taking the right steps now to identify and manage your antitrust risk by focusing resources on the areas that matter most.”

Bernd Meyring, Global Practice Head

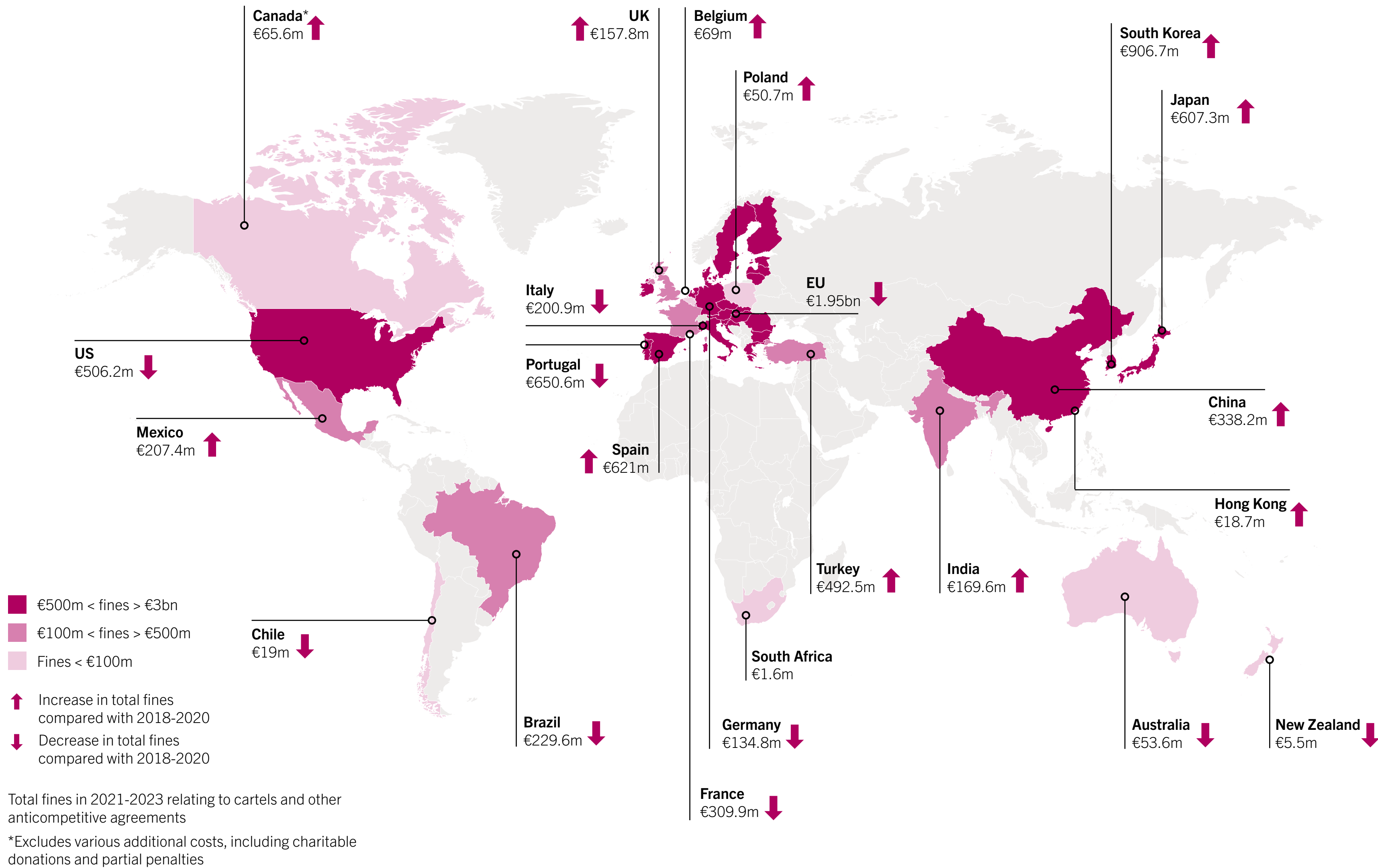


The global reach of cartel enforcement

Cartel fines for 2021-2023 were generally higher than the previous three-year period, reflecting global agency focus on enforcement. After a lull in raids and new cartel investigations during the pandemic, an increase in numbers of fines has been matched by a steep increase in numbers of investigations (particularly in 2023). Total fine value increased in most jurisdictions for the three-year period (dramatically so, in China, Belgium, UK, South Korea, Turkey, Mexico). 2021, in particular, saw some high value penalties imposed.

