2024 YEAR IN REVIEW

ABA International Law Section
International Antitrust Committee
Long Form Supplement

LETTER FROM THE EDITOR

Welcome to the 2024 Antitrust Year in Review, a compilation of the most important recent developments in antitrust law worldwide. Our contributors, each a leading antitrust practitioner in his or her own jurisdiction, recap key legislation, enforcement actions in respect of mergers, cartels, dominance, and anti-competitive practices, major litigation and other major developments over the past year. This publication acts as a supplement to, and expansion of, the International Antitrust Committee's contribution to the International Law Section's Year in Review issue, published July 2025. This year we are proud to expand our coverage to include 21 jurisdictions across the Americas, Europe, Africa, and the Asia-Pacific region.

In another eventful year of antitrust developments, some key themes arose across multiple jurisdictions. 2024 was another year of significant enforcement across all areas of antitrust law, with increased enforcement in many jurisdictions across mergers, civil and criminal matters and in private litigation. Many jurisdictions have implemented legislative changes to strengthen enforcement powers, particularly in the mergers space where amendments tended to broaden the application of merger control regimes or give enforcers additional tools to capture potentially problematic mergers. Monetary penalties for antitrust wrongdoing also were historically high in many jurisdictions. With 2025 poised to include still more activity in the antitrust field, our authors will continue to track these emerging trends.

The 2024 year in review is the culmination of a great deal of work on the part of our authors and our editorial team. Special thanks are owed to Jon Wall of Goodmans LLP, Sam Steeves of McCarthy Tétrault LLP and Teraleigh Stevenson of Davies Ward Phillips & Vineberg LLP for their editorial eyes. We also thank all of our authors – each of whom is listed in the first footnote of their respective articles – for their work distilling key developments and providing keen insight in their jurisdictions.

We hope you enjoy reading our summary of key competition and antitrust developments, and that this publication serves as a valuable primer on the current state of play in an ever developing antitrust landscape.

Sincerely,

Kate McNeece

2024 Year In Review – International Antitrust

Kate McNeece, ed.[1]

This Article outlines the most significant development in international antitrust in 2024 in the following jurisdictions.

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I. ARGENTINA[2]

A. LEGISLATIVE DEVELOPMENTS

On May 28, 2024, by means of Resolution No. 98, the Secretary of Trade approved the *Regulation for the Implementation of the Leniency Program*,[3] submitted by the Comisión Nacional de Defensa de la Competencia ("**CNDC**") after public consultation. The objective of this Program is to detect, investigate and sanction anti-competitive behaviours, by incentivizing companies and individuals involved in such conduct to come forward voluntarily. The benefit of this new Program is that those who self-report and collaborate can be eligible for full immunity or reduction of sanctions pursuant to Antitrust Law, based on a 'race-to-the-door' system.

The effective implementation of this program is expected to significantly increase enforcement, making it a key tool in the fight against cartels and other anti-competitive behaviors in Argentina.

On January 3, 2025, by means of Disposition 156/2024 the CNDC modified the inclusion and exclusion criteria for the notification of economic concentration operations. This procedure, established under Resolution 905/2023 by the former Secretary of Commerce, aims to expedite the review of mergers and acquisitions that are unlikely to pose significant threats to competition in a given market.

These changes are based on the CNDC's experience in dealing with economic concentration operations. On the one hand, regarding horizontal economic concentrations, the new regulation states that the combined market share in each relevant affected market must now be less than 50%,

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[2] Miguel del Pino, Santiago del Rio, Pilar Moreyra, *Marval, O'Farrell, Mairal*.

[3] Resolución 905/2023, available at: https://servicios.infoleg.gob.ar/infolegInternet/anexos/380000-384999/383980/norma.htm.

an increase from the previous threshold of 35%. As for the exclusion criteria, one of the changes stipulated by the CNDC established that, if a regulatory body in terms of Article 17 of the Antitrust Law were to oppose to the transaction because it involved regulated markets, then said economic concentration would not apply for the Procedimiento Sumario ("**PROSUM**").

B. MERGERS

In 2024, a total of 47 transactions were notified and, as of January 2024, the CNDC has unconditionally approved 69 transactions. In addition, since 2020, the CNDC has issued 8 Statements of Objections, of which 6 have concluded, the latest being Avon / Natura.

Avon / Natura

This transaction consisted of the acquisition of the sole control over Avon by Natura.[4] The Secretary of Trade imposed behavioural remedies on the transaction, for a period of three years, including the (i) prohibition of exclusivity clauses in contracts with tollers, suppliers and resellers, and (ii) an obligation to ensure the individual offering of products that are usually offered in kits, intended to mitigate entry barriers and portfolio effects.

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

In January 2024, the CNDC started an investigation for alleged cartelization between prepaid medicine companies. The investigation was launched following indications that these companies may have engaged in coordinated conduct to increase the price of their health plans in a concerted and simultaneous manner, raising serious concerns under Argentina's *Antitrust Law*.[5] As a result,

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[4] Avon/Natura, available at: https://www.argentina.gob.ar/sites/default/files/2024/10/conc173914b_-_reso_y_dictamen_2.pdf.

[5] *Hernán Leandro REYES and Juan Facundo DEL GAISO /c GALENO ARGENTINA S.A.*, available at: https://www.argentina.gob.ar/sites/default/files/2024/04/resolucion_y_dictamen_0.pdf.

an interim measure was issued, ordering the involved companies, along with the Argentine Health Union and its president, to readjust the prices of their prepaid medicine plans monthly, strictly in line with the official Consumer Price published by the National Statistics and Censuses Institute ("**INDEC**", for its acronym in Spanish).

By tying price adjustments to an objective inflation index, the CNDC aimed to suspend any potentially unlawful pricing coordination and to ensure that consumers would not continue to suffer unjustified or artificial price increases. The investigation is currently ongoing.

D. DOMINANCE

In 2022, an investigation was initiated by a complaint filed by the Argentine Chamber of Internet against Tele Red Imagen S.A ("**Tele Red**"). The complaint alleged that, since June 2019, Tele Red had systematically refused to provide access to the TyC Sports signal to internet service providers and other companies affiliated with the Argentine Chamber. According to the complainant, this refusal constituted exclusionary conduct that limited competition in the market for the distribution of audiovisual content, particularly in the broadcasting of live sports events. In May 2024, the CNDC issued an opinion to the Secretary of Trade, recommending that Tele Red be ordered to immediately make the TyC Sports signal, as well as the exclusive sports content it broadcasts, available to companies affiliated with the Argentine Chamber. This recommendation was intended to prevent irreparable harm to competition and ensure that affected companies could continue to offer competitive broadcasting services while the investigation remains ongoing.

E. KEY COURT CASES

FEHGRA/SADAIC: Leading Case on Abusive Pricing is Reversed

In February 2023, the Supreme Court of Justice deemed inadmissible the extraordinary appeal[6] filed by the National Ministry of Production and Labor, granting res judicata status to the decision of the Federal Civil and Commercial Court revoking the economic sanction imposed to the "Sociedad de Autores y Compositores de Música", for the alleged anti-competitive conduct of abusive pricing.

The Court's judgment, confirmed by the Supreme Court, stands as a relevant precedent for abusive pricing cases within Argentine jurisprudence, putting an end to the leading case on the matter by revoking the only sanction for abusive pricing that has been imposed by the CNDC.

Digital Payments Market

In 2023, a complaint was filed before the CNDC concerning the alleged anti-competitive conduct of major international credit card brands. The complainant argued that the restrictions imposed by these brands had an objective to prevent Fintech companies from participating in the processing of payments involving cross-border transactions, constituting an abuse of dominance within the meaning of the *Antitrust Law*. According to the claim, these major credit cards brands were harming both competitors and consumers excluding Fintech companies from the market. In October 2023, the CNDC imposed an interim measure against Visa, Prisma Medios de Pago and

[6] *Federación Empresaria Hotelera Gastronómica de la República Argentina c/ SADAIC*, available at: https://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verDocumentoByIdLinksJSP.html?idDocumento=7816991

First Data Cono Sur, ordering the suspension of said programs and their alleged exclusionary practices until the CNDC concluded its investigation.

Despite the interim measure being challenged before the Civil and Commercial Court of Appeals by Visa, in January 2024, the Court ultimately rejected Visa's arguments, dismissing the appeal and confirming the interim measure imposed by the CNDC. The investigation is still ongoing.

II. AUSTRALIA[7]

A. LEGISLATIVE DEVELOPMENTS

Legislative reform to Merger Laws: a new mandatory, suspensory merger regime

On December 10, 2024, the Australian Federal Government ("**Government**") enacted the *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024* (Cth), which will transform Australia's current voluntary merger regime into a mandatory and suspensory administrative merger control regime. Under the new regime, notification of mergers will no longer be voluntary; instead, acquisitions that meet certain thresholds and are 'connected with Australia' will trigger a requirement to notify the Australian Competition and Consumer Commission ("**ACCC**").[8] While some details of the new regime are yet to be finalised, a summary is set out below:

- **Commencement:** The new mandatory filing regime will commence on January 1, 2026, though parties can voluntarily notify under the new regime beginning on July 1, 2025. 2025 is anticipated to be a year of preparation and transition between the regimes.

- **Thresholds**: The thresholds are yet to be finalised but are expected to include both control and monetary thresholds. The monetary thresholds are expected to consider the turnover of the acquirer and the target, as well as the turnover of similar targets acquired within the last three years (to capture 'serial acquisitions').

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[7] Robert Walker, Roy Chowdhury and Tom McCarthy, *Allens*.

[8] *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024* (Cth); Exposure Draft of *Competition and Consumer (Notification of Acquisitions) Determination 2025* (Cth); Exposure Statement of Exposure Draft of *Competition and Consumer (Notification of Acquisitions) Determination 2025 (Cth)*.

- **Connected with Australia**: Notification is expected to only be required where the target has a connection with Australia. This includes 'carrying on business in Australia' and potentially also an intention to carry on business in Australia.

- **Notifications and waiver**: There will be a short-form notification for transactions that are unlikely to raise competition concerns, and a long-form notification for all other transactions. The ACCC has also released provisional guidance, including market share thresholds, to help parties determine which form to use.[9] Both forms are expected to require organisational charts, financial information and transaction information. The same review process applies regardless of choice of form. Alternatively, parties can seek a waiver from the ACCC to be exempted from notifying about a merger.

- **Suspensory**: Notifiable transactions are 'suspended' (i.e., cannot be put 'into effect') until a positive ACCC determination. Putting a transaction 'into effect' is not limited to a full transfer of ownership, but can also include pre-completion activities such as employment-related matters, IT or operative changes.[10]

- **Expanded test**: The ACCC will assess notified transactions under an expanded 'substantial lessening of competition' test, which will also consider whether a notified merger is likely to create, strengthen or entrench a substantial degree of market power. Where the ACCC does not clear a transaction pursuant to the 'substantial lessening of competition' test (or only clears it conditionally), parties can request the ACCC to assess

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[9] Australia Competition & Consumer Commission, Provisional guidance on criteria for long form notification (28 Mar. 2025), https://www.accc.gov.au/system/files/provisional-guidance-criteria-long-form-notifications.pdf.

[10] Explanatory Memorandum, *Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024* (Cth), s. 3.73.

the transaction under an alternative 'public benefits' test, that is, whether the acquisition would result or be likely to result in a net benefit to the public.

- **Tribunal review**: Both merger and third parties can apply to the Competition Tribunal for a limited merits review of an ACCC merger determination.

Digital Platforms Competition Regime

On December 2, 2024, the Government released a proposal to introduce an ex-ante competition framework aimed at dominant digital platforms.[11] The proposed framework would empower the Government to designate digital platforms and impose both broad and service-specific obligations on designated platforms. The broad obligations would be specified in primary legislation and apply to all designated digital platforms, while the service-specific obligations would be specified in subordinate legislation and apply only to certain designated digital services.

The Government has identified app marketplaces, ad tech services and social media services as 'priority services' that would be considered under the new regime if it comes into effect. The consultation concluded on February 14, 2025 and the Government is yet to announce any further developments concerning this regime.

Prohibitions on non-compete and trade restraints

On April 3, 2024, the Federal Treasury released an Issues Paper proposing potential prohibitions for post-termination restraints of trade, non-solicitation clauses and wage-fixing agreements.[12] The

[11] Australia, The Treasury, A new digital competition regime, Proposal Paper (Dec. 2024), https://treasury.gov.au/sites/default/files/2024-12/c2024-547447-pp.pdf.

[12] Australia, The Treasury, Non-competes and other restraints: understanding the impacts on jobs, business and productivity, Issues Paper (Apr. 2024), https://treasury.gov.au/sites/default/files/2024-04/c2024-514668-issues-paper.pdf.

Government is concerned with the impact of such restraints on worker mobility (particularly among young and low-paid workers).[13] The consultation concluded on May 31, 2024. The Government is yet to announce any further developments concerning this regime.

B. MERGERS

Authorisations

In 2024, there were no applications for any merger authorisations in Australia. In contrast, the ACCC considered a record three authorisation applications in 2023.

The ACCC Informal Review Process

As discussed above, the ACCC's informal (voluntary) merger review process operated in 2024 and will remain in force until December 31, 2025. In 2024, the ACCC conducted 39 public reviews. Of these, the ACCC unconditionally did not oppose 19 transactions, while seven required undertakings as a prerequisite for their clearance. Some of the key notified transactions were:

- **Brookfield's acquisition of Neoen**. The ACCC did not oppose Brookfield's acquisition of Neoen, subject to an undertaking by Brookfield to divest Neoen's existing renewable electricity generation and storage assets and its development projects in the state of Victoria. The ACCC was concerned that Brookfield had a controlling interest in Victoria's electricity transmission network and that, without the undertaking, could have used its interest to favour its own generation and storage assets.[14]

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[13] *Id*.

[14] Australia Competition & Consumer Commission, Brookfield's acquisition of Neoen not opposed, subject to divestments (31 Oct. 2024), https://www.accc.gov.au/media-release/brookfield%E2%80%99s-acquisition-of-neoen-not-opposed-subject-to-divestments.

- **Stockland and Supalai partnership**: The ACCC did not oppose the acquisition of Lendlease's 12 master planned community projects after accepting an undertaking for Stockland to divest its masterplan community project in the Illawarra region. The ACCC cited concerns the transaction would increase the concentration of Stockland's masterplan communities in the area.[15]

- **Sigma Healthcare's acquisition of Chemist Warehouse**: The ACCC did not oppose Sigma's acquisition of Chemist Warehouse subject to a behavioural undertaking. Both Sigma and Chemist Warehouse are franchisors of pharmacies, and Sigma is also a pharmacy wholesaler. Sigma committed to allowing pharmacies to switch to other banner groups or wholesalers without penalty and restricting use of certain confidential data.[16]

- **Viva Energy's acquisition of LOC global**: The ACCC did not oppose Viva's proposed acquisition of 50% of LOC Global from New World Corporation subject to an undertaking from Viva to divest 14 retail fuel and convenience sites to a subsidiary of New World Corporation.[17] The undertaking addressed the ACCC's concern about the parties' retail fuel supply overlap.

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[15] Australia Competition & Consumer Commission, Stockland and Supalai's acquisition of Lendlease MPC projects not opposed, subject to divestiture (26 Sept. 2024), https://www.accc.gov.au/media-release/stockland-and-supalais-acquisition-of-lendlease-mpc-projects-not-opposed-subject-to-divestiture.

[16] Australia Competition & Consumer Commission, Sigma and Chemist Warehouse proposed merger not opposed, subject to undertaking (7 Nov. 2024), https://www.accc.gov.au/media-release/sigma-and-chemist-warehouse-proposed-merger-not-opposed-subject-to-undertaking.

[17] Australia Competition & Consumer Commission, Viva Energy's proposed acquisition of LOC Global not opposed, subject to divestiture (12 Dec. 2024), https://www.accc.gov.au/media-release/viva-energys-proposed-acquisition-of-loc-global-not-opposed-subject-to-divestiture.

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

Full Federal Court and High Court ruling on meaning of 'understanding'

In March 2024, the Full Federal Court of Australia upheld appeals by a construction union and construction company against an earlier judgment in favour of the ACCC.[18] The trial judge had found that the union and the construction company entered and gave effect to an 'understanding' to boycott a waterproofing subcontractor in contravention of Australia's secondary boycott provisions. Specifically, the union threatened industrial action unless the subcontractor was removed from the project and the construction company subsequently terminated the subcontract. The Full Federal Court found there was insufficient evidence to support an inference that an understanding had been reached.

In August 2024, the High Court of Australia granted the ACCC special leave to appeal. In April 2025, the High Court dismissed the appeal.[19] The majority ruled that compliance with a threat, without evidence of express or implied mutual commitment, does not constitute an 'understanding'. The decision offers some clarification around what is meant by a 'contract, arrangement or understanding', which is a key element in Australia's cartel and anti-competitive agreements prohibitions.

Updated ACCC immunity policy

On December 18, 2024, the ACCC released an updated immunity and cooperation policy for cartel conduct.[20] The updates are intended to increase transparency about how the policy is administered

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[18] *J Hutchinson Pty Ltd v Australian Competition and Consumer Commission* (2024) 302 FCR 79.

[19] *Australian Competition and Consumer Commission v. J Hutchinson Pty Ltd (ACN 009 778 330) & Anor [2025]* HCA 10.

[20] Australia Competition & Consumer Commission, Immunity and cooperation policy for cartel conduct (18 Dec. 2024), https://www.accc.gov.au/about-us/publications/accc-immunity-and-cooperation-policy-for-cartel-conduct.

by the ACCC, and to update and clarify the requirements for immunity applicants. It is now a criteria for corporate conditional immunity (and corporate derivative conditional immunity) from ACCC-initiated civil proceedings that the corporation has implemented measures, or undertaken to implement measures, to mitigate the risk of future non-compliance with Australia's competition and consumer laws. The updated policy also confirms that, at the proffer stage, the ACCC will not generally permit representatives of an immunity applicant to attend ACCC interviews with a derivative immunity applicant.

D. DOMINANCE

In 2024, the ACCC continued its proceedings against Mastercard Asia/Pacific Pte Ltd and Mastercard Asia/Pacific Australia Pty Ltd ("**Mastercard**") for alleged misuse of market power. The ACCC alleges that Mastercard entered into agreements with major retailers offering discounted rates for credit card transactions processed over the Mastercard network. This discount was conditional on businesses processing all or most of their debit transactions through the Mastercard network, rather than the eftpos network. The ACCC alleges that Mastercard substantially lessened competition in the supply of debit card acceptance services.[21] The matter has been delayed and is scheduled for trial in the Federal Court of Australia in 2026.

In 2024, Epic Games also continued its proceedings against Apple and Google for misuse of market power and other anti-competitive arrangements. Epic Games alleged that Apple and Google restricted the use of alternative app stores or in-app payment solutions on their iOS and

[21] Australia Competition & Consumer Commission, Mastercard in court for alleged misuse of market power over card payments (30 May 2022), https://www.accc.gov.au/media-release/mastercard-in-court-for-alleged-misuse-of-market-power-over-card-payments.

Android platforms.[22] The trial concluded in July 2024, and, at the time of writing, judgment is pending.

[22] *Epic Games Inc & others v Apple Inc & another* (NSD 1236/2020); *Epic Games Inc & others v Google LLC & others* (NSD 190/2021).

III. BRAZIL[23]

A. LEGISLATIVE DEVELOPMENTS

Three draft bills aimed at regulating digital platforms and protecting intellectual property rights remain pending before the Brazilian Congress.[24] Despite the lack of progress on these proposals, the Ministry of Finance has recently put forward a plan to strengthen the Administrative Council for Economic Defense ("**CADE**"), empowering it to oversee digital platforms, particularly large tech companies, as part of broader efforts to address issues of market concentration, competition, and user data protection within Brazil's digital economy.[25]

While it is unclear if the drafts, or even the Ministry of Finance's plan, will move forward, these recent initiatives indicate an important move by the government in regulating the digital sector. The potential new legislation would seek to align with the Ministry's goals, promoting fair competition and preventing monopolistic practices in Brazil's evolving digital landscape.

B. MERGERS

In 2024, CADE reviewed 697 transactions,[26] amounting to approximately BRL 1 trillion (≈ US$ 175 billion[27]) in total value. The main sectors involved included energy, real estate, retail and industry. Of these, 680 transactions were unconditionally cleared, two were cleared with restrictions, and 13 were dismissed for not meeting the mandatory notification threshold. In

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[23] Milena Mundim and Julia Braga, *Lefosse Advogados.*

[24] Draft Bill No. 2768/2022, Draft Bill No. 2630/2020, and Draft Bill No. 2370/2019.

[25] See Ministry of Finance, *Digital Platforms: Competition Aspects and Regulatory Recommendations for Brazil* (Dec. 16, 2024), *available at* https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/sre/relatorio-consolidado-traducao-26122024.pdf.

[26] CADE, *CADE em Números* (Braz.).

[27] Exchange Rate: 1 USD = 5.68 BRL (2024).

addition, only one transaction was blocked by CADE.[28] The average review period was 21.5 days overall, 15.1 days for fast-track cases and 93.9 days for non-fast-track cases.[29]

The only transaction blocked by CADE in 2024 was unanimously rejected by the Tribunal and involved two companies operating in the drywall market. The case concerned Knauf do Brasil Ltda.'s proposed acquisition of Trevo Industrial de Acartonados S.A. According to the Tribunal's decision, the market lacks sufficient competition, as only four companies are active in the sector– two of which are Knauf and Trevo. Although the parties proposed remedies to secure approval, these were deemed insufficient and difficult to monitor.[30]

CADE launched 18 gun-jumping cases in 2024, significantly exceeding the previous year's total (eight gun-jumping cases).[31] Of these, nine were settled through a Merger Control Agreement ("**ACC**," in Portuguese), three resulted in a determination that the transaction must be submitted for CADE's review, and four were closed.

One of the most notable cases involved the acquisition of Goshme Soluções para a Internet Ltda. ("**JusBrasil**") by Digesto Pesquisa e Banco de Dados S.A., in which the parties did not notify the transaction in advance based on their understanding that it did not meet the turnover thresholds.[32] After extensive discussions regarding the definition of an economic group, it was ultimately determined that the parties did meet the relevant criteria.

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[28] In 2024, CADE's Tribunal dismissed a merger case based on article 62 of Law 12.529/2011 (the Brazilian Competition Act), due to misleading information and documents presented by the parties. See Administrative Council for Economic Defense (CADE), Merger Case No. 08700.004023/2024-93 (Braz.).

[29] CADE, *Anuário 2024* (Braz.).

[30] CADE, Merger Case No. 08700.003198/2023-01 (Braz.).

[31] CADE, *Anuário 2024* (Braz.).

[32] CADE, APAC No. 08700.000641/2023-83 (Braz.).

However, due to a lack of clear guidelines for defining economic groups involving investment funds, CADE did not impose a fine on the applicants. The case raised important considerations, particularly by expressly stating that the starting point for determining the economic group is the identification of the parties directly involved in the transaction, and by highlighting the importance of a case-by-case analysis of control aspects, based on CADE's precedents.

Furthermore, a new understanding regarding the approach to calculating gun-jumping fines now sets a limit of 20% of the transaction value for fines imposed on good-faith violators[33]. In cases where the transaction value is very low, CADE's precedents have considered alternative metrics to determine the transaction value, such as the tangible and intangible assets necessary for the company's operation, capital increases, and the nationalized value of global operations.[34]

Using its legal prerogative to request the submission of transactions that are not subject to mandatory notification, CADE determined that the acquisition of MM Turismo & Viagens S.A. ("**Maxmilhas**") by 123 Viagens e Turismo Ltda. ("**123milhas**") should be submitted for analysis.[35] The decision was based on the understanding that the turnover figures reported by the companies and their respective economic groups might not reflect their actual economic power or the significance of the transaction – particularly given the large volume of business both companies have generated in the air miles sales intermediation market in recent years.

[33] CADE. APAC No. 08700.005463/2019-09 (Braz.).

[34] CADE, APAC Nos. 08700.009028/2023-21, 08700.009331/2023-80, and 08700.006175/2023-40 (Braz.).

[35] CADE. APAC No. 08700.004240/2023-01 (Braz.).

In addition to requiring submission, CADE decided to convert the review to the non-fast-track procedure due to the parties' significant market shares in the air miles segment. After an in-depth market analysis, the transaction was unconditionally approved in October 2024.[36]

2024 also featured the launch of important guidelines and tools by CADE. In April, CADE released the *Non-Horizontal Merger Guidelines*, inspired by those of the European Commission and aligned with antitrust initiatives in other key jurisdictions, such as the United States.[37] In addition, CADE published the *Manual for Trustees*, aimed at formalizing and enhancing the monitoring of compliance with decisions, commitments, and agreements adopted in the context of mergers and anticompetitive practices involving the implementation of remedies.[38]

CADE also launched the e-Notifica tool to improve the online systems for fast-track merger submissions. The objective is to modernize and digitize the notification process. Despite this initiative, of all fast-track transactions submitted to CADE in 2024, only 32 were filed through e-Notifica, with an average analysis time of 10.4 days under this new system – slightly shorter than the average analysis time under the traditional system.[39] At the end of the year, CADE also launched the tool's first update.[40]

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[36] CADE, Merger Case No. 08700.008693/2023-06 (Braz.)

[37] See CADE, *Guia V+*, *available at* https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/Guia V+/Guia-V+2024.pdf (Braz.).

[38] See CADE, *Manual para Uso de Trustee (2024)*, *available at* https://www.gov.br/cade/pt-br/assuntos/noticias/superintendencia-geral-do-cade-publica-manual-para-uso-de-trustee/Manualdetrusteefinal.pdf (Braz.).

[39] CADE, *Anuário 2024* (Braz.).

[40] See CADE, *Cade apresenta versão atualizada do e-notifica* (Nov. 1, 2024), *available at* https://www.gov.br/cade/pt-br/assuntos/noticias/cade-apresenta-versao-atualizada-do-e-notifica (Braz.).

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

In 2024, CADE ruled a total of 21 anticompetitive proceedings, including 17 cartels, one involving unilateral conduct and three involving uniform conduct.[41] The fines imposed totaled approximately BRL 300 million (≈ US$ 52.7 million[42]), representing an increase of over 200% compared to 2023. The main cases involved the markets for salt, medicines, orthoses and prostheses, forklift trucks, and soccer championship advertising.

Over the past two decades, CADE has signed a total of 113 leniency agreements, averaging five agreements per year.[43] In 2024, CADE signed four leniency agreements – twice as many as in the previous year. CADE also updated its understanding by recognizing that statements made by leniency signatories may not, on their own, constitute sufficient grounds to initiate proceedings unless supported by appropriate documentation.[44]

Finally, a decision involving the practice of inviting competitors to cartelize in the ethanol market drew attention in 2024 due to a divergence among CADE's Tribunal members regarding the appropriate methodology for analyzing such conduct – whether to apply the *per se* rule or the rule of reason.[45] Although the proceeding was closed without a conviction, the discussion marked an important development in CADE's case law. The Tribunal ultimately agreed that the key to analyzing an invitation to cartelize lies in understanding the context in which the statement was made and the specific characteristics of the market – whether the statement was sufficiently generic

[41] CADE, *CADE em Números* (Braz.).

[42] See footnote 27 for the exchange rate.

[43] See CADE Leniency Program Stats, available at https://www.gov.br/cade/pt-br/assuntos/programa-de-leniencia/estatisticas (Braz.).

[44] CADE, Administrative Proceeding No. 08700.003510/2021-96 (Braz.).

[45] Administrative Proceeding No. 08700.005438/2021-31 (Braz.).

to reflect only general market trends (as determined in this case), or whether it effectively demonstrates the existence of an anti-competitive conduct.

D. DOMINANCE

CADE has been taking an increasingly proactive stance in digital markets, despite the fact that regulation has not yet sufficiently progressed. In late 2024, CADE's General Superintendence ("**GS**") launched an administrative inquiry against Google Brasil Internet Ltda.[46] and an administrative proceeding against Apple Computer Brasil Ltda. ("**Apple**") to investigate alleged abuse of dominance.[47]

The investigation against Apple stems from the Terms & Conditions established by Apple to govern the functioning of its mobile operating system, iOS. CADE's GS is examining if these practices have the potential to foreclose the Brazilian market for the distribution of mobile apps, digital goods and services, and systems for processing transactions in apps on the iOS operational system. Given the circumstances, CADE also imposed a preventive measure against the company, which Apple has challenged before the Judiciary Branch. Both the judicial case and the administrative proceeding are still ongoing.

[46] Administrative Inquiry No. 08700.009916/2024-25 (Braz.).

[47] Administrative Proceeding No. 08700.009531/2022-04 (Braz.).

IV. CANADA[48]

A. LEGISLATIVE DEVELOPMENTS

In June 2024, Bill C-59,[49] the third of three bills containing major amendments to *Competition Act* (the "**Act**") since 2022, received royal assent. Among the amendments, Bill C-59 introduced a rebuttable structural presumption of anti-competitive effects for mergers that result in or are likely to result in a significant increase in concentration or market share by exceeding new quantitative thresholds set out in the Act, adapted from the US *Horizontal Merger Guidelines*.[50] Further, the remedies available to the Competition Tribunal ("**Tribunal**") must now preserve or restore competition to pre-merger levels, rather than eliminate the "substantial" element of any lessening or prevention of competition resulting from the merger. The limitation period applicable to any challenge by the Competition Bureau (the "**Bureau**") to non-notified transactions increased from one year to three years post-closing.

Bill C-59 also significantly broadened other aspects of civil enforcement under the Act. Private parties now have the ability to seek leave to bring proceedings to the Tribunal under the Act's deceptive marketing and competitor collaboration provisions that could previously only be initiated by the Bureau. New administrative monetary penalties are now available under the competitor collaboration provisions, and those competitor collaboration provisions now also apply to certain agreements that are not between competitors, and past anti-competitive agreements for up to three years after termination. New greenwashing provisions carry a reverse onus on parties

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[48] Adam S. Goodman, Simon Kupi and Camila Maldi, *Dentons*.

[49] C-59, *An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023*, 1st Sess, 44th Parl, 2023 (assented to 20, June 2024).

[50] U.S. Department of Justice & FTC, *Merger Guidelines* § 2.1 (2023), online: https://www.justice.gov/d9/2023-12/2023 Merger Guidelines.pdf.

to substantiate claims regarding the benefits of products, businesses and business activities for protecting or restoring the environment or mitigating climate change.

Further amendments of note under Bill C-59 include: (1) an expanded refusal to deal provision that applies to situations where a refusal substantially affects only part of a business rather than the business as a whole, and where a manufacturer refuses to provide a means of diagnosis and repair; (2) anti-reprisal provisions to protect individuals communicating or cooperating under the *Act*; and (3) a new procedure allowing parties to request certificates from the Bureau exempting certain agreements or arrangements from the Act's conspiracy, bid-rigging, and civil competitor collaboration provisions that the Bureau is satisfied are "for the purpose of protecting the environment" and not anti-competitive.

B. MERGERS

In February, the Bureau approved the purchase of 29 oilfield waste facilities owned by Secure Energy Services ("**Secure**") to Waste Connections, an integrated solid waste services company.[51] The Tribunal had previously ordered the divestiture of these facilities in its decision regarding Secure's 2021 acquisition of Tervita Corporation. In March, the Bureau entered into a consent agreement with Béton Provincial to address concerns with its acquisition of CRH Canada Group Inc.'s concrete operations by requiring the divestiture of a plant and associated assets and employees.[52] In April, the Bureau concluded that the proposed acquisition of Viterra Limited by Bunge Limited would likely be anti-competitive and result in a significant loss of rivalry in

[51] *See* "Competition Bureau approves Waste Connections as buyer of 29 Secure facilities to resolve competition concerns", **Competition Bureau** (Feb. 5, 2024), online: https://www.canada.ca/en/competition-bureau/news/2024/02/competition-bureau-approves-waste-connections-as-buyer-of-29-secure-facilities-to-resolve-competition-concerns.html.

[52] *See* "Competition Bureau statement regarding agreement with Béton Provincial to protect ready-mix concrete competition in Québec", **Competition Bureau** (Mar. 28, 2024), online: https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/competition-bureau-statement-regarding-agreement-beton-provincial-protect-ready-mix-concrete.

Canadian agricultural markets such as grain and canola oil.[53] The transaction was approved by the Governor General in Council with restrictions in January 2025.[54] In June, Bell Media Inc. agreed to sell 669 advertising displays to address concerns with the company's acquisition of a rival outdoor advertising exhibitor.[55] In November, TransAlta Corporation agreed with the Bureau to divest three Alberta generation facilities in connection with its acquisition of rival power producer Heartland Generation Ltd.[56] In December, RONA Inc. entered into a consent agreement to sell a truss manufacturing facility in order to resolve Bureau concerns with its proposed acquisition of a rival producer of these building components.[57]

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

The Bureau obtained a production order in furtherance of its investigation into Kalibrate Canada's data, pricing and consultation services to gas station operators.[58] Kalibrate's business involves providing data services to retail gas and diesel operators, including competitive intelligence. Kalibrate also holds an extensive historical database on the Canadian retail gas and diesel market. The Bureau's investigation relates to how Kalibrate provides pricing guidance to gas station

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[53] *See* "Competition Bureau releases report identifying substantial competition concerns with Bunge's proposed acquisition of Viterra", **Competition Bureau** (Apr. 23, 2024), online: https://www.canada.ca/en/competition-bureau/news/2024/04/competition-bureau-releases-report-identifying-substantial-competition-concerns-with-bunges-proposed-acquisition-of-viterra.html.

[54] Order in Council number 2025-0002.

[55] *See* "Competition Bureau statement regarding the acquisition by Bell of Outedge Canada", **Competition Bureau** (Jul. 12, 2024), online: https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/competition-bureau-statement-regarding-acquisition-bell-outledge.

[56] *See* "Competition Bureau reaches agreement with TransAlta to preserve competition in wholesale electricity supply in Alberta" Competition Bureau (Nov. 14, 2024), online: https://www.canada.ca/en/competition-bureau/news/2024/11/competition-bureau-reaches-agreement-with-transalta-to-preserve-competition-in-wholesale-electricity-supply-in-alberta.html.

[57] *See* "Competition Bureau reaches agreement with RONA to preserve competition in housing construction" Competition Bureau (Dec. 23, 2024), online: https://www.canada.ca/en/competition-bureau/news/2024/12/competition-bureau-reaches-agreement-with-rona-to-preserve-competition-in-housing-construction.html.

[58] *See* "Competition Bureau advances an investigation into Kalibrate's gas pricing services", Competition Bureau (Jul. 24, 2024), online: https://www.canada.ca/en/competition-bureau/news/2024/07/competition-bureau-advances-an-investigation-into-kalibrates-gas-pricing-services.html.

operators, as well as the level of visibility that Kalibrate's products provide to its customers on their competitors.

D. ABUSE OF DOMINANCE

The Bureau entered into a consent agreement with the Yukon Real Estate Association ("**YREA**") in which YREA agreed not to require prospective members to live in Yukon for a year before they could become a member.[59] The Bureau concluded that this requirement was anti-competitive, creating barriers to new forms of competition, including services offering consumers choices and fee structures different from those of traditional real estate brokerages. The YREA also agreed to ensure non-discriminatory access to the market for future competitors.

Relatedly, the Bureau also announced an investigation into the Canadian Real Estate Association ("**CREA**") relating to real estate commissions and Multiple Listing Services ("**MLS**") systems.[60] The investigation is considering whether CREA's rules requiring a seller's realtor to offer a commission to the buyer's realtor when an MLS-listed property is sold discourage buyers' realtors from competing to offer lower commission rates, following the resolution of the NAR class actions in the United States.[61] The Bureau is also investigating whether CREA's realtor cooperation policies impact the ability for alternative listing services to compete with MLS systems or provide

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[59] *See* "Competition Bureau reaches agreement to protect real estate competition in the Yukon", Competition Bureau (Apr. 25, 2024), online: https://www.canada.ca/en/competition-bureau/news/2024/04/competition-bureau-reaches-agreement-to-protect-real-estate-competition-in-the-yukon.html.

[60] *See* "Competition Bureau advances investigation into the Canadian Real Estate Association's policies", Competition Bureau (Oct. 3, 2024), online: https://www.canada.ca/en/competition-bureau/news/2024/10/competition-bureau-advances-investigation-into-the-canadian-real-estate-associations-policies.html.

[61] *Moehrl, et al. v. National Association of Realtors, et al*., Case No. 19-cv-01610 (N.D. Ill.) and *Gibson, et al. v. National Association of Realtors, et al*., Case No. 4:23-cv-00788 (W.D. Mo.).

larger real estate brokers an unfair advantage relative to smaller brokers. In relation to this investigation, the Federal Court issued a production order against CREA.[62]

In November, the Bureau also obtained court orders to advance two separate software-related abuse of dominance investigations. The first concerned Dye & Durham Limited's practices as a provider of conveyancing software used by lawyers in residential real estate transactions, including practices potentially preventing rivals from supplying such software.[63] The second related to Broadridge Software Limited's supply of book-of-record platforms to broker-dealers in the securities industry, including whether the company's practices prevent competitors from supplying complementary software products to those customers.[64]

E. KEY COURT CASES

The Ontario Superior Court of Justice ("**ONSC**") dismissed a class action alleging misrepresentation by Ticketmaster regarding the enforcement of its terms and policies against ticket resellers.[65] The class action was dismissed on the basis that the plaintiffs failed to establish a causal connection between the representations made in respect of providing a fair market and enforcing ticket limits, and the decision to purchase tickets on the secondary market. The ONSC

[62] *See* "Competition Bureau advances investigation into the Canadian Real Estate Association's policies", Competition Bureau (Oct. 3, 2024) online: https://www.canada.ca/en/competition-bureau/news/2024/10/competition-bureau-advances-investigation-into-the-canadian-real-estate-associations-policies.html.

[63] *See* "Competition Bureau obtains court order to advance an investigation into Dye & Durham's business practices" (Nov. 7, 2024), online: https://www.canada.ca/en/competition-bureau/news/2024/10/competition-bureau-obtains-court-order-to-advance-an-investigation-into-dye--durhams.html.

[64] *See* "Competition Bureau advances an investigation into Broadridge's business practices" (Nov. 26, 2024), online: https://www.canada.ca/en/competition-bureau/news/2024/11/competition-bureau-advances-an-investigation-into-broadridges-business-practices.html.

[65] *Thompson-Marcial v Ticketmaster Canada LP*, 2024 ONSC 2305.

found that the plaintiffs would have suffered the same damages by purchasing from ticket resellers regardless of whether they knew the representations to be false.

The ONSC also certified a class action alleging that manufacturers misrepresented that diesel vehicles included ultra-low emission systems.[66] The manufacturers installed unlawful devices that increased performance at the cost of increasing nitrogen oxide emissions beyond permitted levels. The nitrogen oxide levels were also in excess of the levels disclosed to regulators and as advertised.

The Federal Court of Appeal heard an appeal regarding the certification of a class action[67] alleging that licensed real estate brokerages control prices for the supply of buyer brokerage services in residential real estate purchases in Toronto, which overlaps with the investigation into CREA noted above. In the underlying certification motion, the Federal Court concluded that there was a reasonable cause of action against certain brokerage defendants in respect of the alleged arrangement to control prices, but not regarding the alleged arrangement to fix, maintain, or increase prices. The Federal Court also found that the claim disclosed a reasonable cause of action against certain real estate associations for aiding, abetting, and counselling the price control arrangement. A Canada-wide class action was also initiated on virtually identical grounds.[68] Re/Max Canada, a defendant in both proceedings, has since entered into settlements in respect of its involvement in both.[69]

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[66] *Mackinnon v Volkswagen Group Canada Inc*, 2024 ONSC 4988.

[67] *Sunderland v Toronto Regional Real Estate Board*, 2023 FC 1293.

[68] *McFall v Canadian Real Estate Association*, Toronto T-119-24 (FC).

[69] *See* Clarrie Feinstein, "Re/Max Canada agrees to 'substantial' $7.8-million settlement in lawsuits alleging real estate commissions" (Feb. 27, 2025), online: https://www.thestar.com/business/re-max-canada-agrees-to-substantial-7-8-million-settlement-in-lawsuits-challenging-real-estate/article_4731a2ea-f388-11ef-9c66-bb7d964162ff.html.

The Tribunal ordered a record penalty of CAD $39 million against Cineplex Inc. ("**Cineplex**") for failing to disclose a mandatory online booking fee applicable to ticket sales, contrary to the *Act*'s drip pricing provisions.[70] The Tribunal's decision is the first to impose a penalty under new drip pricing provisions of the *Act* allowing for penalties of up to three times the value of the benefit derived from deceptive conduct or, if that amount cannot be reasonably determined, up to 3% of the corporation's annual worldwide gross revenues.[71] Cineplex has appealed the decision.

The Federal Court stayed a class action alleging drip pricing by Uber Eats on its food delivery platform, upholding the validity of Uber's arbitration clause.[72] In granting the stay, the Federal Court rejected the plaintiff's arguments that the arbitration clause was invalid, that there was a physical impediment to applying the arbitration clause, and that the arbitration clause was void for unconscionability. The Federal Court's decision affirms the enforceability of arbitration agreements against claims for damages under the Act in proposed class actions.

[70] *Cineplex – Reasons for Order and Order*, 2024 CanLII 93716 (CT).

[71] *Competition Act*, RSC 1985, c. C-34, s 74.1(1).

[72] *Lin v Uber Canada Inc*, 2024 FC 977.

V. CHINA[73]

A. LEGISLATIVE DEVELOPMENTS

China Adopts New Merger Control Filing Thresholds

In January 2024, China doubled its previous merger filing thresholds and now requires prior filing to and approval from the Chinese antitrust regulator, the State Administration for Market Regulation ("**SAMR**"), if at least two parties 1) each have more than CNY 800 million (approximately US$116 million) in Chinese revenue and 2) more than CNY 12 billion (approximately US$74 billion) in combined global revenue or more than CNY 4 billion (approximately US$580 million) in combined Chinese revenue in the preceding fiscal year.[74] China also updated its simple filing form, reducing certain information required for the simple filing process.[75] According to statistics published by SAMR, the increased filing thresholds resulted in a 19.3% decrease in SAMR filings in 2024 as compared to 2023.[76]

The New Judicial Interpretation of Antitrust Civil Litigation

In June 2024, China's Supreme People's Court ("**SPC**") released a judicial interpretation regarding civil antitrust disputes (the "**New Judicial Interpretation**").[77] The landmark New Judicial Interpretation significantly lowers the barriers for private antitrust plaintiffs to advance their cases beyond the initial stages—an area where plaintiffs have struggled in prior cases. The New Judicial

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[73] Peter Wang and Yizhe Zhang, *Jones Day*.

[74] State Administration for Market Regulation (China), Provisions of the State Council on Notification Thresholds for Concentrations Between Undertakings (2024 Revision), https://www.gov.cn/zhengce/content/202401/content_6928387.htm.

[75] State Administration for Market Regulation (China), https://www.gov.cn/zhengce/zhengceku/202409/content_6976648.htm

[76] State Administration for Market Regulation (China), https://www.gov.cn/lianbo/bumen/202406/content_6958104.htm; and https://news.cpd.com.cn/n3557/225/t_1173785.html.

[77] https://ipc.court.gov.cn/zh-cn/news/view-3112.html.

Interpretation introduces several key changes including (1) allowing plaintiffs to rely on administrative findings in follow-on litigation; (2) shifting or adjusting the burden of proof in certain cases involving abuse of market dominance, concerted practices, or resale price maintenance; and (3) clarifying the analytical framework for assessing reverse payment agreements in the healthcare sector. These changes are expected to reduce plaintiffs' evidentiary burden and may lead to a surge in private antitrust litigation in Chinese courts.

Guidelines for Standard-Essential Patents ("SEPs")

On November 8, 2024, SAMR released the Anti-Monopoly Guidelines for SEPs (the "**SEP Guidelines**").[78] The SEP Guidelines reflect China's recent practice on FRAND terms and conditions and provides clarifications and guidance on competition issues relating to SEPs. For example, the SEP Guidelines provide that SEP holders will be presumed to have a dominant market position if there is no alternative standard, unless the SEP holders provide sufficient evidence to overcome this presumption. This approach is consistent with prior enforcement cases.[79]

In addition, SEP holders, including patent pools, are subject to rigorous antitrust scrutiny and are subject to extensive licensing and documentation obligations including providing information about their methodology for calculating licensing rates and granting FRAND licenses to entities at any level of the value chain upon request.

[78] State Administration for Market Regulation (China), the Anti-Monopoly Guidelines for Standard Essential Patents (Nov. 8, 2024), https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fldzfys/art/2024/art_77e07edb4b7f4b72844a37c9add3e9fe.html.

[79] See China's National Development of Reform Commission's 2015 decision in *Qualcomm* and the Guangdong High People's Court's 2013 decision in *Huawei v. IDC*.

The Horizontal Merger Review Guidelines

On December 10, 2024, SAMR issued Horizontal Merger Review Guidelines (the "**Horizontal Merger Guidelines**"), comprising 12 chapters and 87 articles.[80] The Horizontal Merger Guidelines offer detailed guidance on market definition, assessment of market shares, procedural protocols, and competition analysis, thus improving transparency and predictability of the SAMR merger review process.

Market definition and market shares are central to SAMR's competition assessment. According to the Horizontal Merger Guidelines, transactions with combined market shares of less than 15% are presumed to not be anti-competitive. Transactions with combined shares of 15%-25% generally do not raise competition concerns, although specific market conditions may warrant further analysis. Transactions with combined shares of 25%-50% are likely to lead to competition concerns requiring close scrutiny. Finally, transactions with combined shares of more than 50% are presumed to be anti-competitive. The Horizontal Merger Guidelines also clarify that SAMR will take pipeline products and innovation markets into consideration when evaluating competitive effects.

B. MERGERS

During 2024, merger reviews by SAMR continued to focus on the semiconductor, healthcare and advanced manufacturing industries. SAMR unconditionally approved more than 99% of the deals it reviewed in 2024, while imposing conditions only in one transaction, a historical low for one

[80] State Administration for Market Regulation (China), the Horizontal Merger Review Guidelines (Dec. 20, 2024), https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fldzfes/art/2024/art_635d601b816e412e88265f83d4f6794d.html.

calendar year.[81] In order to focus more on high-profile and complex cases, SAMR has delegated approximately half of all notified simple cases to five provincial AMR branches over the past two years. Approximately 90% of these cases were qualified for simple filings and were cleared within the 30-day phase I review period (17 days on average for 2024).[82]

In the only conditional approval case in 2024, *JX Nippon/Tatsuta*,[83] SAMR adopted a conglomerate effects theory of harm to find that the transaction was likely to eliminate or restrict competition in the Chinese market for several flexible printed circuit component products through potential post-merger tying/bundling practices. SAMR imposed two conditions for clearance: i) prohibiting the company by itself or through its distributors from engaging in certain anti-competitive practices (including tying/imposing other unreasonable trading conditions; discriminating against customers who purchase the products separately; and restricting partners from purchasing third party products); and ii) requiring the company to require its distributors to supply according to FRAND principles. Notably, the second condition appears to require the company to intervene in their distributors' operations by requiring them to supply products to end customers in accordance with FRAND principles—even though the distributors are not parties to the transaction under merger review. Interestingly, SAMR made no reference to "distribution" or "distributors" in the competitive analysis section of its decision. The far-reaching remedy raises questions about implementation. For example, how can the company ensure that its distributors

[81] *See* State Administration for Market Regulation (China), Cases Approved with Conditions or Prohibited, https://www.samr.gov.cn/fldes/tzgg/ftj/index.html; and State Administration for Market Regulation (China), Cases Approved without Conditions, https://www.samr.gov.cn/fldes/ajgs/wtjjz/index.html.

[82] State Administration for Market Regulation (China), https://www.samr.gov.cn/fldes/ajgs/jyaj/index.html.

[83] State Administration for Market Regulation (China), Notice of Conditional Approval of JX Nippon's acquisition of Tatsuta (Jun. 11, 2024), https://www.samr.gov.cn/fldes/tzgg/ftj/art/2024/art_ee026cc074884d50ade381f916ab943a.html.

comply with the FRAND supply obligation? And if distributors fail to do so, who bears liability for non-compliance?

In 2024, SAMR also "called in" two transactions that did not meet the merger notification thresholds, citing potential competition concerns.[84] One of these transactions was ultimately abandoned. It is expected that SAMR will continue to exercise its discretion to "call in" below-thresholds transactions for review, particularly in highly concentrated markets or sensitive sectors.

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

In 2024, SAMR continued to investigate alleged anti-competitive practices in sectors closely tied to people's livelihoods, including construction, automobile services, pharmaceuticals, and public utilities. Cartels remain particularly common in the domestic construction and automobile service industries, driven by intense homogeneous competition, low entry barriers, and localized market dynamics. SAMR issued seven penalties in connection with cartel enforcement in 2024—three in the construction sector, three in automobile services, and one in public utilities.[85]

D. DOMINANCE

SAMR and its local branches continued to focus on policing unilateral conduct in the public utility and pharmaceutical sectors, including bringing enforcement actions for unfairly high pricing, exclusive dealing, refusal to deal and imposing unreasonable trading conditions. Five out of the

[84] *Id*.

[85] State Administration for Market Regulation (China), Administrative Penalty Cases, https://www.samr.gov.cn/fldes/tzgg/xzcf/index.html.

six unilateral conduct cases published by SAMR in 2024 involved domestic public utilities, while the other one related to active pharmaceutical ingredients.[86]

None of the above-referenced dominance cases involved multinational companies.

E. KEY COURT CASES

In 2024, the Chinese courts concluded 97 antitrust cases with findings of antitrust violations in 17 cases—a nearly five-fold increase from the previous year—involving industries such as education, healthcare, food, utilities, travel, and construction materials. The SPC published nine representative antitrust cases for the year.[87]

Mr. Jin v. Apple

The Shanghai Intellectual Property Court dismissed a lawsuit against Apple, where the plaintiff accused Apple of abusing its market position by charging a 30% commission on in-app purchases and restricting payment methods.[88] The Court affirmed Apple's dominant market position but found no abuse of market power, holding that there was no evidence to prove that the higher prices the plaintiff paid for apps were caused by the commission charged by Apple.

Ningbo Ketian etc. v. Hitachi Metals

In 2021, China's Ningbo Intermediate People's Court ruled that Hitachi Metals abused its dominance when it refused to license patents necessary for the production of sintered neodymium-iron-boron ("**sintered NdFeB**"). This is the first case in which a Chinese court applied the

[86] *Id*.

[87] Annual Report of the Intellectual Property Tribunal of the Supreme People's Court (2024), https://www.52hrtt.com/sg/n/w/info/F1745308659155.

[88] (2021) Hu 73 Zhi Min Chu No. 220, https://mp.weixin.qq.com/s/knxomLxILvbF1z4OkeeO_w.

"essential facilities doctrine" to patents that are not essential to a technological standard. In 2024, the SPC reversed the lower court ruling, finding that the patents owned by Hitachi Metals were non-essential and that Hitachi Metals lacked a dominant position in the technology market for the manufacture sintered neodymium iron boron.[89] The decision indicates the Court's restrained approach in applying the essential facility theory to cases that do not involve standard-essential patents.

Li v. DiDi

This 2024 case marks China's first SPC ruling on antitrust claims based on "big-data discrimination". The plaintiff accused DiDi, a popular online rideshare provider and platform, of algorithmic price discrimination based on user data, but the trial court dismissed the case due to insufficient evidence of anti-competitive harm. On appeal the SPC conducted a detailed analysis, defining the relevant market to include both ride-hailing services and traditional taxis with digital dispatch, rejecting DiDi's broader urban transport market definition argument. While the court found no evidence of DiDi's market dominance, it still evaluated the alleged discriminatory practices under an assumption of dominance. It concluded that (1) DiDi's pricing variations were driven by legitimate business incentives; (2) the minimal wait-time differences were justifiable, and (3) ride option variations were mere recommendations.[90]

[89] (2021) SPC Zhi Min Zhong No. 1413, https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=zWwP3sOYntw8kgrXKUs5dv7slhiJOtL7RTDLey+WX+yjcc3TH4040p/dgBYosE2ggT7C8vGQZUM7vh65g6Wf2qDbFGg0gJaFLeg+8bHHyKt8l0rH+u+OA39LPRNFp2KA.

[90] (2024) SPC, (2019) Zui Gao Fa Zhi Min Zhong No. 207, https://www.ciplawyer.cn/articles/155816.html.

Tobish v. SAMR

In December 2024, the Beijing Intellectual Property Court (the "**Beijing IP Court**") issued China's first-ever judicial review of a merger remedy decision in *Tobish v. SAMR*.[91] The case involved Simcere's acquisition of Tobish, a transaction that fell below the notification thresholds but was "called in" by SAMR in 2022 due to competition concerns regarding the batroxobin injection market. Tobish, the target of a hostile takeover, appealed to revoke the SAMR conditional approval decision through administrative reconsideration and then litigation. The Beijing IP Court affirmed SAMR's decision, finding that (1) the target was an eligible plaintiff, because the conditional approval decision affected the right and interests of the target, even though the remedy proposal was made by the buyer; (2) SAMR has the authority to impose conditions on transactions below the filing thresholds regardless of whether the filing was voluntary or made at SAMR's written request; and (3) SAMR did not have to block the transaction, as such prohibition should only be applied when remedies clearly would be ineffective. The Court affirmed the remedies imposed by SAMR as proportionate, feasible, and timely. This court decision shows judicial deference to SAMR's administrative discretion in merger review decisions and a reluctance to overturn SAMR's decisions absent clear legal or procedural mistakes.

[91] (2024) Beijing Intellectual Property Court, (2024) Jing 73 Xing Chu No. 5180., https://www.zhichanli.com/p/220708535.

VI. COLOMBIA[92]

A. LEGISLATIVE DEVELOPMENTS

In February 2024, Colombia's Superintendency of Industry and Commerce ("**SIC**") issued Resolution 4231 of 2024, which prohibits any form of direct or informal contact with SIC officials. As a result, all meetings must now follow a formal process, including submitting a detailed agenda request form. This measure aims to ensure that all interactions with the antitrust authority—whether related to merger control, investigations, or other matters under its jurisdiction—are properly documented and conducted with transparency.

B. MERGERS

In March 2024, after conducting an administrative investigation, the SIC determined that Avianca and PRICE RES had failed to comply with the remedies imposed during the approval of their merger.[93] According to the SIC, the parties violated a condition that prohibited Avianca from offering discriminatory terms that could disadvantage competitors of Avianca Tours, a joint venture between the two entities. The SIC found that Avianca had issued promotional vouchers worth COP 150,000 (approximately US$40) to customers who purchased airline tickets through its website—vouchers redeemable exclusively at Avainca Tours. These promotions steered customers toward the joint venture, creating an undue competitive advantage over other travel

[92] Alejandro García de Brigard and Olga María Mutis Ordóñez, *Brigard Urrutia*.

[93] Superintendency of Industry and Commerce, Resolution 9341 (Oct. 17, 2024), available at, https://www.sic.gov.co/sites/default/files/documentos/072024/RESOLUCI%C3%93N 9341 DEL 11-03-2024 - IMPONE SANCI%C3%93N - AVIANCA-PRICE.pdf (in Spanish).

agencies. Additionally, voucher redemption required a minimum spend at Avianca Tours, further reinforcing that advantage.[94]

Avianca argued that the promotions were non-discriminatory and financed by Avianca Tours. Nonetheless, the SIC concluded that Avianca had leveraged its market position to benefit the joint venture, thereby violating the merger conditions. It imposed fines of approximately COP 4.1 billion (approx. US$1 million) on AVIANCA and COP 882 million (approx. US$220,000) on PRICE RES.[95]

Another significant development was the initiation of a gun-jumping investigation by the SIC, which brought charges against Adidas Colombia and Fashion Fitness Colombia for alleged violations of Article 9 of Law 1340 of 2009.[96] The charges stem from the companies' failure to notify the SIC of their merger involving the Reebok brand, as required under Articles 9 and 10 of the same law.[97] The transaction was structured as a sale of assets, including Reebok's inventory, from Adidas Colombia to Fashion Fitness Colombia. The SIC found that Adidas Colombia held more than 20% of the market share in the Colombian sports apparel and footwear sector at the time of the transaction, which triggered a mandatory pre-merger notification that was not properly conducted.[98] The investigation also includes charges against two individuals associated with the companies for their roles in executing the transaction without notifying the SIC.[99]

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[94] Superintendency of Industry and Commerce, Resolution 9341 (Oct. 17, 2024).

[95] Superintendency of Industry and Commerce, Resolution 9341 (Oct. 17, 2024).

[96] Superintendency of Industry and Commerce, Resolution 21089 (Apr. 26, 2024), available *at*, https://www.sic.gov.co/sites/default/files/Resolucio%CC%81n de Apertura ADIDAS. Versio%CC%81n PUBLICA firmada.pdf (in Spanish).

[97] Superintendency of Industry and Commerce, Resolution 21089 (Apr. 26, 2024).

[98] Superintendency of Industry and Commerce, Resolution 21089 (Apr. 26, 2024).

[99] Superintendency of Industry and Commerce, Resolution 21089 (Apr. 26, 2024).

Finally, on December 19, 2024, TigoUne (a local subsidiary of Millicom) submitted a merger filing in connection with the proposed acquisition of the local assets of Spain's Telefónica, which operate under the Movistar brand. TigoUne and Movistar are currently the second and third largest players in Colombia's telecommunications sector, following Claro, which is owned by Mexico's América Móvil. Upon completion of the transaction, Millicom will control Movistar, strengthening its position as the second-largest telecommunications service provider in Colombia.[100]

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

In April 2024, the SIC launched a major investigation into alleged collusion in a private procurement process for helicopter transportation services purchased by Colombia's state-owned oil company Ecopetrol, as well as a number of Ecopetrol's affiliates. The alleged collusion involves the helicopter service provider Helistar.[101] The probe was prompted by media reports of irregularities in the awarding of helicopter transport contracts. The SIC is assessing whether these entities engaged in anticompetitive conduct by favoring Helistar without allowing for competitive bidding, potentially restricting free competition.[102]

Additionally, the SIC launched an investigation into mobility apps Uber, DiDi, and Cabify for alleged anticompetitive and unfair competition practices.[103] The authority is assessing whether these platforms gained undue advantages by failing to comply with transportation regulations.

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[100] Globe News Wire, *Millicom (Tigo) announces potential acquisitions in Colombia* (Jul. 31, 2024). available *at*, https://www.globenewswire.com/news-release/2024/07/31/2921556/0/en/Millicom-Tigo-announces-potential-acquisitions-in-Colombia.html.

[101] Superintendency of Industry and Commerce, Resolution 20884 (Apr. 26, 2024), *available at*, https://www.sic.gov.co/sites/default/files/Apertura Helico%CC%81pteros 260424. Versio%CC%81n pu%CC%81blica firmada 1.pdf.

[102] Superintendency of Industry and Commerce, Resolution 20884 (Apr. 26, 2024).

[103] Uber's Investigation is the following: Superintendency of Industry and Commerce, Resolution 24024 (May 14, 2024). *available at* https://www.sic.gov.co/sites/default/files/boletin-juridico/2024024024RE0000000001_0.pdf.

According to the SIC, the platforms exercised direct influence over essential elements of the service—such as fare calculation, payment processing, platform commissions, and driver remuneration—suggesting that they may have acted beyond the role of mere intermediaries. This alleged noncompliance may have allowed the platforms and their user-drivers to circumvent regulatory costs and obligations applicable to traditional service providers.

In October 2024, the SIC opened an administrative investigation into a suspected price-fixing cartel among several hotels in Cali,[104] Colombia's third-largest city. The hotels allegedly coordinated pricing during high-profile events, including the UN's Conference of the Parties to the Convention on Biological Diversity (COP16).[105] Preliminary findings suggest that eight hotel operators colluded to fix prices and maximize revenues. The SIC also filed charges against 13 legal entities for facilitating the exchange of sensitive information through meetings, chat groups, and digital platforms. Coordinated actions reportedly included price fixing and customer allocation. The Hotel and Tourism Association of Colombia (COTELCO) and its Valle del Cauca chapter are also under investigation for providing a technological tool that enabled the information exchange.

In December 2024, the SIC launched two separate investigations into alleged bid rigging in public procurement. The first targets two construction and architecture firms suspected of colluding in at least 29 public tenders across several departments and municipalities, including Antioquia, Caldas, Quindío, Medellín, Segovia, Santa Bárbara, Barbosa, and Donmatías.[106] Evidence includes

[104] Superintendency of Industry and Commerce, Resolution 62210 (Oct. 17, 2024), *available at*, https://www.sic.gov.co/sites/default/files/documentos/112024/Resoluci%C3%B3n de Apertura de Investigaci%C3%B3n - 24-228384 - Versi%C3%B3n P%C3%BAblica Firmado.pdf

[105] Superintendency of Industry and Commerce, Resolution 62210 (Oct. 17, 2024).