But some (notably the EU and US) have bucked the trend with a fall in total fine value. And while the most recent fines have often related to smaller infringements (resulting in lower value penalties), many of the larger cartel investigations initiated post-pandemic are still in progress...

Total cartel fines in selected jurisdictions (2021-2023)



The global reach of cartel enforcement

Africa

South Africa continues to see settlements in most cartel cases, with only two (non-settlement) fines issued since 2021. Cartel activity has been recently criminalised (although there is yet to be a criminal prosecution in South Africa).

Various African authorities have been investigating industry associations, including South Africa and Kenya. Horizontal coordination in the financial sector has been a priority – in Mauritius, 11 insurance firms are being investigated for collusion, while reinsurance is being examined in Kenya and the Namibian authority has launched an investigation into interchange fees.

Americas

The US has handed out 30 cartel penalties since 2021 (over 540 million USD) – lower than 2018-2020, but over half of which derived from two major fines imposed in 2023. The Department of Justice (DoJ) remains committed to bringing criminal charges in cases of cartel conduct, for those involving *per se* offenses, including price fixing, bid rigging, and market allocation agreements.

Fines in Canada have ramped up – 2023 saw more penalties than 2021 and 2022 combined – and certain HR practices can now result in criminal sanctions (see [here](#)). With a substantial budget increase on the horizon and recent legislative changes expanding the conduct under the authority’s jurisdiction, expect enforcement to continue to increase.

Asia Pacific

China has continued to see big-ticket fines, largely driven by the healthcare sector, as the effects of the Covid pandemic continue to filter through. Resale price maintenance (RPM) and cartel cases involving trade associations saw the highest penalties. However, there are signs of moderating enforcement and the use of softer measures, after an intensive crackdown in recent years. South Korea has seen cartel fines almost four times the level of the 2018-2020 period – but there is speculation that the current administration’s pro-business policies may result in a decrease in future fines.

The Hong Kong Competition Commission (HKCC) has found its feet, seeing an almost 12 times increase in overall fines, as it explores more complex forms of competitor coordination.

The Competition Commission of India (CCI) issued 22 fines, totalling almost €170 million during the period. 10 of these were non-monetary, usually involving leniency applications – the CCI has been keen to encourage leniency applications in exchange for information on other cartels.

New Zealand and Australia saw civil fines fall significantly compared to 2018-2020. New Zealand recently had its first filing of criminal charges for cartel conduct, resulting in half the defendants pleading guilty. In contrast, the Australian Competition and Consumer Commission (ACCC) has seen numerous setbacks in its pursuit of criminal cartel trials – but appears committed to continue pursuing such cases.

Europe and the region

Numbers of fines issued in some European jurisdictions soared in 2023; perhaps reflecting a backlog of cases, post-pandemic. Belgium and France doubled their number of fines compared with 2022. The Turkish Competition Authority has seen a significant uptick, with 40 cases in 2023 resulting in fines, compared to 17 in 2022. Many of these have been in the cosmetics and fast-moving consumer goods (FMCG) / retail sectors.

Fines on tech, pharma and construction companies have kept total penalties high – Spain’s National Markets and Competition Commission (CNMC) handed its second largest fine ever to Amazon and Apple in 2023 and the UK’s Competition and Markets Authority (CMA)’s high fines derive largely from two hefty fines on pharma and construction companies.

But outside of this, many have seen a downward trend in the average fine value. Although the EU fined more cartels between 2021-2023 than 2018-2020, total fines are down and individual fine levels were generally lower. Similarly, after imposing some of the highest penalties between 2018-2020, including a €1.1bn fine (later reduced) on Apple, France has seen moderate levels of fines, despite a higher volume for the period. Total fines in Portugal also decreased in 2023 to around 5% of the value of fines imposed in 2022. The pandemic may still be impacting on investigation pipelines, as many of the cases reaching penalty stages are smaller consumer and retail infringements – in place of the larger global cartels, which may take several years to trickle through.