[106] Superintendency of Industry and Commerce, Resolution 76824 (Dec. 5, 2024), *available at*, https://www.sic.gov.co/sites/default/files/documentos/122024/Versio%CC%81n Firmada APERTURA GA versio%CC%81n pu%CC%81blica.pdf

identical documentation, the use of the same insurance broker for bid bonds, nearly identical auditor certificates, simultaneous bid submissions, joint execution of contracts, and close business ties between the firms[107]. The second investigation involves nine car rental companies and 11 of their representatives, accused of colluding in public procurement processes conducted by the Unidad Nacional de Protección ("**UNP**") for armored vehicle leasing.[108] According to the SIC, the companies coordinated their bids and allocated contracts among cartel members from 2015 to 2024.[109]

D. DOMINANCE

In 2023, the SIC launched an investigation against Claro, a company recognized by both telecom and antitrust authorities in Colombia as dominant in the mobile service market, for allegedly engaging in unilateral conduct to restrict competition.[110] The investigation focused on alleged anticompetitive practices aimed at limiting mobile number portability (MNP) and obstructing services offered by competitors. In 2024, Claro proposed remedies, including commitments to enhance transparency in the MNP process, ensure non-discriminatory access to its network, and improve the quality of interconnection services.[111] However, the SIC rejected these remedies in Resolution No. 36162, issued on July 5, 2024, determining that they were insufficient to address the competitive concerns. The SIC concluded that the proposed measures lacked the necessary

[107] Superintendency of Industry and Commerce, Resolution 76824 (Dec. 5, 2024)

[108] Superintendency of Industry and Commerce, Resolution 76824 (Dec. 5, 2024).

[109] Superintendency of Industry and Commerce, Resolution 76824 (Dec. 5, 2024).

[110] Superintendency of Industry and Commerce, Resolution 46189 (Aug. 4, 2023). available at https://www.sic.gov.co/sites/default/files/files/2023/RES_%20Apertura_%20Versio%CC%81n%20Pu%CC%81blica.pdf

[111] Superintendency of Industry and Commerce, Resolution 36162 of 2024. *available at* https://sic.gov.co/sites/default/files/documentos/082024/RESOLUCI%C3%93N 36162 DEL 05-07-2024 - RECHAZA OFRECIMIENTO DE GARANT%C3%8DAS - COMCEL - %C3%9ALTIMA MILLA %281%29.pdf at 7–12.

scope and enforceability to prevent future anticompetitive behavior and ensure fair competition in the telecommunications market.

E. KEY COURT CASES

Colombia's enforcement system is administrative. As a result, courts are not involved in initial decision-making, but rather as a second-stage forum for judicial review. Court cases take anywhere between five to ten years to resolve. There were no major decisions in 2024.

VII. EUROPEAN UNION[112]

A. LEGISLATIVE DEVELOPMENTS

On December 2, 2024, Teresa Ribera took the head of the European Commission's Directorate General for Competition ("**EC**"), succeeding to Margrethe Vestager, who had held this role for 10 years. On the policy side, Executive Vice-President Ribera will have to deal with calls to mold the EU competition law framework to allow consolidation into "European champions". The review of the EC's Horizontal Merger Control Guidelines, mandated in her Mission Letter, will provide a further forum for this debate to air.[113] She will also have to determine whether to move forward with a proposed revamp of the EC's antitrust procedural rules.[114] In the course of 2024, the EC also released and consulted the public on draft Guidelines on exclusionary abuses, the most significant policy development in single firm conduct enforcement in the past 15 years.[115] Separately, as part of a broader steer to alleviate and simplify the EU regulatory landscape, the EC decided to withdraw its pending proposed regulation on Standard Essential Patents, a move that triggered controversy.[116]

The EC continued its enforcement of the *Foreign Subsidies Regulation*, which took effect in 2023, completing its first in-depth screening of financial contributions granted by non-EU governments

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[112] Laurie-Anne Grelier, *Covington & Burling LLP*.

[113] Ursula von der Leyen, "Mission Letter to Teresa Ribera" (1 Dec 2024), https://commission.europa.eu/document/download/33d74e86-3a17-472c-ba93-59d1606bbc20_en?filename=mission-letter-ribera_0.pdf

[114] European Commission, "Commission publishes findings of evaluation of EU antitrust enforcement framework" (4 Sept 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4550.

[115] European Commission, "Commission seeks feedback on draft antitrust Guidelines on exclusionary abuses", https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3623.

[116] Annex to the European Commission's Work Programme 2025, "Moving forward together: A Bolder, Simpler, Faster Union" (11 Feb 2025), https://commission.europa.eu/document/download/7617998c-86e6-4a74-b33c-249e8a7938cd_en?filename=COM_2025_45_1_annexes_EN.pdf.

in connection with an M&A transaction,[117] as well as conducting its first dawn raid at a company suspected to have benefited from distortive foreign subsidies.[118] In parallel, another piece of flagship EU legislation in the digital space, the *Digital Markets Act*, went into its second year of enforcement, with the EC considering and making further gatekeeper designations and advancing or initiating compliance activities *vis-à-vis* designated gatekeepers.[119]

B. MERGERS

Merger control activity bounced back up to the pre-Covid 19 pandemic levels, with 392 transactions notified to the EC in 2024. While the EC did not block any deals, parties withdrew their notified transactions in 7 instances during the initial (Phase 1) review and in 2 instances during the extended (Phase 2) review periods.[120] Beyond these figures, 2024 saw a number of significant developments. In a landmark ruling, the EU Court of Justice found that the EC did not have the power to review, and therefore to prohibit, Illumina's acquisition of Grail in 2022. The ruling more generally clarified that the EC lacks jurisdiction to obtain referral of deals that fall outside the scope of Member States' merger control regimes.[121] In the aftermath of this ruling, the EC cleared Nvidia's acquisition of Run:ai, which the Italian Competition Authority had called in and referred to the EC for review.[122] The transaction will provide an opportunity to further clarify the referral mechanism, following Nvidia challenging its use before the EU courts.[123] That

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[117] European Commission, "Commission conditionally approves the acquisition of parts of PPF Telecom by e&, under the Foreign Subsidies Regulation" (24 Sep 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4842.

[118] European Commission, "Commission carries out unannounced foreign subsidies inspections in the security equipment sector" (23 Apr 2024), https://ec.europa.eu/commission/presscorner/detail/en/mex_24_2247.

[119] European Commission, "DMA Annual Report 2024", https://digital-markets-act.ec.europa.eu/about-dma/dma-annual-reports_en.

[120] European Commission, "Statistics on mergers cases", https://competition-policy.ec.europa.eu/mergers/statistics_en.

[121] Cases C-611/22 P and C-625/22P *Illumina*, ECLI:EU:C:2024:677 (September 3, 2024).

[122] European Commission, "Commission approves acquisition of Run:ai by NVIDIA" (20 Dec 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_6548.

[123] Case T- 15/25 *Nvidia* (January 10, 2025).

mechanism also faces an appeal by Luxembourg's top brewery following the referral of its acquisition of Boissons Heintz to the EC.[124]

Alongside these developments, the airline sector kept the EC busy. It cleared Lufthansa's and MEF's joint acquisition of Italian rival ITA Airways, subject to divestment of certain slots and other remedies.[125] It likewise cleared Korean Air's acquisition of Korean compatriot Asiana following an in-depth review, subject to divestment of Asiana's cargo business and certain passenger business-related remedies.[126] Ending an in-depth review that started in 2023, Spain's top operator IAG abandoned its plans to acquire number 3 local rival Air Europa,[127] whilst the EC waived commitments it had imposed on Lufthansa when it acquired Swiss International Airlines some 20 years ago.[128]

In the telecom sector, which has given rise to debate about facilitating consolidation, following an in-depth review, the EC cleared a Spanish JV between Orange and MásMóvil, subject to a remedy package.[129]

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[124] Case T- 289/24 *Brasserie Nationale* (July 5, 2024).

[125] European Commission, "Commission clears proposed acquisition of stake in ITA Airways by Lufthansa, subject to conditions" (3 Jul 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3604.

[126] European Commission, "Commission approves the acquisition of Asiana by Korean Air, subject to conditions" (13 Feb 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_761.

[127] European Commission, "Statement by Executive Vice-President Vestager on the announcement by IAG to withdraw from proposed acquisition of Air Europa" (2 Aug 2024), https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_24_4142.

[128] European Commission Decision in case M.3770 (19 Nov 2024), https://ec.europa.eu/competition/mergers/cases1/202503/M_3770_10453114_660_3.pdf.

[129] European Commission, "Commission approves joint venture between Orange and MásMóvil in Spain, subject to conditions" (20 Feb 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_928.

C. CARTELS & ANTI-COMPETITIVE PRACTICES

In its continued enforcement efforts against cartels, the EC imposed fines totaling about €48.7 million (approx. US$51.4 million), all in respect of a boycott cartel in the rail passenger market,[130] marking the lowest amount of total cartel fines imposed in the past 5 years.[131] Alongside, the EC started or continued investigations of suspected cartel activities, including in online food delivery, an antispasmodic ingredient, farmed Atlantic salmon, and consumer fragrances (imposing a c. €16 million fine (approx. US$18.1 million) on one of the investigated companies for obstruction[132]).

Outside the cartel field, the EC imposed a €337.5m fine (approx. US$381 million) on Mondelez for engaging in distribution arrangements that restricted intra-EU sales of its products.[133]

D. DOMINANCE

In contrast, the EC imposed its highest total fines for single firm conduct in the past 5 years, amounting to about €3.1 billion (approx. US$3.3 billion). These principally arose from its enforcement into the tech / digital sector. The EC imposed a €1.8 billion (approx. US$1.9 billion) fine on Apple regarding its anti-steering rules for music streaming apps,[134] whilst accepting commitments from the company to resolve its investigation into Apple Pay.[135] It also imposed a

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[130] European Commission, "Commission fines České dráhy and Österreichische Bundesbahnen €48.7 million over collusion to exclude common competitor" (23 Oct 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5425.

[131] European Commission, "Cartels cases and statistics", https://competition-policy.ec.europa.eu/antitrust-and-cartels/cartels-cases-and-statistics_en.

[132] European Commission, "Commission fines International Flavors & Fragrances €15.9 million for deleting WhatsApp messages during an antitrust inspection" (24 Jun 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3435.

[133] European Commission, "Commission fines Mondelēz €337.5 million for cross-border trade restriction" (23 May 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2727.

[134] European Commission, "Commission fines Apple over €1.8 billion over abusive App store rules for music streaming providers" (4 Mar 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1161.

[135] European Commission, "Commission accepts commitments by Apple opening access to 'tap and go' technology on iPhones" (11 Jul 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3706.

€798 million (approx. US$841 million) fine on Meta in connection with its Facebook Marketplace service.[136] In the pharmaceuticals sector, the EC took issues with alleged disparagement (and other) practices, closing an investigation targeting Vifor upon receiving commitments from the company, whilst imposing a €462.6 million (approx. US$487.8 million) fine on Teva.[137] These three fining decisions are all being challenged before the EU Courts.

E. KEY COURT CASES

Single firm conduct gave rise to a number of important judgments in 2024. Concluding the *Google Shopping* saga, the EU Court of Justice (the EU's top court) confirmed that the essential facilities doctrine does not apply to self-preferencing.[138] In the *Intel* saga, it further clarified the role of the "as efficient competitor" test to assess the foreclosure potential of exclusivity rebates.[139] In its first ruling on the topic in the past 15 years, the EU General Court (the EU's lower court) held that predatory pricing does not require the EC to show anti-competitive effects.[140]

Continuing a stream of recent jurisprudence about sport governance, the EU Court of Justice held that FIFA rules on compensation due by and restrictions on players changing clubs early amount to no-poach agreements, expressing skepticism that these rules could be justified by the pursuit of legitimate sporting objectives.[141]

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[136] European Commission, "Commission fines Meta €797.72 million over abusive practices benefitting Facebook Marketplace" (14 Nov 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5801.

[137] European Commission, "Commission fines Teva €462.6 million over misuse of the patent system and disparagement to delay rival multiple sclerosis medicine" (31 Oct 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5581.

[138] Case C-48/22P *Google Shopping*, EU:C:2024:726 (September 10, 2024).

[139] Case C-240/22P *Intel*, ECLI:EU:C:2024:915 (October 24, 2024).

[140] Case T-671/19 *Qualcomm*, ECLI:EU:T:2024:626 (September 18, 2024).

[141] Case C-650/22 *Fédération internationale de football association* (FIFA), ECLI:EU:C:2024:824 (October 4, 2024).

Separately, in its first ruling relating to the *Foreign Subsidies Regulation*, the EU Courts weighed in on what information the EC may request a company's EU subsidiaries to provide from overseas, and the interplay with foreign non-disclosure rules.[142] The matter triggered a number of political and trade reactions.

[142] Order of the President in Case T-284/24R *Nuctech*, ECLI:EU:T:2024:564 (August 12, 2024), affirmed by Order in Case C-720/24P(R), ECLI:EU:C:2025:205 (March 21, 2025).

VIII. INDIA[143]

A. LEGISLATIVE DEVELOPMENTS

In 2024, the Government of India brought into force the most far-reaching amendments to the *Competition Act, 2002* ("**Indian Competition Act**") since the statute was enacted. The changes to both enforcement and merger control provisions are in four principal respects:

1. *Penalties*: First, the Competition Commission of India ("**CCI**") is now empowered to calculate monetary penalties on the basis of worldwide, "total turnover" rather than the narrower "relevant turnover" (i.e., the turnover derived from the contravening products and services, in India) that had previously applied. The new Penalty Guidelines temper this expansion by expressly requiring the CCI to apply the principle of proportionality.[144]

2. *Commitments and Settlements*: Second, an administratively-driven resolution toolbox for cases concerning vertical restraints or abuse of dominance has been formalised. Parties that are the subject of such proceedings may now: (i) offer commitments after a *prima facie* order but before receipt of the Director General's report ("**DG's Report**"), in which case no penalty is imposed and the commitment decision cannot be relied upon in follow-on damages actions;[145] or (ii) propose a settlement once the DG's Report has been issued but prior to the final order, in which case the CCI may impose

[143] Naval Satarawala Chopra, Aman Singh Sethi, Rohan Bhargava and Aryan Uppal, *Shardul Amarchand Mangaldas & Co* (SAMCo.).

[144] Competition Commission of India, Determination of Monetary Penalty Guidelines, 2024 - No. B-14011/1/2024-ATD-II (Issued on March 6, 2024).

[145] Competition Commission of India, Commitment Regulations, 2024 - CCI/Reg-C.R./2024 (Issued on March 6, 2024).

a monetary amount discounted by up to 15% of the penalty otherwise payable. In the case of settlements, the possibility of follow-on claims remains open.[146]

3. *Leniency*: Third, the leniency regime has been broadened through the introduction of "Leniency Plus", which permits a leniency applicant in one cartel to secure an additional reduction of up to 30% in respect of that cartel, if it simultaneously provides evidence of a second, previously unknown cartel. Such an applicant would also receive a reduction in penalty of up to 100% in respect of the second cartel.[147]

4. *Merger Control*: Fourth, the merger control regime has also been modernised. A "deal value" threshold has been introduced that mandates prior notification of acquisitions where the consideration exceeds INR 20 billion (approx. US$230 million) and the target has "substantial business operations in India", even if the traditional asset and turnover based tests are not met.[148] Moreover, revised exemptions under which certain categories of notifiable transactions are exempt from mandatory notification requirements have also been introduced.[149]

The statutory review timetable has also been reduced. The CCI must now form a *prima facie* view within 30 calendar days (formerly 30 working days), failing which the transaction is deemed approved. The outer limit for clearance has also been curtailed from 210 to 150 calendar days.[150]

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[146] Competition Commission of India, Settlement Regulations, 2024 - CCI/Reg-S.R./2024 (Issued on March 6, 2024).

[147] Competition Commission of India, Lesser Penalty Regulations, 2024 - No. L-3(4)/Reg-L.P./2023-24 (Issued on February 20, 2024).

[148] Competition Commission of India, Combinations Regulations, 2024 - CCI/CD/Comb. Regl. /2024 (Issued on September 9, 2024).

[149] Competition (Criteria for Exemption of Combinations) Rules, 2024 - G.S.R. 549(E) (Issued on September 9, 2024).

[150] Sections 6 (2A) and 29 (1B), Indian Competition Act.

Derogations from the standstill obligation are now available for on-market purchases, including open offers, subject to subsequent CCI approval.[151]

Ex-Ante Digital Regulation

Separately, the Committee on Digital Competition Law published a draft Digital Competition Bill, 2024 ("**Bill**"), proposing an *ex-ante* regime applicable to "Systemically Significant Digital Enterprises" that satisfy turnover/market-capitalization and user-threshold tests in respect of designated "Core Digital Services".[152] The Bill would prohibit, *inter alia*: (i) self-preferencing; (ii) misuse of non-public business-user data; (iii) anti-steering provisions; and (iv) tying and bundling. After receiving significant resistance from industry, the Bill has been put on hold as deliberations continue.[153] The CCI has initiated a market study on 'Artificial Intelligence and Competition' and is likely to issue its report in the coming year.[154]

B. MERGERS

The CCI cleared, subject to extensive behavioural and structural remedies, the consolidation of the Indian entertainment assets of Viacom18 Media Private Limited and The Walt Disney Company. This has been the most consequential transaction in this sector in India to-date. Remedies include: (i) refraining from bundling television, over-the-top ("**OTT**") streaming services and premium sports advertising for the tenure of the existing rights; (ii) supplying advertising inventory on streaming platforms on fair, transparent and non-discriminatory terms; (iii) limiting increases to

[151] Section 6A, Indian Competition Act.

[152] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Govt. of India (Mar. 12, 2024).

[153] Manu Kaushik, *Digital competition law won't be hurried: minister*, FINANCIAL EXPRESS (March 16, 2025), https://www.financialexpress.com/india-news/digital-competition-law-wont-be-hurried-minister/3778737/.

[154] Press Release, Competition Commission of India, Competition Commission of India Launches Market Study on Artificial Intelligence and Competition (April 22, 2024), https://www.cci.gov.in/economics-research/market-studies/details/45/0.

advertisement rates and those of OTT streaming services; and (iv) divesting a portfolio of channels.[155]

Recent decisions signal the CCI's heightened expectations regarding overlap analysis. In *TPG Growth/Asia Healthcare Holdings* the CCI remarked that the parties cannot apply their own criteria to identify affiliates.[156] Additionally, while approving Temasek's acquisition of 2.6% shareholding in Niva Bupa the CCI treated the activities of Temasek's portfolio healthcare companies and Niva Bupa's insurance activities as complementary, as health insurance is combined with healthcare services to make the latter more cost effective for consumers.[157]

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

The National Company Law Appellate Tribunal ("**NCLAT**") affirmed the CCI's 2022 finding that Delicasy Continental Private Limited ("**Delicasy**") engaged in bid-rigging and market allocation, endorsing the calculation of the penalty on the total turnover notwithstanding the respondent's absence of revenue in the relevant market.[158] The NCLAT nevertheless reduced the quantum of the penalty on the basis that Delicasy had played only a peripheral role by providing cover bids.

Following a remittal ordered by the NCLAT for breach of natural justice, the CCI reversed its 2018 infringement decision against ethanol producers, reiterating that price parallelism absent "plus factors" could not establish a cartel.[159]

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[155] Viacom18 Media Private Limited / Reliance Industries Limited / Star India Private Limited (C-2024/05/1155).

[156] TPG Growth V SF Markets PTE. Ltd./ Waverly PTE. Ltd./ Asia Healthcare Holdings PTE. Ltd (C-2024/01/1102).

[157] V–Sciences Investments Private Limited is indirectly wholly owned by Temasek Holdings (Private) Limited. V–Sciences Investments Private Limited/ Niva Bupa Health Insurance Company Limited (C-2023/10/1070).

[158] Delicasy Continental Private Limited v. Competition Commission of India, Competition Appeal (AT) No. 32 of 2022.

[159] India Glycols Limited v. India Sugar Mills Association, CCI Case No. 21 of 2013.

D. DOMINANCE

The technology sector remained under intense scrutiny.

In relation to WhatsApp's 2021 privacy-policy update, the CCI found: (i) an unfair imposition of conditions on users; (ii) denial of market access for Meta's competitors owing to sharing of data between Meta Companies; and (iii) leveraging of WhatsApp's dominance in OTT messaging into Meta's activities in online display advertising through data-sharing. Remedies included a five-year prohibition on sharing WhatsApp user data with Meta for advertising purposes.[160]

The NCLAT has, however, provisionally stayed that aspect on the grounds that it could jeopardise WhatsApp's commercial model and overlap with the forthcoming Digital Personal Data Protection legislation.[161]

Separately, the NCLAT partially upheld the CCI's 2022 decision against Google for abusing its dominant position by mandating the use of only Google's proprietary billing system ("**GPBS**") for processing payments for paid app downloads and in-app purchases on the Google Play Store.[162] The NCLAT sustained six of the CCI's eight remedial measures while emphasizing that an effects-based analysis, encompassing both actual and likely impacts remains essential in dominance cases.[163]

[160] In Re: Updated Terms of Service and Privacy Policy for WhatsApp users, CCI Case No. 1 of 2021.

[161] WhatsApp LLC v. Competition Commission of India, Competition Appeal (AT) No. 1 of 2025 and No. 2 of 2025.

[162] XYZ v. Alphabet, CCI Case No. 7 of 2020.

[163] Alphabet v. Competition Commission of India, Competition Appeal (AT) No. 4 of 2023.

The CCI has also opened two new investigations into Google:

1. The CCI found Google's Play Store payments policies to be *prima facie* excessive and discriminatory given the commission rates for paid apps vs in-app purchases (15 vs 30% for GPBS and 11 vs 26 % for alternative billing systems). The CCI noted that not only does Google's commission far exceed the commission charged by other comparable Android app stores, it also substantially exceeds its costs for providing these services. The CCI however, did not stay the policies pending investigation.[164]

2. The CCI also directed another investigation into Google's selective inclusion of certain real-money-gaming applications in a pilot programme, which the CCI considered opaque and potentially distortive.[165] Importantly, the CCI noted that the scope and duration of a pilot played a critical role in determining its competitive impact. A pilot should be implemented in a controlled and phased manner with clear limitations.

E. KEY COURT CASES

The Delhi High Court, in *JCB India v CCI*, underscored the importance of finality in alternative dispute-resolution mechanisms by terminating an abuse-of-dominance investigation where the parties had previously executed a mediated settlement. The Court held that allowing the CCI to re-examine the settlement terms would undermine the sanctity of the settlement process.[166]

[164] Indian Broadcasting and Digital Foundation v. Alphabet Inc., CCI Case No. 27 of 2023.

[165] Winzo Games Private Limited v. Google LLC and others, CCI Case No. 42 of 2022.

[166] JCB India v. Competition Commission of India, Delhi High Court W.P.(C) Case No. 2244 of 2014.

IX. JAPAN[167]

A. LEGISLATIVE DEVELOPMENTS

In June 2024, the Act on *Promotion of Competition for Specified Smartphone Software* (the "**Act**"), which aims to ensure a level playing field for mobile OS, app stores, browsers, and search engine providers, was enacted. Pursuant to the Act, Apple Inc., iTunes K.K., and Google LLC were designated by the Japan Fair Trade Commission ("**JFTC**") as Designated Business Operators in March 2025. This means the said companies will be prohibited from conducting certain anti-competitive acts and required to submit an annual report on compliance with the Act after it becomes fully effective.[168]

In addition, in April 2024, the JFTC amended its Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society under the *Antimonopoly Act*[169] ("**Green Guidelines**"), originally published in March 2023, based on public comments. Notably, the amended Green Guidelines explicitly recognize that enterprises' initiatives to reduce greenhouse gas emissions can have a pro-competitive effect, and the JFTC may rely on information from relevant government agencies when evaluating these effects. The JFTC stated in its press release[170] that it will continuously review the Green Guidelines in order to respond to future changes in markets and trends in business activities.

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[167] Shigeyoshi Ezaki, Vassili Moussis, Kiyoko Yagami and Azusa Hong, *Anderson Mori & Tomotsune*.

[168] The Act will become fully effective before December 18, 2025; Japan Fair Trade Commission, *Designation of Specified Software Operators under the Act on Promotion of Competition for Specified Smartphone Software* (Mar. 31, 2025), https://www.jftc.go.jp/en/pressreleases/yearly-2025/March/250331.html.

[169] Japan Fair Trade Commission, *JFTC Revises 'Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society under the Antimonopoly Act'* (Apr. 24, 2024), https://www.jftc.go.jp/en/pressreleases/yearly-2024/April/240424.html.

[170] Japan Fair Trade Commission, JFTC Revises '*Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society under the Antimonopoly Act*' (Apr. 24, 2024), https://www.jftc.go.jp/en/pressreleases/yearly-2024/April/240424.html.

B. MERGERS

In financial year ("**FY**") 2023, the JFTC received a total of 345 merger notifications, none of which were brought into a Phase II review and only one of which required remedies.[171] The JFTC maintained its stance to review non-reportable transactions that may affect competition in Japan, and reviewed 13 non-reportable transactions that were voluntarily submitted by the parties or investigated by the JFTC *ex officio*.

One of the notable cases in 2024 was Korean Air's acquisition of Asiana Airlines, for which the JFTC carried out various economic analyses to evaluate potential incentives to increase fares. The JFTC cleared the case on the condition that structural and behavioral remedies be implemented, including the transfer of several passenger routes to third-party airlines, the divestiture of the air cargo business of Asiana, and the provision of cargo block spaces to a third-party airline.[172] In early 2025, ANA Holdings' proposed acquisition of Nippon Cargo Airlines was cleared on the condition that ANA provides cargo block space to a third-party airline.[173] In both cases, the appointment of different types of trustees was included in the remedies to ensure that the parties comply with the conditions.

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

In FY2023, the JFTC opened investigations against 152 cases of suspected violations of the *Act on Prohibition of Private Monopolization and Maintenance of Fair Trade* ("**AMA**") and took legal

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[171] Japan Fair Trade Commission, *The Status of Notifications Regarding Business Combinations and the Results of Reviews of Major Business Combinations in the Fiscal Year 2023* (Jul. 5, 2024), https://www.jftc.go.jp/en/pressreleases/yearly-2024/July/240705.html.

[172] Japan Fair Trade Commission, *The JFTC Reviewed the Proposed Acquisition of Asiana Airlines Inc. by Korean Air Co., Ltd.* (Jan. 31, 2024), https://www.jftc.go.jp/en/pressreleases/yearly-2024/January/240131.html.

[173] Japan Fair Trade Commission, *Regarding the Review Results of ANA Holdings Inc.'s Acquisition of Shares in Nippon Cargo Airlines Co., Ltd.* (Jan. 30, 2025), https://www.jftc.go.jp/houdou/pressrelease/2025/jan/250130kiketesu_an.html (in Japanese).

measures in nine cases, including four cease-and-desist orders and five approvals on commitment plans.[174]

Insurance cartel

In October 2024, the JFTC issued cease-and-desist orders and surcharge payment orders against four major general insurance companies and one insurance agency for, among others, engaging in cartel activities (including exchange of information on premiums) that resulted in the maintenance of premiums and shares for various co-insurance products.[175] The total surcharges imposed on these four insurance companies amounted to approx. US$14.5 million.

These cease-and-desist orders are related to nine different insurance programs for each policyholder, and the JFTC defined the relevant market for each policyholder. Tokio Marine & Nichido Fire Insurance Co., Ltd., secured the first place in the leniency applications, and was exempted from surcharges in most conduct at issue, minimizing its surcharge payment obligation to approx. US$225,000. On the other hand, three other insurance companies were subject to surcharges totaling nearly US$4 million.

Aside from the cease-and-desist orders, the JFTC published "Cautionary Notes on Co-insurance from the Perspective of the AMA," noting the high risk of exchange of sensitive information (e.g., insurance premiums) among insurance companies that participate in a co-insurance program or through insurance agencies. Furthermore, the JFTC requested that the Financial Service Agency

[174] Japan Fair Trade Commission, *Annual Report of the Japan Fair Trade Commission (Apr. 2023–Mar. 2024)* (Jun. 18, 2024), https://www.jftc.go.jp/en/pressreleases/yearly-2024/June/240618.html.

[175] Japan Fair Trade Commission, *The JFTC Issued Cease and Desist Orders and Surcharge Payment Orders against Non-Life Insurance Companies* (Oct. 31, 2024), https://www.jftc.go.jp/en/pressreleases/yearly-2024/October/241031.html.

and the General Insurance Association of Japan ensure insurance companies' compliance with the AMA.

Bid-rigging concerning the Tokyo Olympics

In 2023, the JFTC filed a criminal accusation with the Prosecutor General against six advertisement agencies and seven individuals for criminal violations of the AMA and the Penal Code, with regard to bid-rigging concerning the outsourcing contracts for test events of the 2020 Olympic and Paralympic Games.[176] These agencies and individuals were subsequently indicted by the Tokyo District Prosecutors' Office, and by March 2025, four agencies received fines of approx. US$140,000 – 210,000, and four individuals were sentenced to one and a half to two years in prison with suspension of execution.

The other cases are still pending at the Tokyo District Court, and none of the judgments so far have become final. In addition to the criminal proceedings, the JFTC is investigating the case in parallel and is expected to issue cease-and-desist orders and surcharge payment orders against the relevant agencies.

D. DOMINANCE

Cease-and-desist order against Google

In April 2025, the JFTC issued a cease-and-desist order against Google for excluding competitors by entering into license agreements with mobile device manufacturers under which Google made them preinstall its applications, including Google Search and Google Chrome, on a default home

[176] Japan Fair Trade Commission, *The JFTC's criminal accusation on bid-rigging concerning the outsourcing contracts of planning test events, etc. regarding the Olympic and Paralympic Games Tokyo 2020 ordered by the Tokyo Organizing Committee of the Olympic and Paralympic Games* (Feb. 28, 2023), https://www.jftc.go.jp/en/pressreleases/yearly-2023/February/230228.html.

screen, along with its application store called Google Play. An additional violation is that Google contemplated to exclude competitors by entering into a revenue sharing agreement with mobile device manufacturers and carriers under which Google pays them a part of its revenue from search advertisements on the condition that they do not install or encourage smartphone users to install third-party search functions.[177]

Cease-and-desist order against ASP Japan for bundle sales

In July 2024, the JFTC issued a cease-and-desist order against ASP Japan, a successor of the business in question from Johnson & Johnson, for bundled sales of automated endoscope reprocessors ("**AERs**") and phtharal (a disinfectant) used by them.[178] Until April 2013, Johnson & Johnson was the patent holder and the only manufacturer of phtharal in Japan. After the expiry of the patent, Johnson & Johnson installed a barcode reader in AERs to prevent medical institutions from purchasing cheaper generics of phtharal. This made the cleaning function of AERs inoperable unless the barcode affixed to the bottle of phtharal manufactured by Johnson & Johnson was read. The JFTC found that selling AERs with a barcode reader whose cleaning function was interoperable only with Johnson & Johnson's phtharal constituted bundled sales and thus violated the AMA.

[177] Japan Fair Trade Commission, *JFTC Issues a Cease and Desist Order to Google LLC* (Apr. 15, 2025), https://www.jftc.go.jp/en/pressreleases/yearly-2025/April/250415.html.

[178] Japan Fair Trade Commission, *The JFTC Issued a Cease and Desist Order against ASP Japan G.K.* (Jul. 26, 2024), https://www.jftc.go.jp/en/pressreleases/yearly-2024/July/2407262.html.

X. KOREA[179]

A. LEGISLATIVE DEVELOPMENTS

In February 2024, the Monopoly Regulation and Fair Trade Law ("**FTL**") was amended to expand merger filing exemptions for transactions with minimal anti-competitive concerns, introduce a voluntary remedy system to submit remedy proposals to the Korea Fair Trade Commission ("**KFTC**"), and increase the threshold for presuming market dominance from KRW 4 billion to 8 billion.[180]

In particular, the amendments newly exempt the following four types of transactions from a merger filing obligation: (i) establishment of private equity funds, (ii) mergers and asset/business transfers between a parent and its subsidiary as defined under the Korean *Commercial Code*, (iii) interlocking directorships involving less than 1/3 of board members (excluding the representative director), and (iv) mergers between affiliates where the size of the merged entity is less than KRW 30 billion on a standalone basis.

The KFTC will also introduce a system that invites parties to formally submit remedy proposals to reduce the burden on merging entities and more effectively implement merger remedies. Prior to the amendment, there had been no system in place for parties to formally submit remedies during the merger review process, leading to uncertainty about timing and regulatory procedures.

Further, the KFTC has increased the minimum annual sales thresholds for presuming dominance, which is applied when determining whether an entity is dominant in a market, from KRW 4 billion

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[179] Youngjin Jung, Jiyeon Song, Maria Hajiyerou, Eun Sun Jang, *Kim & Chang*.

[180] KFTC, Five Amendments, Including an Amendment to the FTL, Passed by the National Assembly (Jan. 25, 2024) (S. Kor.), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=10453.

to KRW 8 billion. This change is reflective of shifting economic conditions, with the KFTC aiming to reduce the regulatory burden on small and medium-sized enterprises ("**SMEs**") and venture companies.

In June 2024, the FTL *Enforcement Decree* was amended to clarify evaluation methods for compliance programs under the Fair Trade Voluntary Compliance Program ("**CP**"), allowing companies with exceptional programs to receive lesser penalties.[181] The CP system, first adopted in 2001, is designed to promote a culture of voluntary compliance with fair trade regulations. The proposed amendment sets forth subordinate regulations to facilitate the integration between the CP provisions under the amended FTL and the actual adoption and implementation of CP systems by business operators. Benefits under this system include a potential reduction in fines (up to 20% max.), and possible mitigation of a corrective order (e.g. reducing the size and number of publications for corrective orders). However, these benefits are not available in certain cases, including violations that occurred prior to the implementation of the CP, violations involving high-level officers of a company or hardcore cartels (e.g., price fixing, bid rigging).

B. MERGERS

The KFTC unconditionally approved Ansys' acquisition of a 34.68% interest in Safe Parent, which owns Humanetics, the world's largest manufacturer of anthropomorphic devices (i.e., crash test dummies).[182] Despite being the #1 player in the market, the KFTC unconditionally cleared Ansys's acquisition of a 34.68% stake. According to the KFTC's press release, Humanetics' second largest

[181] KFTC, Cabinet Passes Amendment to the FTL Enforcement Decree (Jun. 4, 2024) (S. Kor.), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=10453.

[182] KFTC, Approval of acquisition of Humanetics by U.S based Ansys (Mar. 19, 2024) (S. Kor.), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=10519.

shareholder would maintain overall managerial rights, and accordingly, Ansys would not likely gain substantial control. The KFTC's press release also indicated that the KFTC would review the market situation again if / when Ansys exercises its option to acquire a controlling stake in Safe Parent.

The KFTC conditionally approved the combined 39.87% acquisition of SM Entertainment, a K-Pop contents company and leading player in the digital music planning and production market by Kakao and Kakao Entertainment.[183] Kakao is a leading internet company known for its mobile messaging app, while Kakao Entertainment is a leading player in the digital music distribution and platform market, which operates streaming platform Melon. As a condition to approving the acquisition, the KFTC prohibited the merged entity from withholding music contents from competitors and required it to establish an independent inspection committee. According to its press release, the KFTC found that Kakao was highly likely to limit competition in the music contents market by failing to timely supply music contents that it distributes to Melon's competitors, or by favoring Melon in music content production and distribution. This case marked the first time the KFTC imposed corrective remedies on a merger due to concerns about self-preferencing.

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

In February, the Seoul High Court overturned a KFTC finding of price-fixing against 23 shipping lines.[184] The Court held that the KFTC lacked the authority to regulate marine freight rates by domestic and foreign container liner carriers, stating that the Marine Transportation Law exempted

[183] KFTC, Conditional Approval of Kakao/SM Entertainment Merger (May 2, 2024) (S. Kor.), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=10591.

[184] [Romanized Court Name] [Seoul High Ct.], Feb, 1, 2024, 2022Nu43742(S. Kor); KFTC, Apr. 1, 2024, Decision No. 2022-090 (S. Kor.).

freight rates agreements from competition laws. The Court also held that only the Ministry of Oceans and Fisheries has the exclusive jurisdiction to regulate collaborative acts regarding freight rates by container liner carriers. This appeal was filed by Evergreen following a KFTC corrective order and sanction of KRW 3.399 billion that was imposed against 23 container liner carriers for fixing basic freight rates and various incidental costs.[185] In September, the same court overturned a KFTC ruling in a duck meat cartel case, finding that certain agreements in the agricultural and livestock sectors qualify for exemption from competition laws.[186]

In February 2024, the Seoul High Court annulled the KFTC's KRW 3.297 billion fine and corrective orders against Coupang[187] for abusing its superior bargaining position vis-à-vis 101 suppliers by demanding that they increase the sales prices of their goods on competing online sites to compensate for Coupang's lowest price matching policy.[188] The Court held that Coupang did not hold a superior bargaining position and that the KFTC failed to prove that Coupang's conduct was coercive. The Court held that intervention by the KFTC is justified if there is a significant gap in bargaining power between parties. If, however, the parties are more or less equal, a much higher standard should be applied in order to justify intervention. As such, the Court required that a close review of the bargaining power of the parties as well as the characteristics of the relevant products at issue was needed.[189]

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[185] The lower court case was recently overturned by the Supreme Court and remanded to the lower court for reconsideration. See, Sup. Ct. Apr. 24, 2025, 2024Du35446 (S.Kor).

[186] [Romanized Court Name] [Seoul High Ct.], Sept. 26, 2024, 2022Nu61146 (S. Kor.); KFTC, Aug. 24, 2022, Decision No. 2022-216 (S. Kor.). The appeal to the Supreme Court (2024Du59824) is pending as of April 30, 2025.

[187] [Romanized Court Name] [Seoul High Ct.], Feb. 1, 2024, 2022Nu36102 (S. Kor.).

[188] KFTC, Sept. 23, 2021, Decision No. 2021-237 (S. Kor.).

[189] The appeal to the Supreme Court (2024Du35545) is pending as of April 30, 2025.

In August 2024, the KFTC imposed administrative fines of KRW 140 billion, a corrective order, and criminally referred Coupang and its subsidiary CPLB[190] for prosecution for unfairly manipulating algorithms to prioritize its products in search rankings and for creating fake reviews using its employees to promote its own products.[191] According to the KFTC, Coupang, the leading player in Korea's online shopping market since 2022, engaged in deceptive practices to increase the sales of its products. It did so by leveraging its dual position as both a seller of its own products (direct purchases and private label products) and an intermediary for third party sellers, to unfairly prioritize its own products. Such practices systematically excluded products and helped to maintain high visibility for Coupang's own products in search rankings. The KFTC also found that Coupang engaged 2,297 of its employees to generate over 72,000 positive reviews for its products, which manipulated visibility and perceived popularity, and that Coupang had systematically instructed its employees on review writing techniques and mandated quick posting timelines. In its decision, the KFTC noted that this decision aligned with the decisions of other global competition authorities acting against online platforms for unfair self-preferencing, and that it aimed to empower consumers and promote fair competition on product price and quality.[192]

D. ABUSE OF DOMINANCE

In January 2024, the Seoul High Court dismissed Google's appeal of a KFTC finding that Google stifled innovation in the mobile OS market and the Android-based app market by preventing device manufacturers, including Samsung Electronics, from using competitors' modified version of the

[190] CPLB is Coupang's subsidiary producing private label products.

[191] KFTC, Aug. 5, 2024, Decision No. 2024-284 (S. Kor.); KFTC, http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=10659.

[192] The appeal to the Seoul High Court (2024Nu57899) is pending as of April 30, 2025.

Android operating system and obstructing the release of devices with alternative systems.[193] In 2021, the KFTC issued corrective orders and a fine of KRW 224.9 billion against Google, finding that (i) Google abused its dominant market position to obstruct competitors, (ii) executed exclusive dealing arrangements, and (iii) enforced unfair trade practices. In particular, the court viewed Google's anti-fragmentation obligations on device manufacturers as a calculated move to impede competition. The court added that it was imperative to have regulatory intervention if a company, which holds a dominant position in one market, seems to be threatening competition in other markets.[194]

In October 2024, the KFTC criminally referred and fined Kakao Mobility KRW 72.4 billion[195] for demanding trade secrets from drivers about rival taxi services and retaliating against drivers who refused by blocking access to the widely-used Kakao T general-taxi service.[196] According to the KFTC's press release, through such practices, Kakao Mobility's market share had increased from 51% as of 2020, to 79% as of 2022, after a number of competitors, including Tada, Banban Taxi and Macaron Taxi, withdrew or were effectively pushed out of the market for platform-based franchise taxi operators. In reaching its findings, the KFTC took into consideration that Kakao Mobility had taken advantage of its market dominance in the general call taxi market to increase its position in the franchise taxi market.[197]

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[193] [Romanized Court Name] [Seoul High Ct.], Jan. 24, 2024, 2022Nu32995 (S. Kor.); KFTC, Dec. 30, 2021, Decision No. 2021-329 (S. Kor.).

[194] The appeal to the Supreme Court (2024Du38131) is pending as of April 30, 2025.

[195] On December 17, 2024, the fine amount was revised to KRW 15.1 billion by the KFTC based on the company's net revenue amount.

[196] KFTC, Sanction on Abuse of Dominance of Kakao Mobility (Oct. 2, 2024), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=10823.

[197] The appeal to the Seoul High Court (2025Nu4328) is pending as of April 30, 2025.

XI. MEXICO[198]

A. LEGISLATIVE DEVELOPMENTS

Constitutional Amendment

In 2024, the Mexican government approved a Constitutional reform to article 28 of the Constitution, the regulatory cornerstone of both the Federal Economic Competition Commission ("**COFECE**") and the Federal Institute of Telecommunications ("**IFT**" and together with COFECE, the "**Agencies**")[199]. This amendment was published in the Official Gazette in December 2024 with relevant changes for competition policy.[200]

These changes included the dissolution of both COFECE and IFT as constitutionally autonomous bodies, with their antitrust regulatory functions reassigned to a new entity with technical and operative autonomy, under the Ministry of Economy.

Changes in Regulatory Bodies

Pursuant to the constitutional amendments, new Commissioners will be appointed immediately after the amendment becomes effective (roughly six months after the Official Gazette´s publication). On April 24, 2025, the President of Mexico submitted to Congress the proposed bill to amend the Competition Law (the "**Law**"), which is expected to be approved and enacted within the coming months.

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[198] Carlos Mena Labarthe, Mauricio Serralde Rodríguez, Sara Gutiérrez Ruiz de Chávez, Aleine Sthephany Obregón Natera, María Andrea Latapie Aldana, José Manuel Lapuente Gómez, Natalia Patricia Patiño Espinosa, Kevin Alexis López Reyes and Bárbara Giselle Casillas Álvarez, *Creel*.

[199] Both agencies became constitutionally autonomous bodies as a result of the 2013 constitutional reform.

[200] *See* Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de simplificación orgánica. Diario Oficial de la Federación Dec. 20, 2024, *available at*: https://www.dof.gob.mx/nota_detalle.php?codigo=5745905&fecha=20/12/2024#gsc.tab=0

The proposed amendment to the Law (if approved as proposed by the President of Mexico) would come into force the day after its publication and would, among other things: *(i)* suspend all investigation procedure deadlines of both COFECE and IFT until the new Board of the National Antitrust Commission ("**CNA**") is fully formed; *(ii)* require the CNA to establish the new Board by June 30, 2025[201]; and *(iii)* have the CNA begin operations on July 1, 2025 (the "**CNA Start Date**"), at which point previously suspended investigations will resume. All actions taken by COFECE and IFT before the CNA Start Date will remain legally effective. As long as the new Law is not amended, the current Law will continue to be in force.

B. MERGERS

From January 1st to December 31st, 2024, 164 transactions were notified. By year-end, 145 were resolved (of which 46 were pending from 2023). COFECE unconditionally cleared 142 (97.93%, a decrease of 1.37% as of the clearance rate of 2023[202]), blocked 2, and cleared 1 transaction subject to remedies.[203]

COFECE has increased scrutiny of local/regional transactions particularly in the tourism sector, resulting in one blocked transaction and one approved with remedies after an in-depth review. In 2024, manufacturing industries sector had the highest number of clearances.[204]

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[201] Please consider that the timelines calculated with specific dates are presented as such because this is how the proposed amendment to the Law indicates in its current version. However, if there are setbacks in the legislative process, it is possible that the publication may stablish delayed specific dates. (We estimate that in any case, the timeline would not be delayed more than one month as it is today).

[202] *See* Federal Economic Competition Commission (Mexico), 2023 Annual Report, *p. 16, available at:* https://www.cofece.mx/wp-content/uploads/2024/07/2023-Annual-Report_final.pdf.

[203] *See* Federal Economic Competition Commission (Mexico), Monthly Report, June 2024, *available at:* https://www.cofece.mx/wp-content/uploads/2024/06/CN23_cofece-en-numeros_VF.pdf.

[204] *See* Federal Economic Competition Commission (Mexico), *Cofece en números*, Mar. 2025, *p. 8, available at*: https://www.cofece.mx/wp-content/uploads/2025/03/CN24_contenido-2.pdf.

IFT also has authority over mergers resolutions in telecommunications and broadcasting sectors in Mexico. In 2024, IFT unconditionally approved one concentration: Green Bridge Investment Company SCS acquired 5% of Telefónica, S.A., through Morgan Stanley & Co. International plc.[205]

Blocked and conditioned mergers

Grupo Xcaret

Grupo Xcaret intended to acquire four companies operating two different ferry routes in Quintana Roo.[206] COFECE found that the transaction would reduce the number of service providers, limiting user choice and reducing incentives to compete on price and quality and consequently decided to block it.

Mexico Infrastructure Partners/ Iberdrola Mexico

This transaction involved the acquisition of 13 power generation plants from Iberdrola in Mexico by Mexico Infrastructure Partners. COFECE imposed remedies to ensure the plants will be operated independently and to prevent the exchange of sensitive or strategic information between competitors. The purchaser must hire a third-party agent to verify compliance with these measures.[207]

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[205] *See* Federal Telecommunications Institute (Mexico), Fourth Quarter 2024 Activities Report, *p. 23*, *available at*: https://gaceta.diputados.gob.mx/PDF/66/2025/mar/Ift-20250325.pdf.

[206] *See* Federal Economic Competition Commission (Mexico), Resolution in File No. CNT-018-2023 concerning a concentration (parties confidential), Aug. 8, 2024, *available at*: https://www.cofece.mx/CFCResoluciones/docs/Concentraciones/V6083/3/6170365.pdf.

[207] *See* Federal Economic Competition Commission (Mexico), Monthly Report, February 2024, "*Concentrations*", *available at*: Monthly Report-February 2024 – Comisión Federal de Competencia Económica.

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

In 2024, COFECE ruled on 5 conduct proceedings, imposing MXN$924,780,000.00 in fines in total, more than 6 times the amount fined in 2023.[208]

DE-009-2019 - Cartel in the Local Gas Station Industry

In October, COFECE fined 52 gas stations, an association, and 18 individuals MXN $437,911,146.00 in total for colluding in price fixing of regular and premium gasoline in Chiapas, Guanajuato, Hidalgo and Yucatan for eight years.[209]

IO-002-2019 - Cartel of Waterproofing Companies

Also, in October 2024, COFECE fined Grupo Thermotek, Impac, and five individuals over MXN$237,000,000.00 for coordinating prices, locations, and waterproofing products nationwide, directly affecting housing construction costs. These sanctions are the maximum penalties permitted under Mexican competition law;[210] executives received up to five-year disqualification from their industry roles.[211]

Leniency Program and Guidelines

Over the past nineteen years, Mexico´s leniency program has led to sanctions against eighteen cartels, with COFECE receiving 184 applications to date, eight in 2024 seven fewer than in

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[208] *See* Federal Economic Competition Commission (Mexico), Cofece in Numbers, March 2025, *available at*: https://www.cofece.mx/wp-content/uploads/2025/03/CN24_contenido-2.pdf.

[209] *See* Federal Economic Competition Commission (Mexico), Resolution in File No. DE-009-2019 concerning Combustibles y Lubricantes del Mayab et al., Oct. 29, 2024, *available at*: https://www.cofece.mx/CFCResoluciones/docs/Asuntos%20Juridicos/V379/0/6202258.pdf.

[210] *See* Federal Economic Competition Commission (Mexico), Resolution in File No. V-378-0-6199126 concerning a concentration between Pinturas Thermicas del Norte, S.A. de C.V. and others, Oct. 22, 2024, *available at*: https://www.cofece.mx/CFCResoluciones/docs/Asuntos Juridicos/V378/0/6199126.pdf.

[211] *See* Federal Economic Competition Commission (Mexico), Resolution in File No. V-378 concerning Grupo Thermotek, Impac, and others, Oct. 22, 2024, *available at*: https://www.cofece.mx/CFCResoluciones/docs/Asuntos Juridicos/V378/0/6199126.pdf

2023.[212] In 2024, the program supported sanctions against a waterproofing cartel, leading to fines totaling MXN$237,676,938.00.[213]

D. DOMINANCE

In 2024, COFECE sanctioned 2 dominance cases:

1. ***IO-002-2020 - Dominance conducts in the retail market.***

In December, COFECE fined Walmart MXN93,366,000.00[214] and ordered corrective measures to eliminate certain vertical price restriction in the retail market. Walmart had systematically leveraged its market power to impose discretionary discounts and restrictive conditions on its suppliers, preventing them from granting better terms to competing retailers, without necessarily resulting in lower consumer prices at Walmart. Walmart will be monitored and if any breach to the corrective measures, COFECE may impose additional sanctions of up to 8% of Walmart´s turnover.[215]

2. ***DE-050-2019 - Dominance conducts in the production of Mezcal.***

In June, COFECE imposed fines of MXN$4,170,311.00 to the Mexican Regulatory Council for the Quality of Mezcal and one of its directors for dominance abuse and refusal to deal in the certification services to mezcal producers for over three years. The conduct prevented several

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[212] *See* Federal Economic Competition Commission (Mexico), Cofece in Numbers, March 2025, *available at:* https://www.cofece.mx/wp-content/uploads/2025/03/CN24_contenido-2.pdf.

[213] *See* Federal Economic Competition Commission (Mexico), Resolution in File No. V-378-0-6199126 concerning a concentration between Pinturas Térmicas del Norte, S.A. de C.V. and others, *available at*: https://www.cofece.mx/CFCResoluciones/docs/Asuntos Juridicos/V378/0/6199126.pdf.

[214] *See* Federal Economic Competition Commission (Mexico), Resolution in File No. V-381-2-6259456 concerning a concentration (parties confidential), Jan. 15, 2025, *available at*: https://www.cofece.mx/CFCResoluciones/docs/Asuntos Juridicos/V381/2/6259456.pdf.

[215] *See* Federal Economic Competition Commission (Mexico), COFECE fines Walmart and orders it to eliminate abusive practices against its suppliers, Dec. 16, 2024, available at: https://www.cofece.mx/wp-content/uploads/2025/01/Cofece-050-2024_ENG.pdf.

producers from accessing the market. COFECE also imposed a disqualification sanction of over three years to the director, from holding similar positions in the certification of NOM Mezcal.[216]

Sector-Specific Investigations / Market Investigations

In 2024, the Investigative Authority ("**IA**") issued three preliminary opinions regarding possible lack of effective competition conditions. Agents involved may contest them before COFECE's Board of Commissioners. The most substantial preliminary opinions were the following:

1. IEBC-001-2022 - Possible Barriers in Retail e-commerce Market

The IA observed a lack of effective competition in Mexico's retail e-commerce market, citing alleged high market concentration (*Amazon* and *Mercado Libre* control 85% of the market share), network effects, and significant entry barriers. Three main obstacles were identified: bundling of unrelated services in loyalty programs, lack of transparency in offer management algorithms, and preferential treatment for in-house logistics solutions. While the matter is pending resolution by the Board of Commissioners, the IA proposed corrective measures aimed at increasing transparency, allowing greater seller freedom, and separating unrelated services from marketplace offerings.[217]

2. IEBC-004-2022 - Corn and Corn Flour Market

The IA observed a lack of effective competition in Mexico's nixtamalized corn flour market, due to *Gruma*'s dominant position. *Gruma* allegedly controls 50-90% of sales per region, and charges

[216] *See* Federal Economic Competition Commission (Mexico), COFECE fines the Mexican Regulatory Council for the Quality of Mezcal with over 4 million pesos for harming mezcal producers, June 27, 2024, *available at*: https://www.cofece.mx/wp-content/uploads/2024/06/Cofece-026-2024_ENG.pdf.

[217] *See* Federal Economic Competition Commission (Mexico), COFECE identifies potential barriers to competition in the retail e-commerce market, Feb. 13, 2024, *available at*: https://www.cofece.mx/cofece-identifica-posibles-barreras-a-la-competencia-en-comercio-electronico-minorista/.

prices nearly 10% higher nationwide. To restore competition, the IA has proposed that Gruma divest five production plants and cease practices that restrict tortilla shops from switching suppliers.[218]

E. KEY COURT CASES

Mexican airline vs. COFECE – Interpretation of inviolability of private communications

COFECE sanctioned an airline and several individuals for absolute monopolistic practices, basing its case primarily on emails obtained during a dawn raid. The decision was initially overturned by a District Judge Specialized in Antitrust Matters, who granted amparo[219] and protection, finding that COFECE had violated the constitutional guarantee of inviolability of private communications by using these emails as evidence.

However, the Supreme Court later reversed this ruling, apparently under the basis that the emails in question were professional rather than private communications.[220] Although this Supreme Court decision is not binding, it is highly relevant for interpreting the scope of administrative authorities´ powers in relation to constitutional guarantees.

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[218] *See* Federal Economic Competition Commission (Mexico), Investigator Authority identifies that Gruma must sell 5 production plants to reactivate competition in the corn flour market in Mexico, Oct. 7, 2024, *available at* https://www.cofece.mx/autoridad-investigadora-identifica-que-gruma-debe-vender-5-plantas-de-produccion-para-reactivar-la-competencia-en-el-mercado-de-harina-de-maiz-en-mexico/.

[219] *"The writ of amparo protects citizens and their basic guarantees, and protects the Constitution itself by ensuring that its principles are not violated by statutes or actions of the state that undermine the basic rights enshrined within it" Victor Collí, Improving Human Rights in Mexico: Constitutional Reforms, International Standards, and New Requirements for Judge*, THE HUMAN RIGHTS BRIEF (May 22, 2025, at 09:50 ET), https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1850&context=hrbrief.

[220] *See* Federal Economic Competition Commission (Mexico), The SCJN upholds Cofece´s sanction in litigation against Aeroméxico, Feb. 13, 2025, *available at*: https://www.cofece.mx/wp-content/uploads/2025/03/Cofece-002-2025_ENG.pdf.

***Holding company vs. IFT/COFECE* – Companies' Obligation to Provide Information requested through Requests for Information**

In late 2024, the Second Court Specialized in Competition, Telecommunications and Broadcasting, ruled in amparos appeals 846/2022 and 428/2022 that in the event that COFECE issues information requirements directed to subsidiaries in an economic interest group, although the economic agent has certain information and documentation that it must have in its possession by legal obligation, such as that which in fact it has by reason of its economic activity, the fact is that subsidiaries do not have corporate power to force their parent company to provide information in its possession, to which the subsidiaries would not have access due to the corporate structure of the economic interest group to which they belong.[221]

However, seen from a parent company's perspective, in 2025 the same Specialized Collegiate Court ruled that a holding company must provide information it has or can request from its subsidiaries within the same economic group, as long as it holds a majority share and exercises legal control. This broad reading of article 119 of the Mexican Competition Law significantly increases holding companies´ responsibilities to supply information to competition authorities.[222]

First class-action filed by COFECE

Although class actions have been regulated in Mexico since 2011,[223] in 2024, COFECE filed its first ever class action lawsuit against a cartel that allegedly manipulated medicine supply and prices

[221] According to public information in the amparos under the docket numbers 846/2022 and 428/2022 filed in the Second Court Specialized in Competition, Telecommunications and Broadcasting.

[222] *See* Decision issued by the Second Collegiate Court Specialized in Economic Competition, Broadcasting and Telecommunications, in Appeal Docket 591/2023, Feb. 20, 2025.

[223] *See* Decreto por el que se reforman y adicionan el Código Federal de Procedimientos Civiles, el Código Civil Federal, la Ley Federal de Competencia Económica, la Ley Federal de Protección al Consumidor, la Ley Orgánica del Poder Judicial de la Federación, la Ley General

over a decade, seeking over MXN $2 billion in damages.[224] The lawsuits were dismissed in first instance;[225] however, the dismissal was challenged by COFECE and was turned to the Supreme Court for its resolution.[226] This case marked a historic step towards enabling collective antitrust claims in Mexico, where private litigation has been rare. However, private antitrust lawsuits still face restrictive standing rules, procedural challenges in proving and quantifying damages, limited remedies, and a short statute of limitations.

Jurisprudential Developments

In the last year, the most recent criteria issued by the judiciary have been inclined to strengthen the powers and investigative tools of the Mexican antitrust authorities, from the scope of information requests (as it was the case of ***Holding company vs. IFT/COFECE's*** amparo appeal dockets 846/2022 and 428/2022, referenced above) to the information that can be obtained through dawn raids (as it was the case in the ***Mexican airline vs. COFECE's*** amparo appeal docket 284/2023, referenced above).

With the forthcoming loss of constitutional autonomy of the antitrust authority, its incorporation and unification under the public administration, and the forthcoming issuance of secondary legislation on antitrust matters, the criteria issued by the judiciary will be crucial for the catalog of powers of this new antitrust authority.

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del Equilibrio Ecológico y la Protección al Ambiente y la Ley de Protección y Defensa al Usuario de Servicios Financieros, Diario Oficial de la Federación Aug. 30, 2011, *available at*: https://www.dof.gob.mx/nota_detalle.php?codigo=5206904&fecha=30/08/2011#gsc.tab=0.

[224] In November 2024, according to public information in the claim under the docket number 1/2024 filed in the First District Court of Administrative Matter and Specialized in Economic Competition, Broadcasting and Telecommunications.

[225] See *Collective Action Filed by Cofece Against Pharmaceutical Companies Dismissed*, Reforma, Apr. 2025, available at: https://www.reforma.com/desechan-accion-colectiva-de-cofece-contra-farmaceuticas/ar2910356.

[226] In March 2025, the Second Chamber of the Supreme Court decided to exercise their attraction faculty for the resolution of this matter under the docket number 1/2025.

XII. NORWAY[227]

A. LEGISLATIVE DEVELOPMENTS

Market Investigation Tool

In November 2024, the Norwegian Parliament adopted a new market investigation tool.[228] The initial proposition from the Norwegian Ministry of Trade and Fisheries was subject to a public hearing in 2023 and the final proposal was sent to the Norwegian Parliament in September 2024. The market investigation tool will come into force on 1 July 2025.

The market investigation tool provides the Norwegian Competition Authority (the "**NCA**") with the authority to initiate investigations into conduct which is not prohibited by the competition rules, but which the NCA still considers problematic for competition. Subsequent to these investigations, the NCA has broad powers to intervene by imposing requirements upon the relevant undertakings, such as behavioural remedies and/or structural divestment requirements as needed.

Regulation on the Calculation of Interests on Fines

A new regulation on the calculation of interests on fines was adopted in November 2024, with retroactive effect from 1 January 2023.[229] The new regulation gives companies a right to claim interests on fines that are fully or partially paid, should the fine be retracted in an appeal.

A Legislative Committee to Evaluate the Norwegian Competition Act

In September 2024, a legislative committee was established with a mandate to evaluate the Norwegian Competition Act. The committee will examine the need to update the Norwegian

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[227] Heidi Jorkjend and Inger Clem, *Thommessen AS*.

[228] The Act: LOV-2024-12-20-100 (Changes to the Competition Act/Implementing the market investigation tool). The preparatory work: Prop. 118 L (2023-2024). Both in Norwegian only.

[229] The Regulation: FOR-2024-11-26-2909 (in Norwegian only).

Competition Act in light if the developments in case law, regulatory changes in the EU/EEA and social developments in general. The committee's deadline to deliver a formal proposal to the Government falls on 1 December 2025.

B. MERGERS

Introduction – the Merger Control Year at a Glance

During 2024, the NCA reviewed 150 notifications, against 113 notifications in 2023. Two cases were approved during phase II, while the NCA issued one prohibition decision and used its power to call in a transaction. Further, one merger notification was withdrawn by the notifying party.

Two Cases Approved During Phase II

In April 2024, only a few days before the deadline for issuing a Statement of Objection, the NCA cleared the merger between TGS and PGS, two data and services companies in the energy sector. The NCA's opening of phase II was initially based on concerns with the competitive harm in the market for offshore geophysical data services on the Norwegian Continental Shelf.

In January 2025, the NCA cleared the acquisition of Flytoget by Vy. The acquisition was notified to the NCA in December 2024, after a prenotification dialogue with the NCA. Both parties were fully owned by the Norwegian Government prior to the transaction, but the ownership was originally organized under different ministries. Thus, the parties argued that the transaction was not subject to a mandatory filing obligation. Phase II was opened due to concerns in the train travel market, with Flytoget only operating routes to/from Norway's main airport. The transaction was however ultimately approved by the NCA without the question of whether the transaction resulted in a change of control being addressed.

One Prohibition Decision

The NCA issued one prohibition decision in 2024.[230] The case concerned the acquisition of Vitek Miljø AS by Norva24 AS, two players active within the supply of emptying and pressure washing services in a regional market on the West Coast of Norway. The NCA was concerned with the non-coordinated effects in the market for emptying and pressure washing service. The parties appealed the decision to the Norwegian Competition Appeals Tribunal ("**CAT**"), which upheld the NCA's decision.[231]

Exercise of the Power to Call In Transactions

In September 2024, the NCA exercised its power to call in an acquisition falling below the turnover thresholds, thereby obliging Infomedia Retriever Holding AB, Infomedia A/S and Retriever Aktiebolag to submit a merger notification. The transaction had already been closed by the parties when it was called in for review. The merger notification was submitted in January 2025 and as of 30 April 2025, the case is still pending. When the NCA called in the transaction, they referred to a prohibition decision regarding Retriever's attempt to acquire another company in the same market in 2013, as well as stating that they believed that the market conditions had not changed significantly since then.[232]

Withdrawal of One Merger Notification

Saferoad Holding AS decided to withdraw its merger notification concerning the acquisition of Ze Bra Holding AS in December 2024. The NCA opened a phase II investigation due to concerns in the Norwegian market for road marking, as the acquirer was already considered to be the largest

[230] Decision V2024-5 (Norva24 Vest AS/Vitek Miljø AS) (in Norwegian only).