“Enforcement by Asian authorities – particularly in China – has seen a surge in recent years, after a quieter period. Ensure you stay on the right side of the line, with effective and tailored global compliance training.”

Xi Liao, Partner, China



Focus on dominance

Dominance fines have seen a mixed picture between 2021-2023. The EU noticeably imposed no new fines in the period*, as it is building a strong case pipeline post-pandemic. However, Member States remained active – Italy imposed a **record €1.13bn fine** on Amazon and France imposed large tech and utility-focused fines. But while tech fines featured heavily for many (including India’s CCI and South Korea’s Fair Trade Commission (KFTC)), the EU appears to have shifted its efforts to *ex ante* regulation, through its Digital Markets Act.

Since the DoJ resumed criminally enforcing monopolisation offences in April 2022 (after a 40-year hiatus), the US has seen a handful of such cases, and only one minor fine (the more common civil enforcement results in treble damages and injunctions as remedies). In contrast, China’s State Administration for Market Regulation (SAMR) has imposed 35 dominance fines between 2021-23, totalling a colossal €3.1bn, across diverse markets, including healthcare, public service, internet companies and FMCG. Brazil has also maintained a consistent flow of cases with substantial fines.

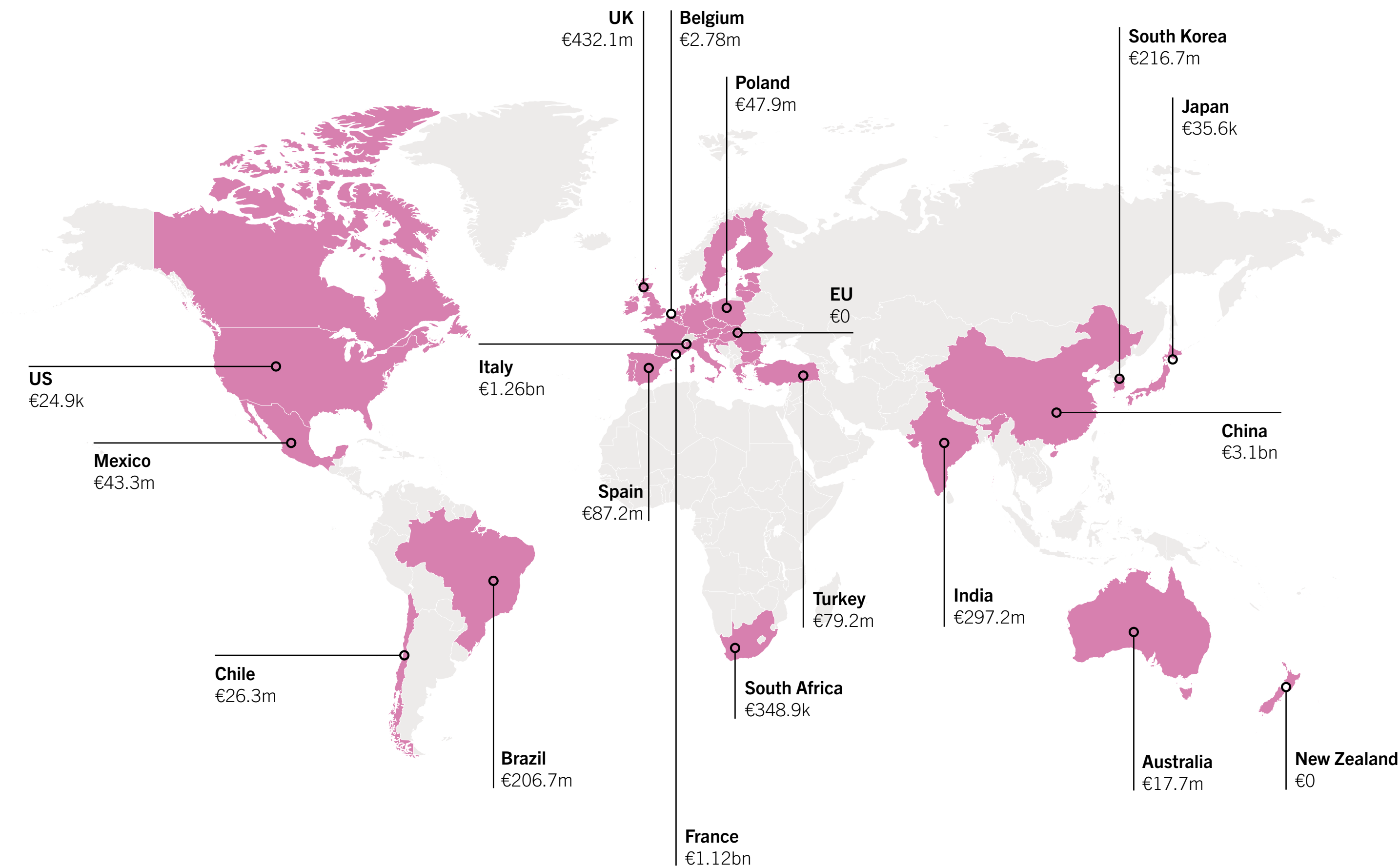
Covid-era infringements continue through the pipeline – Belgium, France, Spain and the UK have targeted pharma companies with large fines, while South Africa has