[231] Decision 2024/1726 (Norva24 Vest AS) (in Norwegian only).

[232] Decision V2024-6 (Infomedia A/S/Retriever Aktiebolag/Goldcup 35547 AB (u.n.c.t Infomedia Retriever Holding AB) (in Norwegian only).

player on the market, where the combined entity could potentially exercise market power after completing the transaction. The notification was withdrawn before the deadline for the Statement of Objections.

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

The Price Hunter Case

In September 2024, the NCA imposed fines on the three largest grocery chains in Norway for violations of the Norwegian Competition Act.[233] This case marks the first instance where the NCA has imposed fines due to the anticompetitive effects of an agreement. The total fines imposed on the grocery chains amount to approximately 4.9 billion NOK (around 423 million EUR).

For background, in 2010, the largest grocery chains in Norway entered into an agreement called the "Industry Norm for Comparative Advertising," ("**Norm**") which was intended to provide guidelines for the chains' use of comparative advertising. The Norm established that price-comparative marketing should be documented and included a provision confirming the chains' right to visit each other's stores to collect prices. The Norm was clarified in 2011. The NCA claims that the chains agreed that the provision confirming access to each other's stores should be implemented in such a way that the parties had access to collect extensive amounts of prices, and that in 2012, an agreement was reached to further expand the access to each other's stores. It is this agreement on extensive collection of price information that, according to the NCA, is illegal.

The NCA concluded that this collaboration weakened competition in the market by increasing price transparency among the chains, enabling them to quickly follow each other's price changes.

[233] Decision V2024-4 (Coop Norge SA/Norgesgruppen ASA/Rema 1000 AS) (in Norwegian only).

This, in turn, has weakened the incentives to reduce prices and strengthened the incentives to increase them.

This is the first time the NCA has imposed fines based on the anticompetitive effects of an agreement. To our knowledge, this is also the first case applying Article 101 of the TFEU (or its equivalents) that relies on a unilateral effects theory of harm, rather than theories based on coordinated or exclusionary effects, in the context of information exchange that diminishes price competition among existing market participants.

All parties have appealed the decision, and the hearings in CAT will take place in May/June 2025.

Other Cases Related to Anti-Competitive Practices

In April 2024, the NCA issued a statement of objection to two companies active in the market for moving services. The NCA conducted dawn raids in September 2021. The suspected infringements relate to information exchange, market sharing and price coordination activities.

Further, in December 2024, the NCA Initiated a new investigation related to illegal cooperation between driving schools. Further details regarding the suspected illegal activities are not public.

In addition, the NCA closed an investigation in the pharmacy market in June 2024.

D. DOMINANCE

There were no material dominance developments not otherwise discussed herein in Norway during 2024.

E. KEY COURT CASES

Appeal Court Judgement in Posten Norge/Bring vs. Truck Manufacturers

In 2017, the Norwegian public postal service, Posten Norge (which later changed its name to Posten Bring), initiated the case against several truck manufactures, claiming that they had paid an overcharge when purchasing trucks. Posten claimed total damages of EUR 47 million plus interest and return on invested capital (in total approx. EUR 90 million), based on a 17% overcharge per truck. Posten furthermore asserted that each defendant was jointly and severally liable for the entire overcharge, including for trucks produced by other cartel participants. The claim against Iveco was settled out of court, meaning that the parties to the Norwegian trucks case were Volvo/Renault, MAN, Daimler and DAF. Scania was also part of the case as a third-party intervener.

The Oslo District Court dismissed Posten's claim in its ruling in February 2023. Following this, Posten appealed, and the appeal case was heard at the Borgarting Court of Appeal in the fall of 2024. The Appeal Court judgement was rendered in March 2025, and awarded Posten approximately EUR 10 million in compensation.[234] The truck manufacturers have appealed the judgement to the Norwegian Supreme Court.

Key takeaways from the Appeal Court judgement:

- The Appeal Court affirmed the District Court's statements that the plaintiffs bear the burden of proof and that, under Norwegian law, there is no presumption of harm in cartel cases.

[234] The District Court's ruling: TOSL-2017-115740-3. The Court of Appeal's ruling: LB-2023-84349-4. Both in Norwegian only.

- The Appeal Court concluded that the scope of the infringement was broader than what the truck manufacturers had acknowledged.

- The Appeal Court found that Posten had paid an overcharge of 10% on trucks purchased in Norway and a 5% overcharge on trucks purchased in Sweden and Slovakia.

- The Appeal Court rejected the truck manufacturers' arguments related to pass-on.

XIII. POLAND[235]

A. LEGISLATIVE DEVELOPMENT

The full picture of legislative development in Poland requires two perspectives. One is the practices of the regulatory body, i.e. the performance of competition protection obligations. The other is initiatives to create new provisions.

From the perspective of the practices of the regulatory body, there has been a clear increase in the value of fines imposed by the Polish antitrust office, the Office of Competition and Consumer Protection ("**OCCP**"). According to official data, OCCP issued over 750 decisions, imposing a total of approximately EUR 223 million in fines.[236] Interestingly, PLN 650 million of these fines concerned practices restricting competition. The highest fine was approximately PLN 400 million in a case involving a detected price collusion and the division of the automotive market between insider entities.[237] Another interesting example involved a detected price collusion between a manufacturer and large household appliance stores with respect to consumer electrical equipment in wholesale distribution.[238] The antitrust authority usually considers a violation of Article 10 paragraph 1 of the Act of 16 February 2007 on Competition and Consumer Protection (Journal of Laws of 2024, item 1616) and Article 3 paragraph 1 and Article 5 of Council Regulation (EU) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ EU L 1 of 4.1.2003, consolidated version OJ EU L 148 of

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[235] Malgorzata Kieltyka, *KIELTYKA GLADKOWSKI KG LEGAL*.

[236] Information according to the official website of OCCP: https://uokik.gov.pl/podsumowanie-dzialalnosci-uokik-w-2024-r.

[237] Poland, Office of Competition and Consumer Protection, Zmowa przy sprzedaży samochodów KIA – decyzja Prezesa UOKiK (1 Oct. 2024), https://uokik.gov.pl/zmowa-przy-sprzedazy-samochodow-kia-decyzja-prezesa-uokik.

[238] https://uokik.gov.pl/ekspresowa-zmowa-prezes-uokik-naklada-kary-na-jura-poland-i-najwieksze-sklepy-z-elektronika.

11.6.2009) as the legal basis for price collusion cases. We can therefore see a trend that the Polish monopoly market is protected by a double legal ring, i.e. national and EU regulations.

Development of lawmaking: combating greenwashing, AI disinformation, cybersecurity and the class action mechanism in competition law

The main core of the development of the legal ecosystem with respect to new provisions is of course security and digital transformation, including the emphasis on threats related to artificial intelligence, cybersecurity and combating disinformation. New trends in law creation focus on combating anti-competitive practices, especially cartels, detecting price fixing in the public procurement market, and implementing new IT solutions. The Polish Presidency of the Council of the European Union in 2025 will also contribute to the development of the public sector in this regard.

In the thicket of recent legal changes, a particularly interesting example is the problem of falsely presenting a product as ecological (greenwashing) within monopolistic practices. A related initiative penalizes unsubstantiated claims on information about the possibility of repairing a consumer product. The clear ESG (Environmental, Social, and Governance) context is particularly worth emphasizing here. One of the indirect legal sources of this initiative is Directive 2024/1799 of the European Parliament and Council of 13 June 2024 on the promotion of the repair of goods (the so-called Right to Repair Directive - R2R). (A directive is an act of the European Union that must be replicated by a Member State’s regulation.) This Directive introduces a programmatic standard for the repair of goods (Right to Repair). The aim here is to combat the overproduction of electronic waste and counteract misleading practices regarding the possibility of repairing consumer goods.

In the broader context of ESG, another new regulatory initiative is important, namely Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 (so-called Greenwashing Directive), which aims to achieve ecological transformation and emphasize the obligation to provide reliable product information. This act extends to the so-called black market practices to include apparent environmental issues (claims raised by manufacturers only to lure clients into buying products) and defines new subject-related grey market practices.[239] Grey market practices are practices that border on legality, which may not be overtly illegal, but are unethical and undermine trust in the market.

Directive 2024/825 enables better management of products throughout their life cycle, ensuring greater transparency of information on the impact of products on the environment. These changes help combat greenwashing practices by imposing the obligation on entrepreneurs to provide reliable information on the ecological aspects of products.[240]

Also very important is the new law that came into force in Poland in 2024, which will enable the application of the class action mechanism to cases concerning the use of practices violating the general interests of consumers and in particular will allow a group of consumers to file a joint lawsuit against companies violating their rights.[241] Namely, it concerns the amendment of the Act of December 17, 2009 on the pursuit of claims in group proceedings. The new mechanism will facilitate the pursuit of claims by consumers, especially in the case of large-scale violations, such as misleading a large number of people or selling defective products. The entities authorized to

[239] R. Bujalski, "Greenwashing - characteristics of the phenomenon and legal environment", (2024).

[240] Poland, Office of Competition and Consumer Protection, Implementation of Directive 2024/825 on empowering consumers in the ecological transition through better protection against unfair practices and better information (7 Nov. 2024), https://uokik.gov.pl/bip/implementacja-dyrektywy-2024-825-dotyczacej-wzmocnienia-pozycji-konsumentow-w-procesie-transformacji-ekologicznej-poprzez-lepsza-ochrone-przed-nieuczciwymi-praktykami.

[241] Amendment of 24 July 2024 to the Act on Pursuing Claims in Group Proceedings and Certain Other Acts, Journal of Laws of 2024, item 1237.

initiate such proceedings will be consumer organizations, which will allow for faster and more effective enforcement of consumer rights.

B. MERGERS

A merger, including an acquisition of control, creation of a joint venture or acquisition of assets, is in the language of antitrust regulations primarily a market activity covered by the term "concentration". This term is defined at the EU level and is generally applicable not only in Poland but throughout the European Union by Article 3 of the Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings.[242]

Therefore, the image of local merger practice in Poland results from the obligation to officially report to the OCCP. Namely, it concerns control proceedings as part of the obligation to report the intention to concentrate to the Polish antitrust authority on the basis of Article 13 in conjunction with Article 94 of the Act of 16 February 2007 on the Protection of Competition and Consumers.[243] The obligation to report the intention to concentrate generally arises when: the total global turnover of the undertakings participating in the concentration in the financial year preceding the year of notification exceeds the equivalent of EUR 1,000,000,000 or the total turnover in the territory of the Republic of Poland of the undertakings participating in the concentration in the financial year preceding the year of notification exceeds the equivalent of EUR 50,000,000. Therefore, the activity of the OCCP in the form of an official register shows the entire merger market in Poland.[244]

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[242] This is the so-called European Community Merger Regulation (Official Journal of the European Union L. of 2004, No. 24, p. 1, as amended).

[243] The up-to-date consolidated text of the amended act was published in the Polish Journal of Laws of 2024, item 1616. This Act supplements Polish government law in the form of the Regulation of the Council of Ministers of 23 December 2014 on the Notification of the Intention to Concentrate undertakings (consolidated text published in the Journal of Laws of 2018, tem 367).

[244] https://uokik.gov.pl/bip/koncentracje.

One of the interesting examples of challenges for a reported market concentration in Poland is the project of creating a JV in the largest media market. In this case, several multimedia giants, including the publisher of a commercial television station and a nationwide press daily and Agora SA, aimed to create a joint venture under the name of the Employers' Association of Digital Publishers with its registered office in Warsaw. The JV was created to collectively manage related rights to press publications, protect related rights to press publications and support and represent the interests of entities that have related rights to press publications. The case ended with the return of the notification, which means that the concentration was not covered by a positive decision through the merger control procedure before the Polish OCCP.[245] The main assessment criterion is the issue of fair competition in the media sector due to the degree and strength of market concentration.

Another interesting issue is the problem of conditional consent of OCCP for concentration. This was also the case in the concentration of a distributor of electrical materials in Poland through a positive but conditional decision (DKK-2.421.44.2023.RAWPS) regarding the takeover of TIM by FEGA & Schmitt Elektrogroßhandel, belonging to the Würth Group. The decision allows control, but with the condition of selling selected assets so as not to violate competition.[246]

[245] Poland, Office of Competition and Consumer Protection, Agora S.A., INTERIA.PL sp. z o.o., Ringier Axel Springer Polska sp. z o.o., TVN S.A., Wirtualna Polska Media S.A. oraz Zjednoczone Przedsiębiorstwa Rozrywkowe S.A. (14 Aug. 2024), https://uokik.gov.pl/bip/agora-sa-interiapl-sp-z-oo-ringier-axel-springer-polska-sp-z-oo-tvn-sa-wirtualna-polska-media-sa-oraz-zjednoczone-przedsiebiorstwa-rozrywkowe-sa.

[246] Judgment regarding Decision of the President of the Office of Competition and Consumer Protection DKK-24/2024 (25 Jan. 2024), https://decyzje.uokik.gov.pl/bp/dec_prez.nsf/43104c28a7a1be23c1257eac006d8dd4/d52ddffe8c3d34a8c1258b09003aadc0/$FILE/82709754.pdf/TIM%20Decyzja%20nr%20DKK-24_2024-%20wersja%20BIP%20(003).pdf.

Another interesting recent example is the ongoing merger of an Asian defence and space industry giant (HANWHA AEROSPACE CO., LTD), which intends to produce ammunition through the creation of a joint venture with a Polish listed electronics company (WB Electronics S.A.).[247]

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

The litmus test for the relevance of the cartel problem is the institution of leniency in Poland, regulated in art. 113a–113[1] of the aforementioned Act on the Protection of Competition and Consumers, that allows entrepreneurs who participated in prohibited anti-competitive practices (e.g. cartels) to avoid or reduce the applicable penalty, provided that certain conditions are met, such as disclosing the fact of the cartel's existence and providing appropriate evidence.

One example of cartel agreements is the penalty imposed on August 19, 2024 by the Polish Office of Competition and Consumer Protection on a truck manufacturer (DOK-1.410.1.2021.MK) in the amount of PLN 155 million. According to the authority, this case concerned participation in a cartel concerning the sale of trucks. In the years 2009-2019, Iveco Poland, together with local distributors, divided the market into exclusive zones and set vehicle prices, which constituted a violation of competition rules. Cartel zoning resulted in the seller directing the customer to a competing distributor or presenting them with an unfavorable offer.[248]

Cartel problems also affect the Polish IT market, as in the proceedings concerning restriction of competition in the IT market.[249] The case concerned prohibited agreements with authorized sellers

[247] Poland, Office of Competition and Consumer Protection, HANWHA AEROSPACE CO., LTD oraz WB Electronics S.A. (Apr. 30, 2025), https://uokik.gov.pl/bip/hanwha-aerospace-co-ltd-oraz-wb-electronics-sa.

[248] Poland, Office of Competition and Consumer Protection, Kartel przy sprzedaży ciężarówek Iveco – decyzja Prezesa UOKiK (16 Sept. 2024), https://uokik.gov.pl/kartel-przy-sprzedazy-ciezarowek-iveco-decyzja-prezesa-uokik.

[249] Poland, Office of Competition and Consumer Protection, Decision of OCCP No. DOK-7.410.1.2023; concerns Dell sp. z o. o. https://decyzje.uokik.gov.pl/bp/dec_prez.nsf/1/7A6C9DD845B7D94BC1258C0B003BA1F7?editDocument&act=Decyzja.

and distributors, which restricted competition in the IT market, and which consisted in assigning specific sales transactions to selected trading partners. The case is an interesting example of a so-called binding decision of OCCP, where the entity is obliged to eliminate the effects of these practices by introducing more open and transparent rules of distribution and a discount policy for the end user.

D. DOMINANCE

A dominant position is defined in the Polish Act on Competition and Consumer Protection as a position of an undertaking which enables it to prevent effective competition on the relevant market by enabling it to act to a large extent independently of competitors, contractors and consumers. It is presumed that an undertaking holds a dominant position if its share in the relevant market exceeds 40 percent.

PayPal is a popular online service in Poland that allows online payments worldwide and acts as an electronic wallet integrated with a bank account. In a recent case, OCCP found that PayPal used unfair terms and prohibited their use. The fine amounted to over PLN 100 million.[250] The subject of the proceedings is the assessment of the contractual clauses of service users. Among them were provisions stating that a user would be punished for even just trying to use a blocked account. The open catalogue of sanctions provided for in the agreement based on the PayPal model, which additionally were not related to individual violations, meant that the company's decisions were arbitrary. For example, it could block the user's money "at any time" and "at its own discretion".

[250] Poland, Office of Competition and Consumer Protection, Ponad 106 mln zł kary dla PayPal (15 July 2024), https://uokik.gov.pl/ponad-106-mln-zl-kary-dla-paypal.

The dominant e-commerce portal in Poland is Allegro. In December 2024, OCCP imposed a fine of nearly PLN 4 million on Allegro for using unfavorable provisions for consumers in the platform regulations and the Allegro Smart! service, a conditional free delivery service for goods purchased on the e-commerce platform (DOZIK 16/2022).[251] These provisions contained general clauses enabling unilateral changes to the terms of the contract by Allegro, which introduced an imbalance in rights and obligations to the detriment of consumers. This is a case particularly worth emphasizing, because in this case the Court of Competition and Consumer Protection confirmed OCCP decision, finding that such practices violated the collective interests of consumers. Allegro announced the possibility of appealing the judgment, but did not exercise it and the decision became final in 2024.[252]

[251] https://decyzje.uokik.gov.pl/bp/dec_prez.nsf/1/E5C25115755AEEB5C125892B003F4948?editDocument&act=Decyzja.

[252] https://decyzje.uokik.gov.pl/bp/dec_prez.nsf/1/E5C25115755AEEB5C125892B003F4948?editDocument&act=Decyzja.

XIV. RUSSIA[253]

A. LEGISLATIVE DEVELOPMENTS

Amendments to Competition Law[254]

Federal Law No. 344-FZ, which took effect on March 1, 2025, introduced several changes to Russian competition law.[255] In particular, the definition of a monopolistically high (or low) price was clarified. Now, when determining such price using comparable markets (i.e., the priority method, since the cost method shall be applied in cases where it is not possible to identify comparable markets), only a relevant product market in the Russian Federation may be considered a comparable one; foreign markets are excluded.

These amendments are aimed at aligning the anti-monopoly legislation with the changed market landscape and to allow for more effective detection and suppression of violations. Linkages to exchange and / or over-the-counter price indicators from global markets do not always reflect the domestic economic situation, particularly the balance of supply and demand.

In addition, the list of violations for which the anti-monopoly authority is obliged to issue warnings has been expanded. According to the amendments introduced, a warning is also now mandatory for certain violations of the prohibition on monopolistic activities by an entity that owns a digital platform. These include: the imposition of disadvantageous or irrelevant terms; economically or technologically unjustified refusal or evasion to enter into a contract with certain customers; the economically, technologically or otherwise unjustified establishment of different prices (tariffs)

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[253] Vassily Rudomino, Alla Azmukhanova and Alisa Belova, *ALRUD Law Firm*.

[254] *Federal Law No. 135-FZ* "On Protection of Competition" (issued Jul. 26, 2006, effective Oct. 26, 2006).

[255] *Federal Law No. 344-FZ* "On Amending Federal Law "On Protection of Competition" (issued Oct. 14, 2024, effective Mar. 1, 2025).

for the same goods, or the imposition of discriminatory terms and conditions. These amendments represent the trend toward adapting antitrust regulations as the digital economy evolves.

Elaboration of the Sixth Anti-Monopoly Package

The Federal Antimonopoly Service of the Russian Federation ("**FAS Russia**") is working on amendments to the anti-monopoly legislation that will be included in the so-called "Sixth Anti-Monopoly Package". Although the text of the bill has not yet been established, FAS Russia is determined to repeal the IP immunities[256] – provisions, that exempt license agreements or other agreements on the usage rights or the transfer of the rights for intellectual property, from application of certain anti-monopoly prohibitions.

The requirements regarding the prohibition on abuse of dominance in particular do not currently apply to actions involving disposal of exclusive rights to the intellectual property including the means of individualization of a legal entity and products, works or services. Meanwhile, the prohibition on agreements restricting competition does not apply to agreements granting and / or alienating the exclusive rights to the intellectual property or the means of individualization of a legal entity, products, works or services. However, considering the transformation that markets have undergone, the existing IP immunities may lead to the restriction of competition by rights holders through the abuse of their exclusive rights, potentially increasing the risk of the monopolization of digital product markets.

[256] FAS Russia, Press Release (Mar. 29, 2024), https://en.fas.gov.ru/press-center/news/detail.html?id=56078.

B. MERGERS

Strengthening Control over Transactions in the Financial Markets

In December 2024, a federal law was enacted[257] amending the merger control requirements for transactions involving the acquisition of shares and assets of financial organizations, as well as rights with respect to such organizations.

According to the amendments, which will come into effect on September 1, 2025, a transaction may require the prior approval of FAS Russia if the value of the assets of the acquiring financial organization of the same type as the target **or** a financial organization of the same type as the target within the acquirer's group exceeds a threshold determined by the Government of the Russian Federation[258] as per the latest financial accounts. If the acquirer's group includes several financial organizations of the same type as the target, the aggregate value of their assets as per the latest financial accounts is to be used to determine whether the threshold has been exceeded.

The current regulation stipulates a merger control filing obligation only for transactions in financial markets where the value of the assets of the target financial organization exceeds the established thresholds. In this regard, the amendments will allow for the monitoring of certain consolidations of financial organizations of the same type to prevent any negative impact on competition in the financial markets.

[257] *Federal Law No. 539-FZ* "On Amending Federal Law "On Protection of Competition" (issued Dec. 28, 2024, effective Sep. 1, 2025).

[258] In coordination with the Central Bank of the Russian Federation, if the relevant type of financial organizations is supervised by it.

Increase in the State Fee for Consideration of a Merger Control Application

The state fee for consideration of a merger control application was increased from 35,000 Russian rubles to 400,000 Russian rubles by a federal law adopted in July 2024.[259]

Remarkably, the maximum administrative fine for the failure to file a merger control application with the anti-monopoly authority remains the same at 500,000 Russian rubles. A bill[260] developed by FAS Russia proposing to increase the maximum fine to 1 million Russian rubles has not yet been adopted.

C. CARTELS AND OTHER ANTI-COMPETITIVE PRACTICES

Cartels in Tenders as a Separate Offense

Article 178 of the *Criminal Code of the Russian Federation*,[261] which stipulates liability for cartel agreements, has been supplemented with a qualified offense, making it specifically illegal to enter into a cartel agreement resulting in an increase, decrease or maintenance of prices in mandatory tenders.[262]

The previous version of this law also covered this violation. However, considering that this type of cartel agreement is the most frequent in practice and causes significant damage to the economy,

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[259] *Federal Law No. 176-FZ* "On Amending Parts One and Two of the Tax Code of the Russian Federation and Certain Legislative Acts of the Russian Federation and Recognizing Certain Provisions of Legislative Acts of the Russian Federation as null and void" (issued Jul. 12, 2024, effective Jul. 12, 2025 except for certain provisions). Provisions re. state fee increase effective Jan. 1, 2025.

[260] *Bill on Amending the Code of Administrative Offences of the Russian Federation*, https://regulation.gov.ru/Regulation/Npa/PublicView?npaID=152646 (in Russian).

[261] *Criminal Code of the Russian Federation No. 63-FZ* (issued Jun. 13, 1996, effective Jan. 1, 1997 except for certain provisions).

[262] *Federal Law No. 467-FZ* "On Amending Articles 76.1 and 178 of the Criminal Code of the Russian Federation and Articles 28.1 and 151 of the Criminal Procedure Code of the Russian Federation" (issued Dec. 13, 2024, effective Dec. 24, 2024).

it was decided to define cartel agreements in tenders as a separate offense and to stipulate greater liability than other types of cartels.

Resolution of Uncertainty in How the Income of Cartels is Understood

As a result of the amendments above, the concept of "income" was also introduced into Article 178 of the *Criminal Code of the Russian Federation*. This article provides for two alternative criminal characteristics of cartels: (1) the infliction of major damage to citizens, organizations or the state; or (2) the extraction of substantial income. Prior to this amendment, there was uncertainty in practice as to what should be considered as "income" for the purposes of criminal liability for cartels.

Following the approach developed by the Constitutional Court of the Russian Federation,[263] the legislator has now defined the concept of "income" as the proceeds derived by all participants in a cartel agreement, without considering the expenses planned or incurred. Thus, the potential for contradictions in the interpretation of this term was eliminated.

The Digitalization of Methods to Detect Cartels

FAS Russia has developed a bill amending competition law to establish a legal basis to run a state information system for the prevention, detection and suppression of anti-competitive agreements.[264]

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[263] *Resolution of the Constitutional Court of the Russian Federation No. 19-P* "On the Case Concerning the Verification of the Constitutionality of Part One and Paragraph 'в' of Part Two of Article 178 of the Criminal Code of the Russian Federation, as well as Paragraph 1 of the Notes to this Article in Connection with the Complaint of Citizen S.F. Shatilo" (Apr. 19, 2023), https://doc.ksrf.ru/decision/KSRFDecision675687.pdf (in Russian).

[264] *Bill on Amending Competition Law*, https://regulation.gov.ru/Regulation/Npa/PublicView?npaID=147862 (in Russian).

The automated system, called "Anticartel", has already been used by FAS Russia in cartel investigations. This experience is being used in the development of a state information system of the same name.

As noted on the FAS website,[265] by using artificial intelligence, the system can analyze tenders on a daily basis. In addition, Anticartel will be integrated with other systems and databases of state bodies and companies to conduct comprehensive data research and allow it to access information quickly.

D. DOMINANCE

Landmark Case – FAS Russia Imposed an "anti-monopoly" Fine for Abuse of Dominance

For the first time,[266] FAS Russia has brought the liability provided for in Article 51(3) of the competition law to bear for abuse of dominance.[267] It did so by prescribing to transfer income obtained through monopolistic activities to the federal budget.

The case background shows that a company holding a dominant position in the cellular communications market increased its tariffs for over 29 million users by an average of 8%. It cited higher costs in justifying the increase. However, the anti-monopoly authority did not accept this justification and recognized the setting and maintaining a monopolistically high price by a

[265] FAS Russia, Press Release (May 22, 2024), https://fas.gov.ru/news/33273 (in Russian).

[266] FAS Russia, Press Release (Oct. 14, 2024), https://fas.gov.ru/news/33517 (in Russian).

[267] Although the text of the prescription does not refer to this provision of competition law (as well as to other legal grounds), we believe that the anti-monopoly authority was guided by this article.

dominant entity as a violation. As a result, FAS Russia issued a prescription for the company to transfer over 3 billion Russian rubles to the federal budget.[268]

Digital Platforms are Under the Close Scrutiny of FAS Russia

FAS Russia continues to closely monitor the e-commerce market and digital platforms in particular.

In 2024, the authority issued warnings to marketplaces that jointly occupy a dominant position that they had to rectify signs that they were imposing unfavorable contract terms on sellers and refusing, without justification, to conclude contracts with potential sellers.[269]

[268] Decision of FAS Russia in a case on violation of anti-monopoly legislation No. 11/01/10-11/2024 (dated Oct. 9, 2024), https://br.fas.gov.ru/ca/upravlenie-regulirovaniya-svyazi-i-informatsionnyh-tehnologiy/d26508fa-0261-4480-8748-971f092d8a0f/ (in Russian).

[269] FAS Russia, Press Release (Apr. 26, 2024), https://fas.gov.ru/news/33238 (in Russian); FAS Russia, Press Release (Apr. 10, 2024), https://fas.gov.ru/publications/24310 (in Russian).

XV. SINGAPORE[270]

A. LEGISLATIVE DEVELOPMENTS

Following the recommendation of the Competition and Consumer Commission of Singapore ("**CCCS**"), the Block Exemption Order for Liner Shipping Agreements – currently Singapore's only block exemption order – was renewed for another five years beginning 1 January 2025. This is the fifth renewal of the Block Exemption Order, which first came into effect in 2006 and applies to the following agreements which are deemed to deliver net economic benefits to Singapore:

1. vessel sharing agreements for liner shipping services; and

2. price discussion agreements for feeder services.[271]

B. MERGERS

2024 saw the CCCS taking more proactive and interventionist action, signalling a fresh appetite for pre-emptive interventions and tougher measures.

Pre-Emptive Interim Measures Imposed in an Anticipated Merger

For the first time in its enforcement history, the CCCS took pre-emptive steps (i.e. prior to the agreement or implementation of a merger) in imposing interim measures ("**IMD**") on parties to an anticipated merger.[272] On February 2, 2024, the CCCS issued a set of IMDs to Grab (which operates a widely-used ride-hailing and food delivery platform) and Delivery Hero (a global food

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[270] Ameera Ashraf and Clarissa Koh, *WongPartnership LLP*.

[271] Competition (Block Exemption for Liner Shipping Agreements), https://sso.agc.gov.sg/SL/CA2004-OR1?DocDate=20211115.

[272] Competition & Consumer Commissioner Singapore, CCCS had issued Interim Measure Directions during the Possible Acquisitions by Grab Delivery Hero's business in Singapore (1 Apr. 2024), https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/imds-issued-during-the-possible-acquisition-by-grab-of-delivery-hero-business-in-singapore.

delivery platform, operating through various local brands such as "foodpanda" in Singapore) with respect to Grab's possible acquisition of Delivery Hero's Southeast Asian business in the online food ordering and delivery ("**OFOD**") market. The issuance of the IMDs was notable because the merger had not been notified to the CCCS. Instead, following statements and reports referencing a possible transaction, the CCCS undertook an investigation, and came to the view that the transaction, if carried out, might result in competition concerns in the OFOD market in Singapore (characterised by few large players, high entry barriers and strong network effects). Accordingly, the CCCS issued the IMDs to, among other things, ensure: (a) that the businesses continued to operate independently as competitors while the CCCS conducted its review, and (b) that the contemplated merger would not proceed before competition concerns were addressed. Not long after the IMDs were issued, the CCCS was informed on February 23, 2024 that the transaction had been abandoned.