issued two (non-settlement) fines for pandemic-related infringements.

Importantly, many dominance investigations from this period have resulted in settlements or commitments tackling the underlying conduct (with no fines). In contrast, while the New Zealand Commerce Commission (NZCC) imposed no dominance fines in recent years, its broadened test of substantial market power (since April 2023) will give the regulator latitude to pursue wider investigations against unilateral conduct, with increased penalties on companies and individuals.

The scope of dominance investigations is likely to broaden in the coming years. The European Commission (EC)’s investigation into Vifor’s treatment of competitor Monofer marks its first standalone disparagement abuse case. As for problematic mergers, the Belgian Competition Authority (BCA)’s adoption of interim measures on Proximus was the first application of the EU’s Towercast judgment regarding the use of abuse of dominance rules in this forum. In the wake of the Court of Justice (CJEU)’s landmark judgment rejecting the expansive use of Article 22 ECMR in *Illumina/Grail*, we may well see more cases following this path.

Total dominance fines in selected jurisdictions (2021-2023)



*Excluding the reimposition of a fine of €376m on Intel in September 2023.



Authority focus areas

Authorities continue to communicate and share concerns in relation to competition infringements in certain sectors. Our analysis shows a number of key focus areas for authorities, which is likely to influence investigation types in the coming years.

“Collusive bid-rigging remains extremely highly enforced globally, with increasing investment in detection. Anticipation of this, through careful training, will help businesses stay out of regulators’ gaze.”
Malgorzata Sz waj,
Partner, Poland



HR & antitrust

Global enforcement in relation to **no-poach agreements** (agreeing not to hire another company’s employees) and **wage fixing** (agreements between competitors on salaries and benefits received by employees) has ramped up since 2021.

The US leads the charge, with nine HR-related investigations opened since 2021 across numerous sectors. While the DoJ’s criminal investigations of no-poach and wage fixing have been less successful (four losses and one voluntary dismissal), it appears, at least publicly, committed to bringing further actions. Canada has followed suit, criminally prohibiting no-poach agreements and wage fixing in June 2023 – albeit, still waiting for a test case.

But European authorities have picked up the mantle – the French Autorité de la Concurrence (FCA) is seeing its first HR case and the EC conducted its first raids over suspected no-poach agreements in 2023. The EC is pursuing leads into HR restrictions, with the “same level of priority as other forms of cartels”, **confirming in May 2024** that no-poach agreements should constitute “by object” infringements. Equally, the Portuguese Competition Authority (PCA) fined parties over €11m in 2022 for no-poach restrictions and has issued new guidelines on HR infringements. The CMA has extended an **ongoing no-poach investigation**, while its investigations into wage fixing in **sports** and **non-sports** television broadcasting continue and Turkey has seen four no-poach investigations in recent years.

Others have HR practices firmly on their radar. China’s SAMR scrutinised no-poach practices in 2023 – albeit with no formal investigation. Portuguese, Lithuanian and Romanian authorities have reportedly used leniency applications and whistleblower tools to uncover labour restrictions, while Chile’s authority pronounced no poach agreements a “collusive agreement” in its 2022 “fire cartel” ruling.