Provisionally Blocked a Transaction in the Ride-Hailing Market

In another significant move, the CCCS provisionally blocked Grab's potential acquisition of Trans-Cab Holdings (a large private taxi operator in Singapore) as it found that the transaction was likely to significantly reduce competition by increasing the "stickiness" between Grab and Trans-Cab's drivers.[273] This would deprive Grab's competitors of an important source of drivers, which would in turn further entrench Grab's dominant position in the ride-hailing market in Singapore. While parties had an opportunity to make representations to the CCCS, they chose instead to abandon the transaction 11 days later.

[273] Competition & Consumer Commissioner Singapore, Proposed Acquisition by Grab Rentals Pte. Ltd. of Trans-cab Holdings Ltd. (Updated 25 July 2024), https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/proposed-acquisition-by-grab-rentals-pte-ltd-of-transcab-holdings-ltd?type=public_register.

Longest CCCS Review – Airline Transactions Cleared with Commitments

In 2024, the CCCS conditionally cleared a complex series of airline transactions involving Air India Limited ("**Air India**"), Singapore Airlines Ltd ("**SIA**"), and Tata SIA Airlines Ltd ("**Vistara**", a joint venture between Tata Sons Private Limited ("**TSPL**") and SIA).[274] There were 2 notifications before the CCCS in respect of these transactions (the "**Notifications**").

(a) **Anti-Competitive Agreement Notification**: The first was a notification on November 30, 2020 of a commercial cooperation agreement by SIA and Vistara in respect of a Commercial Cooperation Framework Agreement for the provision of scheduled air passenger services between India and Singapore (the "**Cooperation Agreement**").

(b) **Merger Control Notification**: The second was a notification on December 14, 2021 of the proposed acquisition by Talace Private Limited of 100% of the equity share capital of Air India (the "**Talace Acquisition**").

In addition, on November 29, 2022, SIA exercised its right under the Cooperation Agreement to require TSPL to integrate the operations of Air India and Vistara following the Talace Acquisition. This resulted in: (A) Talace and Vistara merging into Air India, with Air India as the surviving entity, followed by SIA acquiring 21.5% of the integrated entity (the "**Implementation Agreement**"); and (B) the integrated entity replacing Vistara as the countersigning party to the

[274] Competition & Consumer Commissioner Singapore, Proposed Acquisition by Talace Private Limited of Air India Limited. (Updated 13 May 2024), https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/proposed-acquisition-by-talace-of-air-india?type=public_register.

Cooperation Agreement. Owing to these developments, the CCCS had to also consider the impact of the Implementation Agreement on the Notifications.

Ultimately, the CCCS identified competition concerns and found that the parties involved in the transactions possessed the majority of the market shares for carriers offering certain flights between Singapore and India ("**Affected Routes**"). It also observed that the parties managed to sustain their market shares in recent years despite the existence of a number of competing airlines. The CCCS also did not accept the parties' Net Economic Benefit arguments.

Against this backdrop, the CCCS found that the transactions would allow for price and capacity coordination between the parties, which would in turn significantly restrict competition on the Affected Routes. To address these concerns, the CCCS accepted the following commitments from the parties:

(a) **Capacity Maintenance**: The parties committed to maintaining pre-COVID-19 capacity levels (i.e., calendar year 2019 levels) on the Affected Routes.

(b) **Independent Monitoring**: The appointment of independent auditors to monitor adherence to the commitments.

These transactions marked the CCCS's longest review of such commercial agreements to date. Likely reasons for the extended review period include: (A) the evolving nature of the proposed transactions set against the backdrop of Singapore's voluntary and non-suspensory notification system; (B) the complexity introduced by the confluence of the various transactions and the parties involved; and (C) a lengthy commitments process – which included a market testing exercise on whether the proposed commitments would sufficiently address the competition concerns.

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

Crack Down on Bid-Rigging Conduct

2024 also saw a notable escalation in enforcement against bid-rigging conduct.[275]

In the CCCS's decision in a case of bid-rigging in tenders for vulnerability management software licences,[276] the CCCS fined Rei Securite Pte. Ltd. ("**Rei Securite**") as well as Soh Chee Keong ("**Soh**") – an individual who was considered an "undertaking" for his conduct relating to the IT services he rendered – for engaging in bid-rigging conduct. Soh had been contracted by Rei Securite to provide certain IT services to a client. When the client issued a fresh tender for IT services, Soh entered into an agreement or concerted conduct with Rei Securite by which he procured two cover bids for tenders in respect of that and two subsequent tenders. Rei Securite subsequently won those tenders given that these parties were the only participants in the tenders. The CCCS found that Soh had facilitated these cover bids, noting that a facilitator would also be liable for participating in anti-competitive conduct, if such conduct contributes actively and intentionally to the anti-competitive conduct, even if that facilitator was not itself active in the market affected by the restriction of competition.

[275] Competition & Consumer Commission Singapore, Annual Report 2023-2024: Championing Fair Markets Empowering Consumers (31 January 2025), https://www.cccs.gov.sg/-/media/custom/ccs/files/media-and-publications/publications/annual-reports/cccsfull-ar-fy2324-pdfa.ashx.

[276] Competition & Consumer Commission Singapore, CCCS Penalises Company and Ex-Director for Rigging Bids (5 Sept. 2024), https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/cccs-penalises-company-and-ex-director-for-rigging-bids?type=public_register.

This case is particularly interesting because:

(a) it was the first time the CCCS also found an individual (acting as an economic undertaking) liable for facilitating bid-rigging; and

(b) it made clear that the CCCS will pursue infringements regardless of entity or tender size / value – in this case, the values of the affected bids were between US$49,000 and US$50,000, with the CCCS's fines on both Rei Securite and Soh totalling just US$7,000.

Separately, the construction sector still remains a hotspot for bid-rigging where two of the three bid-rigging cases investigated in 2024 – including dawn raids – originated from this sector.

These cases underscore the CCCS's commitment to stamping out bid-rigging (among others) as an enforcement priority. In monitoring such conduct, the CCCS has also noted in its Annual Report that it will continue to rely on its leniency and whistle-blower programmers, while also leveraging advanced data-driven detection tools, such as its bid-rigging detection tool and document similarity tool, to more effectively uncover and investigate anti-competitive conduct.

Tougher Enforcement & Harsher Penalties

In 2024, the CCCS adopted a firmer stance on enforcement, imposing harsher penalties. Notably, for the first time, the CCCS initiated contempt of court proceedings in a consumer protection case against a business and its manager for breaching court orders, resulting in substantial fines and

imprisonment.[277] Additionally, the CCCS levied one of its highest penalties in recent years – almost S$10 million – on two companies in the construction sector for bid-rigging.[278]

D. DOMINANCE

The CCCS did not take any enforcement action in respect of abuse of dominance in 2024.

[277] Competition & Consumer Commissioner Singapore, Nail Palace Entities and their Managing Director Found Guilty of Contempt of Court. (Updated 10 September 2024), https://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/nail-palace-entities-and-md-found-guilty-of-contempt-of-court-5-sept-24.

[278] Competition & Consumer Commissioner Singapore, CCCS Penalises Contractors Specialising in Non-Residential Interior Fit-Out Tenders for Bid-Rigging. (Updated 20 September 2024), https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/cccs-penalises-contractors-specialising-in-non-residential-interior-fit-out-tenders-for-bid-rigging.

XVI. SOUTH AFRICA[279]

A. LEGISLATIVE DEVELOPMENTS

South Africa celebrated 25 years of competition law and saw the resignation of the Minister responsible for competition, Ebrahim Patel. Prior to departing, Patel issued a block exemption applicable to small, micro and medium-sized businesses (**SMMEs**)[280] and Draft Vertical Restraints Regulations.[281]

The purpose of the block exemption regulations is to exempt a category of agreements or practices among SMMEs which pertain to restrictive horizontal and vertical practices, including Research and Development collaborations, joint purchasing agreements and collective negotiations with large buyers or suppliers. The exemptions are designed to promote the growth and participation of SMMEs in the South African economy.

The Draft Vertical Restraint Regulations are controversial for specifying a list of practices labelled as "*likely to result in a substantial prevention or lessening of competition*" which suggests an attempt to create a presumption of anti-competitiveness for common vertical restraints. The Draft Vertical Restraint Regulations have been heavily criticised and, since they were issued by the previous Minister in the final moments of his time in Office, it will be interesting to see if the current Minister will progress the issuing of final regulations.

[279] Lara Granville and Ciara Quinn, *MGI Competition Law*.

[280] Block Exemption Regulations for Small, Micro and Medium-Sized Businesses, 2024, GN 2538 of GG 50746 (3 June 2024).

[281] Draft Vertical Restraint Regulations, GN 2539 of GG 50746 (3 June 2024).

The Commission issued final guidelines relating to Public Interest in Merger Control,[282] Indivisible Transactions,[283] and the Automotive Aftermarket.[284]

One of the key aspects of the Public Interest Guidelines for Merger Control is the clear positioning of public interest considerations on an equal footing with traditional competition assessments, reflecting the Commission's commitment to the Competition Act's public interest objectives. The Guidelines on Indivisible Transactions outline the Commission's approach to determining when multiple transactions should be assessed as a single merger, with the view to preventing fragmented filings that may obscure the proposed transaction's combined competitive impact. This strengthens the Commission's ability to evaluate the cumulative effects on competition and public interest for mergers with multiple steps.

Liberty Mncube stepped down as a permanent panel member of the Competition Tribunal ("**Tribunal**"), leaving an even larger resource deficit at the Tribunal.

B. MERGERS

The Constitutional Court clarified the correct test for determining whether retrenchments are "merger specific" rather than due to "operational" requirements, overturning the Competition Appeal Court's (**CAC's**) decision.[285] The CAC had determined that only "some nexus" the merger and the retrenchments was required to find them "merger-specific."[286] The Constitutional Court rejected this as inconsistent with proper causation analysis, reasoning that merely showing "some

[282] Revised Public Interest Guidelines Relating to Merger Control, GN 4544 of GG 50323 (20 March 2024).

[283] Guidelines of Indivisible Transactions, GN 5372 of GG 51352 (4 October 2024).

[284] Guidelines for Competition in the South African Automotive Aftermarket, GN 5385 of GG 51352 (4 October 2024).

[285] *Coca-Cola Beverages Africa (Pty) Ltd v Competition Commission and Another* 2024 (4) SA 391 (CC).

[286] *Competition Commission v Coca-Cola Beverages Africa (Pty) Ltd* [2022] ZACAC 4.

nexus" would always link retrenchments to a merger since the merger grants control to the acquiring firm, affecting business decisions. The Constitutional Court reinstated the two-stage causation test, which assesses both factual causation (whether the retrenchments would not have happened "but for" the merger) and legal causation (assessing whether it is fair and reasonable to attribute the retrenchments to the merger, considering the broader economic context and the reasons for the decision).

The Tribunal upheld the Commission's recommended prohibition of Vodacom's acquisition of Maziv,[287] concluding that the proposed transaction would have lasting negative effects on competition in key markets. It noted that the public interest commitments made by the merging parties were insufficient to outweigh the competitive harm. Many see the public interest commitments offered by the merging parties as a lost opportunity to roll out coverage to low-income consumers.[288]

C. CARTELS AND OTHER ANTI-COMPETITIVE PRACTICES

Cartels

The Commission approached the Constitutional Court for leave to appeal the CAC's judgment in a case alleging collusion in the trading of USD/ZAR. The CAC's decision released 17 respondent banks from the case, allowing the prosecution to proceed against 4 banks.[289]

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[287] Competition Commission of South Africa, Media Statement (29 October 2024), https://www.compcom.co.za/wp-content/uploads/2024/10/Commission-welcomes-Tribunal-decision-to-prohibit-the-Vodacom-and-Maziv-merger-29-October-2024-1.pdf.

[288] South African Government, Media Statement (29 October 2024), https://www.gov.za/news/media-statements/minister-parks-tau-notes-tribunal-order-vodacom-and-maziv-merger-29-oct-2024.

[289] Competition Commission of South Africa, Media Statement (6 February 2024), https://www.compcom.co.za/wp-content/uploads/2024/02/Commission-Appeals-CAC-Decision-on-Forex-Cartel-Case-06-February-2024.pdf.

Market Inquiries

The Commission launched an inquiry into the poultry market,[290] and hearings for the Fresh Produce Market Inquiry and Media and Digital Platforms Market Inquiry (**MDPMI**) were concluded. The Commission issued the Fresh Produce Market Inquiry final report in January 2025[291] and the MDPMI provisional report in February 2025.[292] The final report on the Fresh Produce Market Inquiry proposed 31 recommendations including calls for policy reforms, market restructuring, and targeted support for small-scale and historically disadvantaged farmers. The MDPMI provisional report claims that Google plays a significant role in driving traffic to news publishers in South Africa which raises concerns around value sharing. It also notes that AI-powered search could impact referral traffic unless collaborative measures are taken to support local news ecosystems.

The Commission settled with Booking.com, ending its review of the Commission's Online Intermediation Platforms Market Inquiry (**OIPMI**). Booking.com agreed to remove certain price parity terms from contracts. The Commission expressed hope the other four firms with appeals against the OIPMI remedial actions will settle.[293]

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[290] Competition Commission of South Africa, Media Statement (9 February 2024), https://www.compcom.co.za/wp-content/uploads/2024/02/Commission-Invites-Comments-on-Draft-ToRs-into-the-Poultry-Industry-Value-Chain.pdf.

[291] Competition Commission of South Africa, Report (18 June 2024), https://www.compcom.co.za/wp-content/uploads/2024/06/CC_FPMI-NonConfidential-Report-2024.pdf.

[292] Competition Commission of South Africa, Media Statement (11 October 2024), https://www.compcom.co.za/wp-content/uploads/2024/10/MDPMI-Provisional-Report-to-be-released-in-November-2024.pdf.

[293] Competition Commission of South Africa, Media Statement (5 March 2024), https://www.compcom.co.za/wp-content/uploads/2024/08/booking-com-and-competition-commission-reach-settlement-on-online-intermediation-platforms-market-inquiry-appeal.pdf.

D. DOMINANCE

Sasol Gas failed to convince the CAC that the National Energy Regulator has sole jurisdiction to deal with pricing issues in piped gas.[294]

The Tribunal issued an interim order directing Google to permit Lottoland South Africa to access its advertising services. Google had contended Lottoland's advertising breached local legislation and Google's terms of service.[295]

The Tribunal granted interim relief to eMedia, pending the final determination of its complaint to the Commission, permitting sports content sub-licensed by MultiChoice to the National Broadcaster to be broadcast on eMedia's satellite platform. eMedia's claim was that Multichoice's restriction preventing such broadcast amounted to exclusionary conduct.[296] eMedia and Multichoice appear to have reached an out-of-court settlement with a statement to that effect being made in eMedia's interim results.[297]

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[294] Competition Commission of South Africa, Media Statement (5 March 2024), https://www.compcom.co.za/wp-content/uploads/2024/03/Welcome-Statement-Sasol-Gas-CAC.pdf.

[295] Competition Tribunal South Africa, Media Summary (12 November 2024), https://www.comptrib.co.za/info-library/case-press-releases/tribunal-grants-lottoland-interim-relief-orders-google-to-grant-lottoland-access-to-its-advertising-platform.

[296] Competition Tribunal South Africa, Case Alert (15 April 2024), https://www.comptrib.co.za/info-library/case-press-releases/tribunal-grants-emedia-interim-relief-against-multichoice-supersport-and-sabc-in-relation-to-the-broadcasting-of-sporting-events-on-television.

[297] eMedia Holdings, Unaudited Consolidated Interim Results and Cash Dividend Declaration for the Six Months Ended 30 September 2024, https://senspdf.jse.co.za/documents/2024/jse/isse/EMNE/Interims.pdf. The statement pertaining to the settlement appears on page 1.

XVII. SPAIN[298]

A. LEGISLATIVE DEVELOPMENTS

The year 2024 was relatively quiet in terms of legislative activity in Spain. The most notable initiative was the introduction of the "Proyecto de Ley por la que se crea la Autoridad Administrativa de Defensa del Cliente Financiero para la resolución extrajudicial de conflictos entre las entidades financieras y sus clientes", published on December 13, 2024. This draft law, which has not been passed yet, includes several amendments to Law 15/2007 for the Defense of Competition ("**LDC**") which had been previously discussed but not yet enacted. Among the most significant proposed changes to the LDC are the introduction of a formal settlement system, a substantial increase in the maximum fines both for directors, raising the cap from €60,000 to €400,000, and for companies whose turnover cannot be determined for the purpose of calculating fines. Additionally, the draft amendments propose to restructure the catalogue of infringements under Article 62. Notably, two new infringements would be added for the breach of the duty of confidentiality—particularly in relation to leniency and settlement proceedings—and, in the framework of unannounced inspections, for the unjustified delay in allowing entry and inspection of premises.

On the soft law front, the Spanish National Commission on Markets and Competition ("**CNMC**") and the European Commission entered into a Memorandum of Understanding, aimed at strengthening their collaboration in the enforcement of the *Digital Markets Act* ("**DMA**"). Through this arrangement, both organizations are able to combine their resources and form joint teams to

[298] Irene Moreno-Tapia Rivas, Maria Perez Carrillo, Esther de Felix Parrondo, Garralda, Laura López, Carlos Alberto Ruiz and Paula Wignall, *Cuatrecasas*.

investigate matters where the DMA affects the Spanish market. This initiative follows the adoption of Royal Decree-Law 5/2023, which granted the CNMC the authority to investigate possible breaches of the DMA in Spain, as outlined in Article 38(7) of the DMA.

Lastly, the second attempt to transpose Directive (EU) 2020/1828[299] on representative actions took place through the proposed *Organic Law on measures regarding the efficiency of the Public Justice Service and collective actions for the protection and defense of consumers' and users' rights and interests*. However, during the parliamentary processing of the proposal, the section relating to collective actions was removed. Nevertheless, a new *Draft law on collective actions* is currently under parliamentary processing and is expected to be enacted in 2025. The legislator intends to propose a broad scope that includes antitrust civil actions in cases where the collective rights and interests of consumers and users have been harmed.

B. MERGERS

The overall Spanish mergers and acquisitions market experienced significant growth in 2024, with an 8% increase in the total number of transactions[300] that also translated into a 13% increment of reviewed concentrations with respect to 2023. Overall, in 2024, the CNMC reviewed over 80 concentrations, 72 out of which were authorized in Phase I. Most of these cases were notified through the abbreviated procedure (that allows for shorter deadlines). The remaining concentrations were either authorized in Phase I with commitments[301] (some of them on the basis

[299] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC.

[300] "Iberian Lawyer (2025) M&A market in Spain grows by 8% in 2024", https://iberianlawyer.com/ma-market-in-spain-to-grow-by-8-in-2024/.

[301] *See*, CNMC decisions in the following files: Decision in File C/1495/24, *Damm-Idilia / Cacaolat*; Decision in File C/1456/24 , *CASP-MCH/Druni/Arenal*; Decision in File C/1463/24, *Cepsa / Ballenoil*; Decision in File C/1452/24, *Indigo / Parkia*; Decision in File C/1438/24, *Hospitales Cosaga / Centro Medico El Carmen*; Decision in File C/1430/23, *QSI/WPT*; and Decision in File C/1421/23, *BSC / Activos B. Braun*.

of behavioral commitments)[302] or in Phase II with commitments. Exceptionally, there was one deal that was abandoned.[303]

In particular, JCDecaux abandoned its proposed acquisition of Clear Channel, both major players in Spain's out-of-home ("**OOH**") advertising sector. The CNMC raised concerns (both in Phase I and Phase II proceedings) that the deal would significantly reduce competition, particularly in the street furniture advertising segment, where both companies were the only consistent bidders for major municipal contracts. The CNMC feared the merger would create a near-monopoly situation, leading to less favorable terms for advertisers and diminishing the bargaining power of media agencies. After the opening of Phase II in February 2024, JCDecaux ultimately withdrew its notification in October 2024, effectively terminating the deal.

On April 30, 2024, the CNMC fined Rheinmetall €13 million for concealing information and providing misleading data during its acquisition of Expal Systems (approved in Phase I), both active in the defense sector. Initially, the companies failed to disclose their overlapping activities in the nitrocellulose and wet pulp markets, which are crucial for propellant production. Following a complaint by a customer, the CNMC initiated an investigation, and concluded that Rheinmetall had provided incomplete and misleading information. The CNMC classified these actions as two serious infringements, imposing two fines of €6.5 million each. Rheinmetall appealed the decision, arguing that the legal basis for one of the fines is unclear, and the Spanish High Court (Audiencia Nacional) has suspended payment as an interim measure pending a final ruling.

[302] Decision from the CNMC in File C/1424/23, *Smurfit Bulgaria / Artemis BIB*.

[303] Decision from the CNMC in File C/1426/23, *JCDecaux España / Clear Channel España*.

Last but not least, in 2024, the CNMC began reviewing BBVA's takeover bid for Banco Sabadell, and opened a Phase II investigation in November due to concerns in three key areas. First, the CNMC raised concerns that the merger could negatively impact retail banking customers and small businesses by reducing competition, potentially resulting in less favorable terms and branch closures, especially in rural areas. Second, the acquisition of Banco Sabadell's payment services business raised fears that BBVA might increase commissions, particularly affecting SMEs. Third, there were worries that Banco Sabadell customers would lose access to cash machines if existing agreements with other banks were curtailed post-merger. On April 30, 2025, the CNMC authorized the transaction subject to commitments, but it has not yet been implemented, as it is under consideration by the Council of Ministers.

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

Recent Spanish competition law cases highlight the evolving landscape of antitrust enforcement and judicial review, with significant implications for both domestic and international businesses. Two notable cases from 2024—the Cabify arbitration dispute and the annulment of bid-rigging fines in the school transport sector—underscore the importance of procedural rigor and the boundaries of judicial intervention in competition matters.

The dispute between ride-hailing company Cabify and Auro New Transport Concept revolved around exclusivity clauses in their 2017 agreement, which an arbitration panel found to restrict competition. Cabify challenged the arbitration award, arguing that Article 101 of the *Treaty on the Functioning of the European Union* ("**TFEU**")—a fundamental antitrust provision—had not been properly applied, and the High Court of Justice (Tribunal Superior de Justicia) of Madrid partially annulled the award on public policy grounds. However, the Spanish Constitutional Court later

ruled that, while Article 101 TFEU is indeed a rule of public order, the arbitrators had already considered its application. According to the Constitutional Court, by overturning the arbitration award, the High Court overstepped its authority and infringed on Auro's right to judicial protection. The Constitutional Court concluded that there was no breach of public policy or EU law, and the annulment should not have been granted.

On the second case mentioned above, the Spanish High Court (Audiencia Nacional) annulled the fines that the CNMC imposed in 2019 on 14 school transport companies accused of bid rigging in Murcia.[304] The High Court found that the CNMC had not sufficiently proven that the companies knowingly participated in a single and continuous infringement, as required by established case law. The evidence presented only showed recent involvement in certain tenders, without linking the companies to the original 2009 agreement or demonstrating ongoing coordination. The High Court emphasized that circumstantial evidence must be compelling and directly connected to the alleged conduct, not merely suggestive. Additionally, some fines were overturned because the alleged infringements were time-barred, and the High Court clarified that shared management alone does not establish joint liability without proof of economic or organizational links.

D. DOMINANCE

The Spanish competition landscape has recently seen a landmark decision addressing the abuse of dominance in digital markets. The case involving Booking.com stands out for both the scale of the penalty imposed and the breadth of the behavioral remedies required, reflecting the increasing scrutiny of dominant digital intermediaries and their impact on market dynamics.

[304] In relation to the CNMC Decision in File SAMUR/02/18, *Transporte Escolar Murcia*.

In July 2024,[305] the CNMC imposed its largest-ever fine—€413,240,000[306]—on Booking.com for what the authority characterized as two continuous, albeit distinct, forms of abusive conduct in the online hotel-booking sector in Spain, each with alleged implications for competition and hotel partners.

In the first place, the CNMC identified an alleged exploitative abuse. According to the CNMC, the allegedly exploitative behavior stemmed from certain contractual arrangements that, in its view, might have restricted hotels' ability to set independent rates on their direct channels. It is further claimed that these agreements were subject to terms governed by Dutch law and the exclusive jurisdiction of courts in Amsterdam, raising concerns over the transparency and fairness of such provisions. The CNMC maintains that this situation could have placed hotels at a commercial disadvantage, particularly with regard to the visibility of their listings and the impact of specific advertising or ranking programs.

The second alleged abuse was exclusionary. The CNMC suggested that Booking.com may have used its platform's default ranking system to encourage hotels to favor its services over other online travel agencies ("**OTAs**"). Additionally, participation in the "Preferred Partner" and "Preferred Partner Plus" programs is said to have hinged on demonstrating profitability for Booking.com, possibly incentivizing pricing and availability decisions that favored the platform at the expense of broader competition.

[305] The dispute arose on 16 April and 18 June 2021, when two complaints were lodged before the CNMC from two hotel sector associations against BOOKING.COM for a series of anti-competitive practices that could constitute an infringement of the LDC and the TFEU.

[306] €206,620,000 for each of the two single and continuous infringements of abuse of dominant position consisting of the imposition of unfair trading conditions on hotels located in Spain, and restricting competition from other online travel agencies in offering online intermediation booking services to hotels located in Spain, respectively.

To address these issues, and in addition to the fine, the CNMC imposed behavioral remedies to prevent the recurrence of the questioned practices.

While this constitutes the largest fine imposed thus far in the Spanish digital market context, the outcome remains subject to judicial review, leaving open the possibility that Booking.com's conduct may ultimately be interpreted under a more favorable light as legal challenge progress.

E. KEY COURT CASES

In 2024, the Spanish Supreme Court issued several rulings addressing relevant aspects of competition law, both under Article 101 of the TFEU and article 1 of the LDC.

Effects of Administrative Decisions in Civil Proceedings - Burden of Proof

In the framework of civil litigation between petrol companies and petrol stations concerning vertical price fixing, the Supreme Court issued two judgments[307] in which it revisited and adjusted its previous doctrine on the effects of decisions by a competition authority on subsequent private claims, in line with that of the EU Court of Justice.[308] According to the Supreme Court, if the conduct serving as a basis for the claim is not one of the conducts assessed in a decision of a competition authority which is final, but nevertheless is of the same nature and scope —from a material, personal, temporal and geographical perspective— as the infringements declared in such decision, then the burden of proof shifts and it is the defendant who must provide evidence against price fixing (direct or indirect; in vertical agreements, that would be the supplier).

[307] Judgements of the Spanish Supreme Court, Civil Chamber, of November 6 (STS 5266/2024), and November 7 (STS 5558/2024), 2024.

[308] Judgement of the EU Court of Justice, April 20, 2023 (C-25/21 *Repsol Comercial de Productos Petrolíferos*).

Relevant Geographic Market in Cartel Cases

Several companies challenged the fines imposed for rigging bids concerning school transportation services in the Balearic Islands on the basis that not all of them operated on the same islands. The Spanish Supreme Court[309] concluded that if several companies agree to submit rigged bids to allocate a contract to a predetermined contractor, that is an infringement by object regardless of the geographic area where they carry out their activities. Thus, the geographic market is not a constituent element of an infringement.

Antitrust Private Enforcement

In the Trucks case,[310] the Supreme Court issued a second set of rulings in March 2024,[311] in which it analyzed cases with expert reports that quantified the damage specifically rather than relying on generic reports, as was the case in the first set of judgments.[312] The Supreme Court reduced the awarded overcharge to 5% and indicated that, in applying the principle of equal treatment, a common solution should be provided to all claimants.

[309] Judgement of the Spanish Supreme Court, Administrative Chamber, of June 13, 2024 (STS 3223/2024).

[310] The *Trucks* case derives from the European Commission Decision dated 19 July 2016 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (AT.39824 - Trucks).

[311] Judgments no. 370, 372, 373, 374, 375, 376, 377 y 381/2024 of 14 March.

[312] In June 2023, the Supreme Court issued a first set of rulings in the Trucks case, in which it examined claims supported by reports based on meta studies on the effects of cartels in the past, without conducting a specific analysis of the alleged harm. The rulings applied a permissive standard of proof in favor of the claimants and estimated the damage at 5%.

In the Cars cases,[313] several Courts of Appeals have issued various rulings in which they either (i) dismissed the claim on the grounds that the action was time-barred[314] or that the claimant's expert report was insufficient,[315] or (ii) judicially estimated the damage (mostly at 5%).[316]

In the Milk cases,[317] Commercial Courts No. 3 and 11 of Barcelona and No. 1 of Toledo issued several judgments in which they considered that the *dies a quo* for the limitation period began on the day of publication of the CNMC's decision in 2015 (even though such decision was ultimately annulled and the CNMC subsequently issued a new decision in 2019).[318]

In the Euribor case,[319] the Court of Appeal of Valladolid dismissed a claim filed against DEUTSCHE BANK S.A., considering that the Euribor related infringement affected the financial derivatives market and not the mortgage loan market (from which the claim was derived), without the claimant proving otherwise.

[313] The *Cars* case derives from the Resolution of the Council of the National Commission for Markets and Competition, dated 23 July 2015 (S/0482/13) for alleged anti-competitive practices prohibited under Article 1 of Law 16/1989, of July 17, on the Defense of Competition (Law 16/1989), Article 1 of Law 15/2007, of July 3, on the Defense of Competition (LDC), and Article 101 of the Treaty on the Functioning of the European Union.

[314] Judgments from the Provincial Court of Alicante (8th Division) no. 248/2024 dated 13 May 2024, or no. 572/2024 dated 18 November 2024 or judgment from the Provincial Court of Palma de Mallorca (4th Division) no. 379/2024 dated 25 June 2024 (among others).

[315] Judgments from the Provincial Court of Pontevedra (1st Division) no. 67/2024 dated 8 February 2024 or no. 519/2024 dated 4 November 2024, or from the Provincial Court of Valencia (9th Division) no. 81/2024 dated 26 March 2024 or no. 225/2024 dated 19 November 2024 (among others).

[316] Judgments from the Provincial Court of Madrid (32nd Division) no. 30/2024 dated 29 January 2024 or no. 325/2024 dated 11 November 2024, from the Provincial Court of Oviedo (1st Division) no. 24/2024 dated 22 January 2024 or no. 419/2024 dated 16 May 2024 (among others), or from the Provincial Court of León (1st Division) no. 466/2024 dated 28 June 2024 or no. 524/2024 dated 29 July 2024.

[317] The *Milk* case derives from the Resolutions of the Council of the National Commission for Markets and Competition, dated 26 February 2015 and 26 February 2019 (S/0425/201) for alleged restrictive practices of competition prohibited under Article 1 of Law 15/2007, of July 3, on the Defense of Competition (LDC), and Article 101 of the Treaty on the Functioning of the European Union.

[318] Judgments of the Commercial Court No. 3 of Barcelona of 9 February and 4 November 2024, Judgments of the Commercial Court No. 11 of Barcelona of 25 July 2024, and Judgment of the Commercial Court No. 1 of Toledo of 19 February 2024. All Courts considered that a 1-year limitation period applied.

[319] The *Euribor* case derives from the European Commission Decision dated 4 December 2013 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (AT 39914 - Euro Interest Rate Derivatives).

In the *Decennial Insurance* case,[320] the Commercial Court No. 12 of Madrid, in its judgment no. 51/2024, dismissed the follow-on claim of a real estate developer, considering that any damage would have been entirely passed on to the final customers (i.e., the homebuyers). This judgment follows the precedent set by the Madrid Court of Appeals in its judgment no. 377/2022 of 19 May 2022 (which became final after the Supreme Court declared the cassation appeal inadmissible in June 2024).

[320] The *Decennial Insurance* case derives from the Resolution of the Council of the National Competition Commission, dated 12 November 2009 (S/0037/08) for alleged restrictive practices of competition prohibited under Article 1.1 of Law 16/1989 on Competition Protection and Article 81.1 of the Treaty of the European Community.

XVIII. TÜRKİYE[321]

The Turkish Competition Authority (the "**TCA**") has been highly active in 2024, a year marked by significant policy and legislative developments. The Turkish Competition Board (the "***TCB***" or the "***Board***") reviewed a total of 443 cases[322] and issued 114 decisions resulting in administrative fines. Of the investigation-related decisions, 29 were resolved through commitments, 76 via settlements, 13 were dismissed, and 12 concluded with direct administrative fines. Notably, TCB has also initiated 49 new investigations reflecting its continuous active enforcement strategy.

A. LEGISLATIVE DEVELOPMENTS

Procedural Changes to Law No. 4054 on the Protection of Competition

Law No. 7511 ("**Amending Law**"), published in the Official Gazette on May 29, 2024, introduced key procedural changes to Law No. 4054 on the Protection of Competition (the "***Competition Law***"), aiming to expedite full-fledged investigations by the TCA. Previously, investigations involved three core documents from the TCA and three rounds of written defenses from the undertaking, followed by an oral hearing. The amendments brought the following changes:

- The first written defense following the investigation notice is no longer required, as the notice merely reflects a suspicion, not an allegation of infringement.

[321] Sezin Elçin-Cengiz, Emre Onal, Saba Sen, and Merve Demirkaya, *CoPartners*.

[322] Since the 2024 annual report has not been published yet, the numbers given are approximate data and relied on published decisions.

- An additional written opinion by the TCA is now only required if the undertaking's defenses alter the case team's initial assessment.

- The TCA now only has 15 days for its optional additional opinion and the undertaking has 30 days for its response, with no extensions permitted.

Guidelines on Competition Infringements in Labor Markets

On December 3, 2024, the TCB published the final version of the Guidelines on Competition Violations in Labor Markets ("***Guidelines***").[323] The Guidelines confirm that wage-fixing, no-poaching agreements, and the exchange of competitively sensitive labor market information—such as wages and working conditions—between employers may violate Competition Law. Undertakings are deemed competitors in labor markets regardless of their output activities. The Guidelines also introduce a "safe harbour" for information exchange, aligning with U.S. practice, and clarify that ancillary restraints in labor agreements must be proportionate in duration to their legitimate objective.

Draft Amendment to Competition Law

Although the Draft Amendment outlining new obligations and sanctions was shared in October 2022, it has not yet entered into force. However, its inclusion in the Turkish government's 2024–2026 Medium-Term Program and the TCA's 2024–2028 Strategic Plan—emphasizing a shift toward proactive and regulatory interventions—signals a likely forthcoming legislative change.

[323] TCB Decision 24-49/1087-RM(4), Nov. 21, 2024.

Guidelines Concerning the Calculation of Fines

On February 19, 2025, the TCB published the *Guidelines Concerning the Calculation of Fines Rendered by the TCB,* providing key clarifications on the calculation of base fines, mitigating factors, aggravating circumstances and the circumstances under which fines may be imposed on managers and employees.[324] These developments will be canvassed further in the 2025 edition of the Year in Review.

B. MERGERS

According to the M&A Outlook Report ("***M&A Report***")[325], in 2024, the TCB conducted reviews of 311 M&A transactions with a total value of 191,917 million Turkish Lira (US$5.85 billion); and 6 privatizations. This represents an approximately 43% increase compared to the 217 transactions reviewed in 2023. In addition, the TCB did not issue conditional approval decisions in 2024 and conducted a more comprehensive Phase II review of 2 transactions. This can be interpreted as the TCB increasing scrutiny of merger cases.

Three notable developments deserve particular attention:

Following the publication of its 2023 *Final Fast-Moving Consumer Goods Sectoral Report*, the TCB adopted the European Commission's catchment area approach in supermarket acquisitions, defining narrow geographic markets and identifying dominance at a 30% market share; lower than

[324] Rekabet Kurumu, *Guidelines Concerning the Calculation of Fines Rendered* (February 19, 2025), https://www.rekabet.gov.tr/Dosya/ceza-yonetmeligi-kilavuzu-20250219105421829.pdf.

[325] Ekonomik Analiz ve Araştırma Dairesi Başkanlığı, *Merger and Acquisition Outlook Report* (2024), https://www.rekabet.gov.tr/Dosya/bd-gorunum-raporu-6-1-2025-20250107145004292.pdf (Last date of access: 26.04.2025)

the traditional 40% threshold. The TCB supported its analysis with HHI calculations, while also considering e-commerce, alternative stores, and other competitive dynamics.

Moreover, the TCB extended the catchment area approach beyond the Fast-Moving Consumer Goods sector to other sectors, including in the *BP Decision*.[326] In assessing Petrol Ofisi's[327] acquisition of BP's[328] operations in Türkiye, an accessibility-based geographic market analysis, mapping over 12,500 fuel and 10,500 LPG dealer locations using 5 km (central) and 20 km (provincial) radii was conducted. This approach, aligned with EU standards and the 2024 Fuel Sector Inquiry Report,[329] identified 61 local markets where competition concerns could arise due to the merged entity's potential market power.

The TCB found that Petrol Ofisi's acquisition of shares in *Çekisan*[330] and *ATAŞ*[331] did not trigger merger filing thresholds, but raised concerns under Article 4, ultimately granting an individual exemption. Approved on September 12, 2024, the transaction was cleared with commitments including the divestiture of 115 fuel stations, storage and distribution caps, and biannual compliance reporting.

The TCB continues to apply a broad interpretation of both "technology undertaking" and "local nexus" in merger control. As of 2022, such undertakings must make a merger filing regardless of whether they meet financial thresholds if a local nexus exists. The TCB considers an undertaking

[326] TCB Decision 24-37/885-379, Aug. 12, 2024.

[327] Petrol Ofisi A.Ş.

[328] BP Petrolleri A.Ş.

[329] https://www.rekabet.gov.tr/Dosya/akaryakit-sektor-incelemesi-raporu-20240318105053196.pdf (Last date of Access: 21.05.2025)

[330] Çekisan Depolama Hizmetleri Ltd. Şti.

[331] ATAŞ Anadolu Tasfiyehanesi A.Ş.

to qualify if it uses technology - even as an ancillary service - and deems the local nexus met if (i) minimal revenue is generated in Türkiye, (ii) services are accessible from Türkiye or to users visiting Türkiye, or (iii) a group company generates turnover in Türkiye, regardless of the target's current or planned local activity.

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

Although the TCA's 2024 annual report is not yet published, recent statistics and announcements indicate that the TCB issued around 151 decisions on anti-competitive agreements, with a notable increase in horizontal agreement cases, largely driven by growing scrutiny of labor market practices. A higher number of fines were imposed, especially in cartel cases involving customer and territorial allocation. The widespread use of settlement procedures further reflects the TCB's increasingly strict enforcement approach.

The TCB Focused on Cartel Activities in 2024

In 2024, the TCA significantly intensified its enforcement efforts against cartel activities. A particular focus was placed on detecting and penalizing horizontal agreements, such as price fixing and market/customer allocation. Within this scope, the Board concluded the following investigations that are worth noting:

- In the investigation into the refractory materials sector, the TCB determined that *Asmaş*,[332] and *Piromet*[333] had engaged in collusive behavior by coordinating bid prices in tenders

[332] Asmaş Ağır Sanayi Malzemeleri İmal ve Ticaret AŞ.

[333] Piromet Pirometalurji Malzeme Refrakter Makine Sanayi ve Ticaret AŞ.

while *Kümaş*[334] was not fined as the Board found insufficient evidence to establish its involvement.[335]

- In the investigation into ready-mix concrete producers, the allegations involved cartel conduct by coordinating pricing, customers, sales volumes, and payment terms through two separate jointly-controlled sales and marketing companies. The Board imposed administrative fines on the undertakings involved.[336]

- The investigation[337] against *Eti*,[338] *Nestlé*,[339] *Danone*[340] and *Horizon*[341] concerned anticompetitive information exchange allegations. Eti and Horizon have concluded the process through settlement while Danone and Nestlé continued with the full investigation process. Eventually, the TCB imposed an administrative fine on Nestlé for exchanging sensitive information with Eti, while Danone was not fined, as the Board deemed its communications to constitute cheap-talk.[342]

The TCB Continued to Focus on Labor Markets

Following the milestone *Private Hospitals Decision*[343] the TCB increased scrutiny of labor markets. In 2024, ongoing investigations have been concluded, and new investigations related to

[334] Kümaş Manyezit Sanayi AŞ.

[335] TCB Decision 24-20/468-198, Apr. 24, 2024.

[336] TCB Decision 24-45/1068-456, Nov. 07, 2024.

[337] TCB Decision 22-55/849-M, Dec.r 15, 2022.

[338] Eti Gıda San. Tic. A.Ş.

[339] Nestlé Türkiye Gıda San. A.Ş.

[340] Danone Tikveşli Gıda ve İçecek San. ve Tic. AŞ.

[341] Horizon Hızlı Tüketim Ürünleri Üretim Pazarlama Satış ve Ticaret AŞ.

[342] TCB Decision 23-61/1205-429, Dec. 28, 2023.

[343] TCB Decision 22-10/152-62, Feb. 24, 2022.

labor markets have been initiated. With the release of the Guidelines, it is expected that the number of related investigations will further increase. Below are a few examples in which administrative fines were imposed.

- The TCB concluded that French high schools violated Competition Law by fixing school registration fees and their components, as well as coordinating the salaries of Turkish teachers.[344]

- The TCB initiated an investigation against *Abdi İbrahim*[345] and *GlaxoSmithKline*[346] by alleging that the undertakings entered into an informal agreement and exchanged sensitive information regarding the working conditions of their employees. Both undertakings were entered into settlement agreements to pay fines.[347]

- Similarly, the TCB fined Bilim İlaç and *Drogsan*[348] for entering into an informal agreement and exchanging sensitive information on employee working conditions. The investigation concluded with a settlement.[349]

Resale Price Maintenance

Although the TCA's 2024 statistics are not yet published, available decisions show that the TCB maintained its strict stance on resale price maintenance ("***RPM***"), prompting most undertakings to

[344] TCB Decision 24-20/466-196, Apr. 24, 2024.

[345] Abdi İbrahim İlaç Sanayi.

[346] GlaxoSmithKline İlaçları Sanayi ve Ticaret AŞ.

[347] TCB Decision 23-53/1004-M, Nov. 2023.

[348] Drogsan İlaçları Sanayi ve Ticaret.

[349] TCB Decision 24-09/165-M, Feb 21, 2024.

settle. The TCB also continued to distinguish RPM from online sales restrictions, typically rejecting commitments for RPM while accepting those for online sales.

Following the 2023 Arçelik decision, the TCB continued to fine major electronics firms for RPM practices. In its decision the Board fined Samsung,[350] LG,[351] and SVS[352] for interfering with reseller prices.[353]

Similarly, in 2024 the TCB fined another electronic giant (Electrolux) due to its RPM activities. In its reasoned decision,[354] the TCB concluded that Electrolux determined the prices of its resellers and highlighted that Electrolux had directed its distributor, Çetinler, to coordinate and interfere with the resale prices set by its resellers and regarded Electrolux's instructions to Çetinler as an aggravating factor in increasing the base fine by 15%.

Lastly, the TCB imposed another fine on Nestlé for both RPM and customer and territorial restriction after rejecting Nestlé's commitment application for both customer and territorial restriction. This is unlike other cases involving RPM and customer or territorial restrictions, where the TCB often evaluates the two infringements separately[355].

D. DOMINANCE

In 2024, most abuse of dominance cases focused on digital markets, with the TCB acting not only against global firms like Google and Meta, but also local players like Trendyol and Nesine. These

[350] Samsung Electronics Istanbul Pazarlama ve Ticaret Ltd. Şti.

[351] Samsung Electronics Istanbul Pazarlama ve Ticaret Ltd. Şti.

[352] SVS Dayanıklı Tük. Mall. Paz. ve Tic. Ltd. Şti.

[353] TCB Decision 23-36/671-227, Aug. 3, 2023.

[354] TCB Decision 24-05/83-33, Jan. 18, 2024.

[355] TCB Decision 24-08/149-61, Feb. 15, 2024.

interventions, often resolved through commitments, reflect the TCB's effort to address regulatory gaps ahead of the Amending Law's adoption, signaling both its necessity and forthcoming enactment.

On June 4, 2024, the TCB concluded its investigation[356] into allegations that Google, using its dominant position in the general search services market, hindered other websites through certain search features. After examining features like "videos," "people also ask," and "weather box," the Board ruled that Google did not abuse its dominant position and imposed no fines.

On April 8, 2021, the TCB fined Google[357] for abusing its dominance by favoring its own local unit and Google Hotel Ads. Although the TCB approved Google's proposed remedies in March 2024, it later found non-compliance for hotel-related queries and imposed daily fines on Google.

Likewise, amid its Mobile Ecosystems Sector Inquiry, the TCB raised concerns about Apple's App Store rules, particularly the mandatory use of its in-app payment system and bans on linking to alternative payment options. On May 21, 2024, the TCB launched an investigation against Apple Inc. and its Turkish subsidiary for potentially restricting competition in payment systems.

The TCB also imposed fines on other sectors for unilateral conduct. In its decision,[358] the TCB found that EssilorLuxottica breached its 2018 merger commitments by creating de facto exclusivity through bundled sales and below-cost lens-cutting machines, despite formally offering products separately. These practices foreclosed rivals in the ophthalmic lens market, leading the

[356] TDB Decision 24-28/682-283, Jul. 4, 2024.

[357] TCB Decision 24-53/1180-509, Dec. 12, 2024.

[358] TCB Decision 23-39/749-259, Aug. 17, 2023.

TCB to impose daily fines, underscoring its stance against leveraging market power across related markets.

XIX. UKRAINE[359]

A. LEGISLATIVE DEVELOPMENTS

The Ukrainian antitrust regime and enforcement practice have been undergoing significant, very tangible reforms in the course of the last few years, and 2024 was not an exception.

First, a major overhaul of the antitrust legal framework and the enforcement approaches of the Antimonopoly Committee of Ukraine ("**AMCU**") took place at the beginning of the year.[360] This first stage of the so-called "antitrust reform" was a significant milestone, intended to harmonize Ukraine's antitrust framework with the EU *acquis communautaire*.

Following the enactment of the first stage of reform, the AMCU remained committed to change and pushed further major amendments to strengthen its institutional capacity and streamline internal processes to enhance the AMCU's effectiveness.

On July 24, 2024, the second stage of antitrust reform was launched with the unveiling of draft Bill No. 12440 (the "**Draft Bill**").[361] The main focus of the Draft Bill is implementation of the requirements of Directive 1/2019[362] and the introduction of a number of substantive and procedural changes to implement EU standards.

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[359] Timur Bondaryev, Mykhailo Lazoryshynets, Olena Nasienkova, *Arzinger Law Firm.*

[360] *Law of Ukraine on the introduction of amendments to some legislative acts of Ukraine regarding the improvement of the legislation on the protection of economic competition and the activities of the Antimonopoly Committee of Ukraine,* (Adopted by Verkhovna Rada of Ukraine, issued Aug. 09, 2023, effective Jan. 1, 2024). See details in the previous ABA 2023 YEAR IN REVIEW.

[361] *Draft Law on Amendments to Certain Legislative Acts of Ukraine Regarding the Activities of the Antimonopoly Committee of Ukraine,* https://itd.rada.gov.ua/billInfo/Bills/Card/55703.

[362] *Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.*, https://eur-lex.europa.eu/eli/dir/2019/1/oj/eng.

In particular, the Draft Bill proposes the following key amendments:

- Introduction of a definition for "undertaking" and "economic activity" to distinguish state and business functions;
- Introduction of "superior bargaining power" definition and liability for its abuse;
- Enhancement of liability for gun-jumping cases;
- Introduction of a new approach to clearance of ancillary restraints in the course of merger review (i.e., no need to separately apply for clearance of ancillary restraints while applying for merger clearance);
- Extension of the rights of parties involved in antitrust investigations;
- Development of information exchange powers for the AMCU with foreign antitrust agencies;
- Introduction of additional penalties to encourage timely compliance with AMCU rulings.

Even though the Draft Bill has yet to be adopted, it is obvious that the Ukrainian antitrust legal framework has been developing in line with the best European and global practices.

Additionally, the AMCU introduced extensive guidelines on the assessment of horizontal[363] and vertical[364] concerted practices, that mainly refer to the principles of Article 101 of the *Treaty on*

[363] AMCU's Recommendations dated 24 December 2024 No. 15-pp on the Principles for Assessing Compliance of Certain Categories of Horizontal Concerted Actions of Business Entities with the Provisions of Articles 10 and 11 of the Law of Ukraine "On Protection of Economic Competition", https://amcu.gov.ua/npas/shchodo-pryntsypiv-otsinky-vidpovidnosti-pevnykh-katehorii-horyzontalnykh-uzghodzhenykh-dii-subiektiv-hospodariuvannia-polozhenniam-statei-10-ta-11-zakonu-ukrainy-pro-zakhyst-ekonomichnoi-kon.

[364] AMCU's Recommendations dated 24 December 2024 No. 16-pp on the Principles for Assessing the Compliance of Vertical Concerted Actions Concerning the Supply and Use of Goods with the Provisions of Articles 10 and 11 of the Law of Ukraine "On Protection of

the Functioning of the European Union and case law of the European Commission, including the first views on green and sustainability deals.

B. MERGERS

The AMCU's merger control activity in 2024 resulted in 547 filings processed and 365 clearances granted. 12 Phase II investigations were conducted (in 2023 – 14 Phase II cases), 4 of which ended with remedies imposed.

47 gun-jumping cases were investigated, and in each case, the AMCU issued a decision imposing a fine and granting a post factum clearance.

The following sectors were most active on the merger clearance front in 2024: wholesale and retail (21.2 % of total clearances); agriculture (18.7%); and financial markets, insurance, and real estate services (15.7%).

Among the numerous filings this year, a few stood out due to their complexity, novelty and strategic importance.

Global Port Terminal Transaction: Behavioral Remedies

The acquisition of joint control over the Hamburg port logistics company HHLA by global shipping MSC Group came under intense AMCU scrutiny in 2024.[365]

Economic Competition", https://amcu.gov.ua/npas/shchodo-pryntsypiv-otsinky-vidpovidnosti-vertykalnykh-uzghodzhenykh-dii-stosovno-postachannia-ta-vykorystannia-tovariv-polozhenniam-statei-10-ta-11-zakonu-ukrainy-pro-zakhyst-ekonomichnoi-kon.

[365] AMCU Decision No. 446-p dated 14.11.2024, https://amcu.gov.ua/npas/pro-rezultaty-rozghliadu-spravy-pro-kontsentratsiiu-8; AMCU Decision No. 447-p dated 14.11.2024, https://amcu.gov.ua/npas/pro-rezultaty-rozghliadu-spravy-pro-kontsentratsiiu-9.

The main reason for AMCU's concerns was a Ukrainian angle in the perimeter of the deal - the indirect acquisition of control over a container terminal in the Odesa seaport.

From the AMCU's perspective, the transaction could lead to potential consolidation of market power in the container terminal services market at the Odesa seaport due to the absence of competitive alternatives within the port area, a high potential for abuse of market power, and concerns regarding preferential access and pricing for affiliated users.

After a 143-day Phase - II investigation, the transaction was cleared subject to the following behavioral remedies:

- assurance of non-discriminatory access to terminal services for third parties (at least 30 percent of the terminal capacities annually);
- avoiding unjustified price increases; and
- submitting periodic reports to the AMCU to verify compliance.

The above Phase II case demonstrates the significance of careful transaction planning and merger filing preparation in Ukraine, even for global / foreign-to-foreign deals.

Transaction in the Ukrainian Telecommunications Sector: "Quasi" FDI - Screening

In 2024, the AMCU approved NJJ's (a major French investment group) acquisition of Ukrainian telecom companies Lifecell[366] and Datagroup[367] from a group of domestic and international PE & strategic investors.

Acquisition of Lifecell (a leading Ukrainian mobile operator) triggered a Phase II review. Despite the fact that the AMCU did not identify significant competition-related issues, the in-depth investigation was triggered mainly due to the indirect presence of a Russian minority shareholder (about 7 % interest held through Turkcell as a parent company of Lifecell) in the target entity, which is subject to Ukrainian sanctions.

The AMCU carefully scrutinized compliance with Ukrainian sanctions laws, in particular, the beneficial ownership of and control rights over Turkcell as well as the exclusion of a Russian shareholder from decision-making and profit-distribution from the transactions in question. As a result, an unconditional approval was granted.

This particular case illustrates that in the absence of a formal FDI screening regime, the State of Ukraine takes advantage of the merger review process to address national security considerations.

[366] AMCU Decision No. 234-p dated 25.07.2024, https://amcu.gov.ua/npas/pro-rezultaty-rozghliadu-spravy-pro-kontsentratsiiu-4; AMCU Decision No. 235-p dated 25.07.2024, https://amcu.gov.ua/npas/pro-rezultaty-rozghliadu-spravy-pro-kontsentratsiiu-5; AMCU Decision No. 236-p dated 25.07.2024, https://amcu.gov.ua/npas/pro-rezultaty-rozghliadu-spravy-pro-kontsentratsiiu-6; AMCU Decision No. 237-p dated 25.07.2024, https://amcu.gov.ua/npas/pro-rezultaty-rozghliadu-spravy-pro-uzghodzheni-dii.

[367] AMCU Decision No. 76-p dated 07.03.2024, https://amcu.gov.ua/npas/pro-nadannia-dozvolu-na-kontsentratsiiu-39; AMCU Decision No. 77-p dated 07.03.2024, https://amcu.gov.ua/npas/pro-nadannia-dozvolu-na-uzghodzheni-dii-5.

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

For several years in a row, anti-competitive concerted actions have remained the most "popular" type of antitrust enforcement in Ukraine. According to the official AMCU statistics for 2024, among 2,681 competition enforcement cases, 2,012 cases involved enforcement of anti-competitive concerted actions. Accordingly, 79% of total fines imposed originate from anti-competitive practices.

The 5 largest fines imposed by AMCU in 2024, with a total amount exceeding EUR 8.65 million, resulted from bid rigging practices, which remain in focus, even during martial law in Ukraine.

2024 saw a landmark development in Ukrainian antitrust enforcement with the first-ever application of the new leniency procedure, introduced as part of the initial phase of antitrust reform. In a December bid rigging case in the construction sector, the AMCU granted full immunity from liability to the cooperating company, marking a significant step toward more effective cartel detection and enforcement.[368]

D. DOMINANCE

Despite a general decrease in significant dominance cases in the last few years, several large cases appeared in 2024.

[368] AMCU Press release dated 12.12.2024, https://amcu.gov.ua/news/amku-vpershe-zadiiav-novyi-poriadok-zvilnennia-vid-vidpovidalnosti-leniency.

Dominance Issues in the Digital Carpooling Market

The AMCU investigated the activities of the BlaBlaCar service[369] for compliance with competition law. It was established that the company that operates the platform in Ukraine potentially abused its dominant position in Ukraine's carpooling services market via online platforms.

The AMCU concluded that the company, active through the BlaBlaCar platform, charged passengers a service fee without proper economic justification and did not inform them of all of the conditions for refunding this fee. In addition, unequal treatment of passengers in cases of trip cancellation was found - one may be refunded the fee, while the other may not, depending on the company's decision.

As a result, mandatory recommendations were issued for the company to cease its practice of imposing the fee without justification and ensure transparent and clearly defined conditions for refunds.

The BlaBlaCar case is the first significant investigation in the digital markets space in Ukraine.

Dominance in Card-based Payment Transactions under the Gun: is Low Price a Sign of Abuse?

One of the most high-profile cases in the abuse of dominance area is the case against Oschadbank (a major state-owned bank)[370]. The bank was allegedly setting a single fee for merchant acquiring, including interchange fees, even in cases where no such fees were payable (in particular, in intra-

[369] AMCU Recommendations No. 8-рк dated 19.12.24, https://amcu.gov.ua/npas/pro-nadannia-rekomendatsii-shchodo-prypynennia-dii-iaki-mistiat-oznaky-porushennia-zakonodavstva-pro-zakhyst-ekonomichnoi-konkurentsii.

[370] Decision of Temporary Administrative Board of the AMCU No.95-р/тк dated 25.12.2024, https://amcu.gov.ua/storage/app/uploads/public/677/e84/252/677e8425239a9015640466.pdf.

bank transactions, where Oschadbank was both the issuer and the acquirer). This could have artificially inflated the price for merchants and potentially had an anticompetitive effect.

The AMCU arrived at an unexpected but well-reasoned conclusion: Oschadbank did not abuse its dominance in the merchant acquiring services market. Its share fluctuated between 16% and 19% in 2018-2023 and there were other significant competitors, eliminating the dominant position of Oschadbank.

In particular, the AMCU found that the market, despite its high concentration, has been quite competitive - new market players have been entering the market and acquirers had been competing in terms of tariffs and service quality. In addition, merchants had been freely switching between the banks, seeking more attractive commercial terms.

This case is quite remarkable as it demonstrates the AMCU's long-standing position: dominance is not just about market share, but about real market influence. Without proven market power, even a discriminatory tariff policy should not be automatically triggering sanctions. The proceedings were closed without sanctions being imposed.

E. KEY COURT CASES

2024 was marked by an unprecedented court case regarding the invalidation of the domestic merger clearance of the CRH/Dyckerhoff acquisition,[371] which was initiated by a competitor.

In fall 2024, CRH Group (a major international producer of construction materials) obtained a Phase II conditional clearance for its acquisition of Dyckerhoff's Ukrainian cement business.

[371] AMCU Decision No.304-p dated 05.09.2024, https://amcu.gov.ua/npas/pro-rezultaty-rozghliadu-spravy-pro-kontsentratsiiu-7.

Kovalska Group (a domestic construction & construction materials maker and competitor of Dyckerhoff in Ukraine) challenged the clearance in court, claiming that the merger was approved without comprehensive and thorough market review and should be set aside. The first instance court granted Kovalska Group's motion and set the CRH/Dyckerhoff merger clearance aside.[372]

The consideration is pending before the court of second instance and the Supreme Court, but a unique precedent of third parties challenging merger clearance in Ukraine has been established. If the courts of higher instances uphold Kovalska Group's challenge, it will lead to increased standards of market review for the AMCU as well as a need for more substantive filing preparation for parties entering into mergers.

[372] Ruling of the Northern Commercial Court of Appeal in case No. 910/13150/24 dated 10 April 2025, https://reyestr.court.gov.ua/Review/126498502.

XX. UNITED KINGDOM[373]

A. LEGISLATIVE DEVELOPMENTS

In May 2024, the Digital Markets, Competition and Consumers Act ("**Act**")[374] received Royal Assent. The Act makes wide-ranging changes to UK competition law. The provisions relating to merger control, competition law and the digital markets regime came into force on 1 January 2025.

The Act introduces a new jurisdictional threshold for merger control designed to capture so-called "killer acquisitions". The Competition and Markets Authority ("**CMA**") now has jurisdiction to review a transaction where at least one party has (i) a share of supply of goods or services in the UK of at least 33% and (ii) UK turnover of at least £350 million. The target UK turnover threshold has been increased from £70 million to £100 million. The Act has also introduced an exemption for transactions where each party has UK turnover of less than £10 million.

In addition, the Act has strengthened the CMA's investigative and enforcement powers under the Competition Act 1998 ("**CA98**").[375] It grants the CMA new evidence gathering powers by extending the CMA's "seize and sift" powers to domestic premises. In addition, the CMA now has additional powers to sanction companies who fail to cooperate with investigations, including fines of up to 1% of global turnover for non-compliance with investigation measures (up from £30,000) and up to 5% of global turnover for non-compliance with remedies (including undertakings and commitments).

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[373] Neil Cuninghame and Fiona Garside, *Ashurst LLP*.

[374] Digital Markets, Competition and Consumers Act 2024, c. 13 (Eng.), https://www.legislation.gov.uk/ukpga/2024/13/contents.

[375] Competition Act 1998, c. 41 (Eng.), https://www.legislation.gov.uk/ukpga/1998/41/contents.

The Act also implements the UK Government's digital markets strategy and puts the CMA's Digital Markets Unit ("**DMU**") (which launched in "shadow form" in April 2021) on a statutory footing. Under the new digital regime, companies found to have "substantial and entrenched market power" and a "position of strategic significance" in at least one digital activity may be designated as having "strategic market status" ("**SMS**"). The CMA has up to nine months to complete a designation investigation, starting on the day on which the SMS investigation notice is given. In early 2024, the CMA indicated that it anticipated opening three to four designation investigations in the first year of the new regime.[376] As of 30 April 2025, the CMA has opened two SMS investigations:

- On 14 January 2025, the CMA opened an SMS investigation into Google's general search and search advertising services.[377] The CMA is assessing the extent of competition between Google search and other services, including: (i) general search services on both the user and advertiser sides; (ii) specialised search services and (iii) other services such as artificial intelligence interfaces (for example, AI assistants or AI-powered search engines).

- On 23 January 2025, the CMA opened designation investigations into Apple and Google's mobile ecosystems.[378] The investigations are being conducted in parallel, with a single invitation to comment. Notably, the CMA is considering mobile ecosystems as a single

[376] U.K. Competition and Markets Authority, Press release, CMA sets out approach to new digital markets regime, https://www.gov.uk/government/news/cma-sets-out-approach-to-new-digital-markets-regime.

[377] U.K. Competition and Markets Authority, SMS investigation into Google's general search and search advertising services (Updated 25 Mar. 2025), https://www.gov.uk/cma-cases/sms-investigation-into-googles-general-search-and-search-advertising-services.

[378] U.K. Competition and Markets Authority, SMS investigation into Apple's mobile ecosystem (Updated 9 May 2025), https://www.gov.uk/cma-cases/sms-investigation-into-apples-mobile-ecosystem; and U.K. Competition and Markets Authority, SMS investigation into Google's mobile ecosystem (Updated 9 May 2025), https://www.gov.uk/cma-cases/sms-investigation-into-googles-mobile-ecosystem.

digital activity covering mobile operating ecosystems, app stores, browsers and browser engines.

The first designation decisions are expected around September 2025, with the first conduct requirements published around the same time.