The Federal Trade Commission (FTC)’s **attempted ban** on almost all **non-competes** between employers and employees remains subject to numerous challenges. Elsewhere, Australia and **the UK** are currently ruminating on the best way to regulate them, while the CJEU **has confirmed** that such non-competes can constitute an object restriction.



Sustainability

2021 saw car manufacturers in the EU fined €875m for restricting competition in the technical development of emission cleaning technology for new diesel passenger cars. The EC found that legitimate technical cooperation overstepped the mark when the parties agreed to avoid competing on using certain technology to its full potential to reduce emissions. This landmark decision was one of very few where agreements and information exchanges relating to sustainability characteristics were found to infringe competition law.

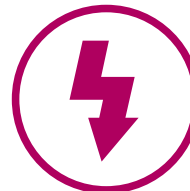
According to our **survey of over 500 sustainability professionals**, 60% reported that competition law played a role in a decision not to pursue a joint sustainability project, while 65% said that they would be more likely to collaborate where competition law guidelines were in place. Guidelines are now published in the EU (and many Member States), UK, Japan, Hong Kong, New Zealand, Canada, South Korea and soon Australia, which provide guidance on the line between legitimate collaboration to achieve sustainability goals and anti-competitive collusion. Guidelines combined with “open door policies” offering businesses the chance to discuss sustainability collaborations with authorities, mean that further infringement decisions may now be less likely.



Bid rigging

Bid rigging (or collusive tendering) is one of the most enforced cartel practices globally, investigated or fined since 2021 in almost all of the jurisdictions surveyed. 75% of the cartel investigations launched by the JFTC in the period (and a similar percentage of total fines) have involved collusion on bids / bidding information. Similarly, almost half (42%) launched by the US authorities and over half of those fined in Spain and Poland involved collusive bidding agreements. Bid rigging is usually a “by object” infringement, with obvious impact on the use of public funds where it involves public procurement, and tangible downsides for consumers, making it a priority in the recent economic climate. Many bid rigging infringements have been in the construction industry, with considerable fines imposed – eg fines from Spain’s CNMC of €203.6m (2022) and €113.3m (2021) and £59m from the CMA (2023).

Authorities are stepping up their game. Last year the NZCC imposed its first criminal charges in a case of bid rigging of publicly funded construction contracts. Various authorities have been investing in technology to help detect such practices more easily – including the Belgian BCA and the CNMC, which is developing data science processes on public tender data. We can expect continued high enforcement in the years to come, particularly given the strong pipeline of investigations ongoing globally.



Resale price maintenance and verticals

Vertical arrangements continue to capture authorities’ interest globally, although the main hotspots tend to be in Europe.

RPM cases are a priority for many – the Turkish authority has launched a hefty 60 investigations since 2021 into vertical arrangements, almost all of which are vertical price fixing cases in consumer sectors. All of SAMR’s vertical investigations in 2021 related to RPM, while around half of Poland’s 32 investigations between 2021-2023 covered vertical arrangements (including RPM, market sharing and information exchange). The CJEU’s landmark judgment in Super Bock has helped clarify the limits of when minimum resale prices are problematic in the EU. India’s CCI has also seen six cases involving exclusive dealing and supply arrangements between 2021-2022.

While most vertical infringements haven’t resulted in the heights of penalties seen in horizontal cartel infractions, restrictions on online sales (often relating to luxury goods) have continued to generate considerable fines – the French FCA, in particular, imposing fines of over €226m across five such cases between 2021-2023, three of which related to luxury goods.

The EU and UK have both issued updated block exemption guidelines in recent years, reflecting updated views on online sales and digital markets. Others, including the ACCC, continue to monitor vertical arrangements – especially in the digital sector – closely.

Highest vertical fines (€)

	Jurisdiction	Behaviour
125.8m	France (Various eyewear manufacturers)	RPM and online sales restrictions
92.8m	Portugal (Super Bock)	RPM
91.6m	France (Rolex)	Online sales restrictions



Focus on dawn raids and enforcement

Jurisdiction	Number of publicly confirmed raids
Turkey	135 (estimated)
Germany	26
Italy	22
Japan	22
Poland	22
Spain	17
EU	16
France	12
India	7
UK	6
Brazil	6
Hong Kong	3
Chile	2

2022 – a boom year

As predicted in our last publication in [autumn 2021](#), the slowdown on raids and enforcement did not last. This was borne out by a 2022 boom in (publicly reported) dawn raids across all regions; the German Federal Cartel Office (FCO) carried out six times as many raids as in 2021, while the Mexican authority carried out eight raids, in contrast to its sole raid of 2021. And while 2023 has seen fewer raids than 2022 in some jurisdictions, overall numbers between 2021-2023 remain high – from the Turkish authority’s estimated 135 raids, to seven raids by India’s CCI, in contrast to the same number over a six-year period between 2014-2020.

Although globally coordinated raids are now rarer than in the past, authorities do continue to work together where anti-competitive conduct may have affected multiple jurisdictions. Linklaters has attended several co-ordinated raids in this time period – consideration of global strategy is critical.

Since the pandemic, when the EU started publicising the sectors it conducted raids in, the US has seen private enforcement in those sectors – raising risks for raided companies beyond geographic lines. See for example, litigation in the US following the EU’s raids on [chemical companies](#) and [tyre companies](#).

Making it personal (and domestic)

Changes in working patterns and locations have affected raids post-Covid. Many authorities globally have conducted home raids in recent years, including in France, the US, the EU, the UK, Spain, Brazil and Chile. Indeed, most authorities have the power to visit home addresses to search for documents without warning (although not all have publicly tested these – eg China). And the evidence needed for a warrant to visit a home (rather than business premises) is not necessarily more stringent – as a recent [UK court ruling confirmed](#).

Digital evidence is increasingly pivotal in raids. No longer confined to office desktops and servers; authorities are focusing on personal phones and private devices, when used for business purposes, in addition to instant messages such as WhatsApp or text messages and data stored in the cloud.

The EC imposed a [€15.9 million fine](#) this year on International Flavors & Fragrances (IFF) where WhatsApp

messages were deleted during a raid. And the CJEU is currently considering whether national protections on private correspondence should trump EU rules on obstruction in a [case](#) involving the deletion of Viber chats linked to an employee’s personal account. Recent [US guidance](#) highlights the risks of ephemeral messaging applications in workplaces. Such messages (even once deleted) are covered by document requests. A failure to retain and produce them may result in civil sanctions or criminal prosecution – which has been made clear in [recent rulings](#).

Better detection tools

Authorities have been investing in tech to detect obstruction, such as destroying digital messages or device-tampering. The DoJ has plans to develop infrastructure for “more modern forms of data analysis”, while enforcers (including in Spain and Germany) have highlighted ongoing use of digital tools to monitor markets and detect abnormalities. Indeed in the EU’s [IFF fine](#), deletion of WhatsApp messages were discovered after the employee’s mobile was reviewed by the EC’s Forensic IT team.

Such tools should lead to enforcement even in the absence of a leniency application or raid (or indeed, targeted raids by better informed authorities). But as costs for raids increase, enforcers may rely on other tools where needed – many prioritise compulsory information requests, while the DoJ has confirmed they use “informants, undercover agents and warrants authorizing the interception of communications” to pull necessary information.

What should you do?

Be dawn raid ready

Check dawn raid preparedness – especially when it comes to giving authorities access to your IT environment – and alert execs to the risk of home raids. Ensure your company is ready to respond by downloading the Linklaters [Dawn Raid App](#).

Don’t keep it on the IM...

Refresh compliance policies on the use of personal devices and instant messaging apps. If used for business purposes they can be searched.

“Competition authorities are increasingly fixated on digital content and ephemeral messages. Companies should ensure their digital retention policy is compliant and that staff know they must not delete messages (including texts and IMs) during a raid or investigation.”
Doug Tween, Partner, US

Sector focus

There's no place to hide...

From school backpacks and baby furniture to bridge joints, PVC pipes and data printing, globally competition authorities have spread the net wide. Investigations and fines relate to global markets that touch citizens around the world but also to niche local markets and everything in between. No business should consider itself beyond scrutiny. That said, there are clear sector focus areas, this section looks at three.

“Consumer facing businesses need to respond to evolving compliance challenges on both antitrust and consumer protection fronts.”
Rachel Hetherington,
Partner, UK



Tech

Competition authorities are grappling with the challenges posed by the evolution of technology. Although the mega-fines in recent years have primarily related to dominance, rather than cartel infringements – for example China’s record \$2.8bn fine on Alibaba, Italy’s €1.13bn fine on Amazon and France’s **€500m fine on Google** for non-compliance with injunctions – authorities have also been looking at anti-competitive cooperation in the sector. The **EC fined Valve** for geo-blocking in 2021, the **Spanish** and **Italian** authorities fined Apple and Amazon for restrictive contractual clauses, while in the UK, **Sepura was fined** £1.5m for anticompetitive information exchange. Looking at the pipeline of ongoing investigations, we expect more to come, with a focus on online marketplaces – including relating to parallel trade and price parity clauses in many jurisdictions.

The question moving into 2025 and beyond is how far authorities continue to bring actions under traditional competition laws or switch to deploying new tools – including the EU’s Digital Markets Act and UK’s Digital Markets, Competition and Consumers Act – to tackle perceived problems in the tech market.

AI is a key area to watch, with authorities around the world grappling with fast moving developments – including the risk of information exchange – in an industry characterised by close links between players active at different levels of the chain. Expect action from competition authorities using all the tools in their toolbox and watch out for our forthcoming Tech 5 Themes publication for more detail.



Consumer markets

Amid rising prices and inflation, competition authorities globally have been examining markets which directly impact prices paid for consumers goods – especially essentials such as groceries.

Fines imposed by authorities on players in food supply chains in 2021-2023 exceeded €450m – including Mondelez’s €337.5m fine; the highest imposed by the EU for illegal restrictions on parallel trade to date. Market investigations into grocers are ongoing in many jurisdictions including the EU and numerous Member States, the UK, Canada, New Zealand, South Africa. The focus extends beyond life’s essentials, with fines also imposed in relation to luxury goods including champagne, premium teas and luxury watches.

This is set to continue, as a number of authorities have been ramping up their use of consumer enforcement powers including in France, Italy, Poland and the US. The UK’s CMA is also set to get a new suite of fining powers for consumer infringements.



Healthcare and pharma

Healthcare and pharma have been in the spotlight for many years, and the past three have been no different – especially in the wake of the global pandemic. Key fines in the sector included **€191m on multiple health companies** by the Portuguese authority and a number of penalties against **pharma companies in the UK** charging the NHS excessive prices for medicines. Many jurisdictions globally include the sector in their statement of priorities, including Brazil, Belgium, France and Mexico, while China has published draft antitrust guidelines for the sector.

The EC has been a natural home for novel theories of harm – the outcome of **its investigation** into whether disparagement of rival drugs can constitute an abuse of dominance will be of great interest. Meanwhile, enforcement and investigations against pay-for-delay, reverse payments and settlements of patent litigation have continued in many jurisdictions, including the US.

Broader sector reform is on the cards in several jurisdictions, including the EU, where the European Parliament adopted the EC’s proposal to reform the core EU pharmaceutical legislation – which may well impact future enforcement at both EU and Member State level.

What should you do?

Intensify focus on compliance and risk management if active in high-risk sectors. Flag to boards and ensure that risks specific to your business are identified and communicated to the people that need to know.

Watch out for opportunities too – if you think there is a risk that your business is being harmed by anti-competitive practices by suppliers or competitors, consider complaining to an authority or bringing private enforcement proceedings.



Private enforcement of antitrust

Unsurprisingly, the US remains the stand-out jurisdiction for private damages in recent years. Payouts were almost double the rest of the world combined (even excluding settlement figures) and the \$1.8bn damages award against the National Association of Realtors, which reportedly imposed anti-competitive conditions on real estate brokers’ commission payments, is the biggest single damages award in the world.

But damages awards in other jurisdictions are higher than 2018-2020 and the increased number of pending claims, supported by the development of collective actions and litigation funding (especially in Europe), will lead to significant growth across regions.

“The growth of opt-out collective action regimes means that companies are increasingly facing significant cases in multiple jurisdictions. Having a coordinated global strategy to manage both regulatory and litigation risk is more important than ever.”

Sarina Williams, Partner, UK

Largest damages awards

US		Rest of world	
Case	Damages awarded	Case	Damages awarded
Real Estate class action	\$1.8 billion	France – Exclusionary practices in telecoms award to Digicel	€174 million
Ingevity Corp award to BASF Corp	\$85 million	South Korea – Damages award to K-water	€159 million
United Egg Producers Inc. award to Kraft Foods Global Inc.	\$18 million	China – Alibaba dominant position (<i>under appeal</i>)	€131 million

Based on publicly available information

The development of private enforcement is well-linked with a drop in leniency applications. Although the EC has managed to reverse this tendency across 2021-2023, leniency application numbers **remain lower than they were 10 years ago**.

Leniency remains an important tool that enforcers – particularly in Asia – continue to promote. In 2023, India introduced its Leniency Plus regime, which incentivises existing leniency applicants to whistleblow on other cartels (leading to additional penalty reductions in both cases). However, antitrust authorities are also turning to alternative tools to obtain information and start ex officio investigations – eg individual whistleblowing incentives and advanced technology to detect infringements.



Private enforcement of antitrust

EU

Almost a decade on from the EU’s Damages Directive, all EU Member States have now implemented the Directive. But given the time lag, most of the claims on their dockets have not yet reached damages award stage. Germany and the Netherlands remain favoured jurisdictions for private enforcement cases in the EU – but other Member States, such as France, Portugal and Spain, are becoming increasingly relevant.

A variety of factors may influence claimants’ jurisdiction choice. Looking at the claims pipeline, one of the key indicators for the significance of a regime is whether the jurisdiction has implemented a collective opt-out claims system – for example in Portugal the pending claims docket has nearly hit 30 cases. In parallel to this trend, EU courts are still clarifying issues, whether procedural or on the merits, in relation to private enforcement (see [here](#) for more information on recent case law).

UK

The UK is home to a significant number of standalone and follow-on damages claims, with hundreds of live claims before the High Court and Competition Appeal Tribunal (CAT). In 2023, damages awards **totalling more than £38.5m** were granted to Royal Mail and BT against DAF – a first wave emerging from the Trucks cartel.

Collective actions are continuing to gather pace as a result of the collective action procedure that was introduced in October 2015. The CAT has notably approved the first two collective settlements under this regime and heard the first full trial under the regime in *Le Patourel v BT* in early 2024. The Supreme Court decision in *Paccar* has not dampened the availability of litigation funding, although the government will consider legislation once the Civil Justice Council has completed its ongoing review into litigation funding (expected to conclude in summer 2025).

In the meantime, use of the regime continues to grow at a rapid pace, with several significant trials to watch out for in 2025.

Asia

South Korea continues to be the stand-out player in private damages in Asia, with damages awards in excess of €350m, particularly involving collusion in the construction and infrastructure industries. But there are signs that litigation implications will become increasingly important elsewhere too. China has seen a successful claim against Alibaba, who was ordered to pay RMB 1bn to JD.com in a follow-on claim (based on SAMR’s finding that Alibaba abused its dominant market position to require exclusivity from retailers on its platforms). Three other (smaller) awards in 2022 also indicate a growing interest in private claims. Similarly, in Japan, three successful damages claims meant almost €11m was paid out to private claimants in 2021-2023 (although one has since been overturned) – a significant growth on the previous three-year period.

Americas (ex-US)

Of note in this region are damages settlements totalling over €100m in mass class actions between 2021-2023 in Canada, as well as follow-on damages settlements of almost €30m in the food industry in Chile. In Brazil, the private enforcement culture remains nascent (with new **legislation** enacted in 2022). But note two awards (for a total of €11.9m) in 2023, for cases initiated not by private parties, but by the Public Prosecutor’s Office.

What should you do?

Factor in private enforcement strategy from the start of an investigation. Claims will follow an infringement finding so defence strategies (especially leniency decisions) must factor in litigation risk.

Be aware of growth globally. Defence strategies must be global in approach and take into account growth in non-traditional jurisdictions.

Stand-alone claims in growth mode. Stand-alone claims are increasingly popular. Listen out for market rumours about pending class actions to stay ahead of the curve.



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