Designated companies will be subject to enhanced regulation, including:

1. A code of conduct tailored to the particular business. This may include requirements not to apply discriminatory terms and to provide clear, relevant, accurate and accessible information to users. The DMU will have the power to enforce the code of conduct. Failure to comply may result in fines of up to 10% of global turnover and director disqualification; and

2. Mandatory reporting requirements for transactions where the consideration exceeds £25 million and an entity in the SMS corporate group crosses the following shareholding thresholds in a company carrying on activities in the UK: 15%, 25% or 50%.

The CMA also has the ability to impose a wide range of “pro-competition interventions” (including structural and behavioural remedies) where it considers there to be an adverse effect on competition and the intervention would be likely to mitigate this adverse effect.

B. MERGERS

The CMA referred ten cases for a Phase 2 investigation between April 1, 2023 and March 31, 2025. Of the 15 Phase 2 investigations completed in this period, eight were unconditionally cleared, one was prohibited,[379] four required remedies and two were abandoned.[380]

In 2024, the CMA completed its review of four partnerships relating to artificial intelligence that involved the acquisition of a small shareholding (if any). In three cases, the CMA concluded that it did not have jurisdiction. In two of these cases, the CMA considered that the partnership did not to give rise to material influence.[381] In the third case, the CMA concluded that the jurisdictional thresholds (i.e. target turnover and share of supply test) were not met.[382]

In the fourth case, (Microsoft / Inflection), the CMA asserted jurisdiction based on the transfer of the core Inflection team combined with access to Inflection's IP.[383] The transaction was ultimately cleared at Phase 1 as Inflection has a limited presence in the UK.

For many years, the CMA has taken the position that behavioural remedies are typically not as effective a means of addressing competition concerns as structural remedies, which provide a more definitive solution and do not require ongoing monitoring. Between April 1, 2022 and March 31,

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[379] This was Microsoft's proposed acquisition of Activision Blizzard, which was subsequently cleared after the deal was re-submitted with a narrower scope excluding cloud streaming rights. U.K. Competition and Markets Authority, Microsoft/Activision Blizzard (ex-cloud streaming rights) merger inquiry (Updated 13 Oct. 2023), https://www.gov.uk/cma-cases/microsoft-slash-activision-blizzard-ex-cloud-streaming-rights-merger-inquiry.

[380] Statistics on CMA merger investigations are available on the CMA's website at: https://www.gov.uk/government/publications/phase-1-merger-enquiry-outcomes.

[381] U.K. Competition and Markets Authority, Microsoft / Mistral AI partnership merger inquiry (Updated May 21 2024), https://www.gov.uk/cma-cases/microsoft-slash-mistral-ai-partnership-merger-inquiry; and U.K. Competition and Markets Authority, Alphabet Inc. (Google LLC) / Anthropic merger inquiry (Updated 24 Dec. 2024), https://www.gov.uk/cma-cases/alphabet-inc-google-llc-slash-anthropic-merger-inquiry.

[382] U.K. Competition and Markets Authority, Amazon / Anthropic partnership merger inquiry (Updated 17 Oct. 2024), https://www.gov.uk/cma-cases/amazon-slash-anthropic-partnership-merger-inquiry.

[383] U.K. Competition and Markets Authority, Microsoft / Inflection inquiry (4 Sept. 2024), https://www.gov.uk/cma-cases/microsoft-slash-inflection-ai-inquiry.

2025, the CMA imposed structural remedies in eight of the nine deals conditionally cleared. In December 2024, the CMA cleared the Vodafone / Three mobile merger at phase 2, subject to behavioural remedies to invest in their combined 5G network and short term commitments on certain prices and commercial terms.[384] This appeared to mark a departure from the CMA's traditional preference for structural over behavioural remedies, although the CMA was keen to emphasise the role of Ofcom (as the sector regulator) in assisting with the ongoing monitoring of the remedies imposed.

Shortly before the CMA's decision in Vodafone / Three, and following statements from the UK Prime Minister, Sir Keir Starmer, to the effect that CMA should do more to promote economic growth, Sarah Cardell (the CMA's CEO) announced that the CMA would launch a review of its approach to merger remedies, including consideration of when behavioural remedies may be appropriate (and whether there are any distinctions for regulated sectors).[385] This review was subsequently launched on March 12, 2025.[386]

The CMA has increasingly imposed procedural fines in recent years. For example, it fined Viatris £1.5 million in November 2024 for failing to comply with the initial enforcement order imposed by the CMA by making changes to key members of its UK management team without the CMA's consent and then failing to inform the CMA of the breach.[387] In addition, the CMA fined Tereos

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[384] U.K. Competition and Markets Authority, Vodafone / CK Hutchison JV merger inquiry (Updated 28 Mar. 2025), https://www.gov.uk/cma-cases/vodafone-slash-ck-hutchison-jv-merger-inquiry.

[385] Sarah Cardell, U.K. Competition and Markets Authority Chief Executive, Driving growth: how the CMA is rising to the challenge (21 Nov. 2024), https://www.gov.uk/government/speeches/driving-growth-how-the-cma-is-rising-to-the-challenge.

[386] U.K. Competition and Markets Authority, Review of merger remedies approach (12 Mar. 2025), https://www.gov.uk/government/calls-for-evidence/review-of-merger-remedies-approach.

[387] U.K. Competition and Markets Authority, Anticipated acquisition by Theramex HQ UK Limited of European Rights to Viatris Inc's Femoston and Duphaston products (12 Nov. 2024), https://assets.publishing.service.gov.uk/media/673f3e452ff787d4e01b09e0/Viatris_Penalty_Notice.pdf.

£25,000 for failing to provide relevant information in relation to the T&L Sugars / Tereos merger investigation.[388] As noted above, the Act has strengthened the CMA's powers to impose fines for failing to cooperate with investigations, with the maximum penalty increasing from £30,000 to 1% of the group's worldwide turnover.

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

The CMA continues to pursue anti-competitive behaviour and cost-of-living issues. In 2024, the CMA did not impose any fines in relation to anti-competitive agreements or practices.

The CMA continued to scrutinise potentially anti-competitive conduct in labour markets in 2024, with the CMA closing two investigations relating to freelance and employed workers in the production, creation and/or broadcasting of TV content in early 2025[389] and continuing to pursue an investigation relating to the fragrance sector.[390]

In February 2024, the CMA opened its first enforcement investigation since 2021 following a market study in which it found evidence that housebuilders may be sharing commercially sensitive information.[391] In December 2024, the CMA opened another investigation in relation to

[388] U.K. Competition and Markets Authority, Anticipated acquisition by T&L Sugars Limited of certain assets of Tereos United Kingdom and Ireland Limited from Tereos SCA (25 Sept. 2024), https://assets.publishing.service.gov.uk/media/66f526b7080bdf716392e915/Penalty_notice.pdf.

[389] U.K. Competition and Markets Authority, Suspected anti-competitive behaviour relating to freelance and employed labour in the production, creation and/or broadcasting of television content, excluding sport (Updated 21 Mar. 2025), https://www.gov.uk/cma-cases/suspected-anti-competitive-behaviour-relating-to-freelance-and-employed-labour-in-the-production-creation-and-slash-or-broadcasting-of-television-content-excluding-sport; and U.K. Competition and Markets Authority, Suspected anti-competitive behaviour relating to freelance labour in the production and broadcasting of sports content (Updated 17 Apr. 2025), https://www.gov.uk/cma-cases/suspected-anti-competitive-behaviour-relating-to-the-purchase-of-freelance-services-in-the-production-and-broadcasting-of-sports-content.

[390] U.K. Competition and Markets Authority, Suspected anti-competitive conduct in relation to fragrances and fragrance ingredients (51257), (Updated 2 Dec. 2024), https://www.gov.uk/cma-cases/suspected-anti-competitive-conduct-in-relation-to-fragrances-and-fragrance-ingredients-51257.

[391] U.K. Competition and Markets Authority, Investigation into suspected anti-competitive conduct by housebuilders (Updated 10 Jan. 2025), https://www.gov.uk/cma-cases/investigation-into-suspected-anti-competitive-conduct-by-housebuilders.

construction services: this investigation relates to suspected bid rigging in relation to the supply of roofing and other construction services to schools.[392]

D. DOMINANCE

The CMA's recent activity enforcing the prohibition on abuse of a dominant position has focused on the digital and pharmaceutical sectors.

Digital Sector

While the CMA waited for its new powers under the Act, it pursued investigations into several large tech companies, including Amazon, Meta and Google. In August 2024, the CMA closed its investigations into the Apple App Store and Google Play Store on "administrative priority" grounds.[393] The investigations related to concerns that Apple and Google were using their market positions to set terms which may be unfair to UK app developers and which may restrict competition and consumer choice. As the CMA indicated in its press release, the CMA is using its new powers under the Act (see above) to address concerns that have "*already been identified through [its] existing work*".[394]

In September 2024, the CMA sent Google a statement of objections setting out its preliminary conclusion that Google has abused its dominant position through use of its buying tools and publisher ad server to strengthen its ad exchange's ("**AdX**") market position. Google's allegedly

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[392] U.K. Competition and Markets Authority, Suspected anti-competitive conduct in relation to the supply of roofing and other construction services (11 Dec. 2024), https://www.gov.uk/cma-cases/suspected-anti-competitive-conduct-in-relation-to-the-supply-of-roofing-and-other-construction-services.

[393] U.K. Competition and Markets Authority, Investigation into Apple AppStore (Updated 21 Aug. 2024), https://www.gov.uk/cma-cases/investigation-into-apple-appstore; and U.K. Competition and Markets Authority, Investigation into suspected anti-competitive conduct by Google (Updated 21 Aug. 2024), https://www.gov.uk/cma-cases/investigation-into-suspected-anti-competitive-conduct-by-google.

[394] As noted above, the SMS investigations into Apple and Google's mobile ecosystems (opened in January 2025) include their respective app stores. U.K. Competition and Markets Authority, CMA looks to new digital markets competition regime to resolve app store concerns (21 Aug. 2024), https://www.gov.uk/government/news/cma-looks-to-new-digital-markets-competition-regime-to-resolve-app-store-concerns.

abusive conduct includes: (i) providing AdX with exclusive (or preferential) access to advertisers that use Google Ads' platform; (ii) manipulating advertiser bids; and (iii) allowing AdX to bid first in auctions run by Google's publisher ad server for online advertising space thereby effectively giving it a right of first refusal.[395]

Pharmaceutical Sector

In January 2024, the CMA opened its first disparagement case: an investigation into whether Vifor Pharma has abused its dominant position in relation to intravenous iron treatments by making misleading claims to healthcare professionals about the effectiveness and safety of a rival product. In December 2024, the CMA published notice of its intention to accept commitments offered by Vifor Pharma. Vifor Pharma proposed that it makes an ex gratia payment of £23 million to the NHS and that it will engage in a multi-channel campaign to clarify the relative safety profile of Monofer. On 23 May 2025, the CMA published its decision to accept the commitments.[396]

In 2023, in the *Hydrocortisone* case, the Competition Appeal Tribunal ("**CAT**") upheld the CMA's findings on liability but reduced the fine to just under £130 million (from £155.2 million) to reflect the period where one of the parent companies was subject to "hold separate" commitments. In a separate hearing, the CAT subsequently concluded that the CMA had failed to observe due process requirements by not fully putting its case on the market sharing allegations to one of the witnesses during cross-examination and therefore set aside the market-sharing aspects of the CMA's

[395] U.K. Competition and Markets Authority, Investigation into suspected anti-competitive conduct by Google in ad tech (Updated 6 Sep. 2024), https://www.gov.uk/cma-cases/investigation-into-suspected-anti-competitive-conduct-by-google-in-ad-tech.

[396] U.K. Competition and Markets Authority, Investigation into suspected anti-competitive conduct by Vifor Pharma in relation to intravenous iron treatments (Updated 23 May. 2025), https://www.gov.uk/cma-cases/investigation-into-suspected-anti-competitive-conduct-by-vifor-pharma-in-relation-to-intravenous-iron-treatments.

decision.[397] In 2024, the UK Court of Appeal considered the series of rulings by the CAT in *Hydrocortisone* and found that the CAT had erred by holding a separate hearing on the due process point.[398] On the substance, the Court of Appeal held that the CMA's case had been properly put to the witnesses.

In November 2024, the CAT rejected the CMA's revised decision to fine Pfizer and Flynn Pharma £63.3 million and £6.7 million, respectively, for engaging in excessive and unfair pricing in relation to various dosages of phenytoin sodium capsules in breach of Chapter II of the CA98.[399] The CAT criticised the CMA's economic methodology for applying the *United Brands* legal test.[400] In particular, the CAT made three main criticisms of the CMA's approach to the excessive pricing limb of that test: (i) the shift from the traditional return on sales methodology to a return on capital employed methodology was not adequately objectively justified; (ii) the CMA did not exercise careful judgment when calculating the reasonable rate of return by reference to the weighted average cost of capital; and (iii) the CMA had not considered "real world" comparables. In relation to the unfair limb of the *United Brands* test, the CAT considered that if a price is not unfair in comparison to competing products then the argument that the price is unfair in itself is likely to be weak. The CAT found that the CMA's analysis of the "unfair in itself" test was incorrect because it was primarily based on factors relevant to the excessive limb (rather than the unfair limb) and that the CMA's analysis of unfairness when compared to competing products was based on an unreasonable and inconsistent rejection of the comparators proposed by the appellants.

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[397] Hydrocortisone [2023] CAT 56.

[398] Allergan Plc and others v. The Competition and Markets Authority [2024] EWCA Civ 1023.

[399] Pfizer Inc. and Pfizer Limited v. Competition and Markets Authority [2024] CAT 65.

[400] Case 27/76, United Brands Company and United Brands Continental BV v. Commission of the European Communities, 1978 E.C.R. 00207.

After considering the merits itself, the CAT took the unusual step of re-making the CMA's decision and notwithstanding its rejection of the CMA's assessment, concluded that the prices charged were (applying the tests correctly) excessive and unfair and imposed comparable fines of £62.3 and £6.7 million respectively.

XXI. UNITED STATES[401]

The developments discussed below address antitrust enforcement in the United States in 2024, the final year of the Biden Administration, during which the U.S. Department of Justice Antitrust Division ("**DOJ**") and the Federal Trade Commission ("**FTC**") were incredibly active, promoting new policies and procedures, adopting an increasingly hard line in merger enforcement, prosecuting cartel activity, and advancing cases against big tech. Civil plaintiffs and state attorneys general joined in these efforts. In late 2024, the U.S. held a Presidential election, which was won by now-President Trump. While several agency policies appear to be changing in 2025 since the Trump administration took office, early indications are that the aggressive approach to antitrust enforcement in the U.S. will continue.

A. Legislative Developments

Merger Policy

The FTC and DOJ finalized updated Merger Guidelines in December 2023,[402] and, as described further below, took opportunities in 2024 to advance the new Guidelines in court. The Guidelines are much broader than prior iterations, covering horizontal and non-horizontal transactions and presenting a wide range of theories of potential anticompetitive harm. The incoming Trump administration leadership at the FTC and DOJ have indicated that these Biden-era Guidelines will continue in force.[403]

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[401] Lisl Dunlop, Sarah Spangler, *Axinn, Veltrop & Harkrider LLP*.

[402] U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf.

[403] Press Release, Fed. Trade Comm'n, *FTC Chairman Andrew N. Ferguson Announces that the FTC and DOJ's Joint 2023 Merger Guidelines Are in Effect* (Feb. 18, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/02/ftc-chairman-andrew-n-ferguson-announces-ftc-dojs-joint-2023-merger-guidelines-are-effect.

The FTC finalized its changes to the Hart-Scott-Rodino ("HSR") premerger notification process in October 2024 to take effect February 2025.[404] The new Form requires HSR filers to provide significantly more information and documentation including:

- Transaction documents from the supervisor of each merging party's deal team even where that person is not an officer or director;

- Ordinary course business plans and reports that were provided to the Board or CEO over the past year and relate to overlapping products or services;

- Narrative descriptions of the merging parties' horizontal overlaps and vertical supply relationships; and identifying the parties' top 10 customers or suppliers across several categories if there are horizontal or vertical overlaps;

- Listing all officers and directors of (i) the entity that is party to the deal, (ii) all of that entity's direct and indirect subsidiaries, and (iii) all of that entity's direct and indirect parents; and

- Disclosing economic subsidies the parties received from certain foreign governments and entities (most notably, including China).[405]

The new Form took effect on February 10, 2025, and the new administration has indicated that (for now) it will remain in effect.[406]

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[404] Press Release, Fed. Trade Comm'n, *FTC Finalizes Changes to Premerger Notification Form* (Oct. 10, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/10/ftc-finalizes-changes-premerger-notification-form.

[405] Premerger Notification; Reporting and Waiting Period Requirements, 16 C.F.R. §§ 801, 803 (Feb. 10, 2025).

[406] *Id*.

Employee Non-Competes

In April 2024, the FTC announced a controversial Rule to ban nearly all noncompete agreements between employers and employees, set to take effect on September 4, 2024.[407] In August 2024, however, a federal judge in the Northern District of Texas issued a permanent nationwide injunction, blocking enforcement of the Rule before it took effect.[408] The FTC has appealed that decision. The FTC also maintains that "[t]he district court's decision does not prevent the FTC from addressing noncompetes through case-by-case enforcement actions."[409]

Enforcement Against Pharmacy Benefit Managers

The FTC released an interim report on the pharmacy benefit manager ("**PBM**") industry in July 2024, detailing how "increasing vertical integration and concentration has enabled the six largest PBMs to manage nearly 95 percent of all prescriptions filled in the United States."[410] The report emphasizes that the "vertically integrated and concentrated market structure has allowed PBMs to profit at the expense of patients and independent pharmacists."[411] In September 2024, the FTC filed an administrative complaint against the three largest PBMs as well as their affiliated group purchasing organizations, alleging that they engaged in anticompetitive rebating practices that inflated the list price of insulin drugs.[412]

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[407] Press Release, Fed. Trade Comm'n, *FTC Announces Rule Banning Noncompetes* (Apr. 23, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes.

[408] Memorandum Opinion and Order on Summary Judgment Motions, *Ryan, LLC v. Fed. Trade Comm'n*, No. 24-cv-986 (N.D. Tex. Aug. 20, 2024).

[409] Fed. Trade Comm'n, *Noncompetes: What You Should Know*, https://www.ftc.gov/news-events/features/noncompetes.

[410] Press Release, Fed. Trade Comm'n, *FTC Releases Interim Staff Report on Prescription Drug Middlemen* (July 9, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-releases-interim-staff-report-prescription-drug-middlemen.

[411] *Id*.

[412] Press Release, Fed. Trade Comm'n, *FTC Sues Prescription Drug Middlemen for Artificially Inflating Insulin Drug Prices* (Sept. 20, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices.

B. Mergers

The agencies took merging parties to court in several high-profile mergers in 2024. In addition, the government's preparedness to litigate led to the record abandonment of nine significant merger transactions and probably others.[413]

Hospital Merger: In June 2024, Novant Health avoided a preliminary injunction of its attempted acquisition of two North Carolina hospitals, convincing the court that, absent the acquisition, the hospitals' financial performance would dramatically decline causing them to reduce services or exit the market. The FTC appealed and won a stay pending appeal. Following the stay, Novant dropped the deal, leaving the requirements for a "flailing firm defense" unresolved.[414]

Luxury Handbags: In October 2024, the FTC won a preliminary injunction to pause the merger of two handbag manufacturers, Tapestry (which owns the Coach and Kate Spade brands) and Capri (which owns the Michael Kors brand).[415] The Agency won on a very narrow market definition of "accessible luxury handbags" priced between $100 and $1000. The case demonstrated the weight courts place on ordinary business documents for market definition, as Defendant companies' documents were replete with references to this term.[416]

Grocery Merger: On December 10, 2024, the District Court in Oregon issued an injunction blocking the proposed deal between grocery rivals, Kroger and Albertsons, after the FTC and the

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[413] Dechert, LLP, *DAMITT 2024 Annual Report: Merger Enforcement at Low Tide on Both Sides of the Atlantic, but 2025 may Bring a Sea Change* (Jan. 30, 2025), https://www.dechert.com/knowledge/publication/2025/1/damitt-2024-annual-report.html.

[414] Fed. Trade Comm'n v. Novant Health, Inc. No. 24-1526 (4th Cir. 2024).

[415] Fed. Trade Comm'n v. Tapestry, Inc. and Capri Holdings Ltd., No. 24-cv-03109 (S.D.N.Y. 2024).

[416] Opinion and Order, Fed. Trade Comm'n v. Tapestry, Inc. and Capri Holdings Ltd., No. 24-cv-03109 at 49-50 (S.D.N.Y. Nov. 1, 2024).

attorneys general of eight states and the District of Columbia sued to block the merger.[417] A second injunction was issued by the King County Superior Court in Washington on the suit of the Washington state attorney general in a separate suit.[418] The Plaintiffs in both proceedings had alleged that the deal would eliminate head-to-head competition on prices and quality of food (harming consumers) as well as for competition of labor (harming workers). They critiqued the parties' proposed divestiture as inadequately mitigating the loss of competition.[419] The day after the courts blocked the deal, Albertson's exercised its right to terminate the $24.6 billion merger agreement, and sued Kroger for its alleged failure to exercise its "best efforts" and to take "any and all actions" to secure regulatory approval as required under the Merger Agreement.[420]

Vertical Merger: Despite an FTC challenge, Tempur Sealy (the world's largest mattress manufacturer) was ultimately able to close on its $4 billion acquisition of Mattress Firm (the world's largest mattress retailer). The FTC sued to block the acquisition in July 2024, but the District Court declined to grant an injunction, persuaded that remedial commitments by the parties (including to divest certain stores to a competitor and to reserve retail floorspace for mattresses manufactured by third parties) resolved "any lingering concerns" regarding the vertical relationship between the parties.[421] The parties completed their deal on February 5, 2025.[422]

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[417] Opinion & Order, FTC v. The Kroger Co., No. 3:24-cv-00347-AN (D. Or. Dec. 10, 2024).

[418] Findings of Fact and Conclusions of Law, Washington v. The Kroger Co., No. 24-2-00977-9 (King Cty. Sup. Ct. Dec. 10, 2024).

[419] Press Release, Fed. Trade Comm'n, FTC Challenges Kroger's Acquisition of Albertson's (Feb. 26, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-challenges-krogers-acquisition-albertsons.

[420] Press Release, Albertsons Companies, Inc., *Albertsons Files Lawsuit Against Kroger for Breach of Merger Agreement* (Dec. 11, 2024), https://www.albertsonscompanies.com/newsroom/press-releases/news-details/2024/Albertsons-Files-Lawsuit-Against-Kroger-for-Breach-of-Merger-Agreement/default.aspx.

[421] Order, Fed. Trade Comm'n v. Tempur Sealy Int'l, Inc., No. 24-cv-02508 at 2 (S.D. Tex. Jan. 31, 2025).

[422] Press Release, Somnigroup Int'l, *Tempur Sealy Successfully Completes Acquisition of Mattress Firm* (Feb. 5, 2025), https://somnigroup.com/newsroom/news-details/2025/Tempur-Sealy-Successfully-Completes-Acquisition-of-Mattress-Firm/default.aspx.

C. Cartels and Anticompetitive Practices

Criminal Enforcement

The DOJ maintained its strong stance against collusion relating to labor markets in 2024, seeking to enforce non-solicitation ("no-poach") arrangements and wage-fixing as per se illegal. While the DOJ had voluntarily dismissed its latest no-poach lawsuit in December 2023,[423] and had faced a slew of court losses,[424] it continued to pursue criminal enforcement of Sherman Act violations in labor markets. The Department progressed its wage-fixing case in *United States v. Lopez*.[425] The case went to trial in January 2025, the early days of the Trump Administration.[426] In April 2025, the federal jury found the defendant guilty on all counts—the first trial to find a defendant criminally liable under the antitrust laws in labor markets.[427]

Not only was *Lopez* actually tried under the Trump Administration, but the new Director of Criminal Enforcement at the DOJ, Emma Burnham, has reiterated the importance of criminally regulating labor issues, particularly in the healthcare context (as was the case in *Lopez*).[428]

Other recent indictments and plea deals from the DOJ indicate its commitment to criminal enforcement of bid-rigging and price-fixing under antitrust laws. For instance, after being indicted in 2022, eight individuals pleaded guilty in March 2025 of conspiring to fix prices in the market

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[423] United States' Motion to Dismiss, United States v. Surgical Care Affiliates, LLC, No. 21-cr-00011 (N.D. Tex. Nov. 13, 2023).

[424] United States v. Jindal, No. 20-cr-358 (E.D. Tex. 2022) (jury acquitted defendants of anticompetitive conduct claims in alleged wage-fixing conspiracy); United States v. DaVita Inc., No. 21-cr-00229 (D. Colo. 2021) (in a no-poach case, the jury acquitted defendants on charges); United States v. Hee, No. 21-cr-00098 (D. Nev. 2021) (while marking the first successful criminal prosecution of labor arrangements for the DOJ, the former manager entered into a pretrial diversion agreement with the Division and the company pled guilty for a minor sum); United States v. Manahe, No. 22-cr-00013 (D. Me. 2023) (jury acquitted all defendants of the alleged wage-fixing conspiracy); United States v. Patel, No. 21-cr-00220 (D. Conn. 2021) (judge granted Rule 29 acquittal, dismissing the case before it even went to the jury).

[425] Superseding Criminal Indictment, *United States v. Lopez*, No. 23-cr-00055 (D. Nev. Sept. 6, 2023).

[426] *United States v. Lopez*, No. 23-cr-00055 (D. Nev. Jan 21, 2025).

[427] *Id*.

[428] Emma Burnham, Director of Criminal Enforcement, U.S. Department of Justice, The Capitol Forum Enforcers Roundtable (Apr. 2, 2025).

for "transmigrante" forwarding agency services.[429] Separately, in January 2025, four defendants pleaded guilty for their roles in bid-rigging schemes in connection with the sale of IT products and services to federal government purchasers.[430]

Civil Enforcement

At the end of the Biden Administration, the DOJ had 10 ongoing civil non-merger litigation matters: (1) Wayne-Sanderson (decree enforcement); (2 and 3) KKR v. Mekki and U.S. v. KKR (suit and countersuit regarding violations of the HSR filing requirements); (4) U.S. v. Visa (credit and debit card network monopolization); (5) U.S. v. RealPage (algorithmic collusion); (6) U.S. v. LNE/Ticketmaster (monopolization of live entertainment industry); (7) U.S. v. Apple (smartphones); (8) U.S. v. Google (Ad Tech); (9) U.S. v. Google (Search), and (10) U.S. v. Agri Stats (information exchange).[431]

There were also several civil litigations brought by private plaintiffs and state and federal regulators against entities that act as information exchanges and allegedly help their customers set prices using common algorithms. Notable cases involved property management software (RealPage and RENTmaximizer), hotel pricing platforms (Rainmaker, STR, and Demand360), and health insurance intermediation services (MultiPlan). While many of these plaintiffs have alleged a per se theory—that the information exchanges facilitated agreements to fix prices—only one of

[429] Press Release, U.S. Department of Justice, *Eight Individuals Plead Guilty to Wide-Ranging Scheme to Monopolize Transmigrante Forwarding Industry, Fix Prices, Extort Competitors, and Launder Money* (Mar. 11, 2025), https://www.justice.gov/opa/pr/eight-individuals-plead-guilty-wide-ranging-scheme-monopolize-transmigrante-forwarding.

[430] Press Release, U.S. Department of Justice, *Four Defendants Plead Guilty in Ongoing Bid-Rigging, Fraud and Bribery Investigation Related to U.S. Government IT Purchases* (Jan. 14, 2025), https://www.justice.gov/archives/opa/pr/four-defendants-plead-guilty-ongoing-bid-rigging-fraud-and-bribery-investigation-related-us#:~:text=Four%20defendants%20pleaded%20guilty%20in,Department%20of%20Defense%20(DoD).

[431] U.S. Department of Justice, *Antitrust Division Accomplishments | December 2021-January 2025* (Jan. 23, 2025), https://www.justice.gov/atr/media/1381041/dl?inline.

case has been allowed to proceed to discovery on this theory. Even under more lenient rule-of-reason information-exchange theories, plaintiffs have struggled to adequately allege harm to competition.

D. Dominance

A great deal of the government and private enforcement throughout 2024 related to the technology industry. Several cases went to trial, with many others in the pipeline for 2025 and beyond. Below are the principal examples of such cases, although there are many other non-government actions in process.

The FTC continued its landmark case against Meta (Facebook's parent company), alleging that Facebook systematically eliminated threats to its monopoly through anticompetitive conduct that included its 2012 acquisition of then-rival Instagram, its 2014 acquisition of WhatsApp, and various conditions imposed upon software developers.[432] Trial began in the District Court for D.C. in April 2025.

The FTC, along with 18 state attorneys general and Puerto Rico, also continued their landmark lawsuit against Amazon, alleging that Amazon uses anti-discounting measures to prevent competitors from growing by offering lower prices, and coercive tactics involving order-fulfillment services.[433] In September, 2024 the case largely survived dismissal in the Western

[432] Fed. Trade Comm'n v. Meta Platforms, Inc., 20-cv-03590 (D.D.C. 2020).

[433] Fed. Trade Comm'n v. Amazon, Inc., No. 23-cv-01495 (W.D. Wash., Sept. 26, 2023).

District of Washington (dismissing only six state law claims from the 20-claim complaint).[434] The case has proceeded to discovery.

The DOJ and 16 attorneys general filed its case against Apple in March 2024, alleging that the tech giant monopolized the smartphone market in violation of the Sherman Act.[435] The Justice Department claims that the Tech Giant is maintaining the monopoly of its iPhone by anticompetitive conduct that includes degrading the quality of cross-platform messaging apps, stifling the growth of third party digital wallets, and blocking the growth of apps that facilitate customer switching between platforms.[436]

The DOJ and several attorneys general also brought cases against Google in several federal courts.[437] Two cases went to trial in the District Court for the District of Columbia and the Eastern District of Virginia in 2024. The first alleged that Google monopolized search and search advertising markets, while the second alleged that Google has monopolized multiple digital advertising technology products (the "ad tech stack") crucial for website publishers to sell and advertisers to purchase digital ads. The district courts found for the DOJ in August 2024 (search case)[438] and April 2025 (ad tech).[439] The parties are preparing for the remedies stage.

Epic Games sued Apple and Google separately for allegedly monopolizing their storefronts, the App Store and the Google Play Store, respectively, by anticompetitive conduct that included their

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[434] Sealed Order on Defendant's Motion to Dismiss, Fed. Trade Comm'n v. Amazon, Inc., No. 23-cv-01495 (W.D. Wash. Sept. 30, 2024).

[435] Press Release, U.S. Dep't of Justice, *Justice Department Sues Apple for Monopolizing Smartphone Markets* (March 21, 2024), https://www.justice.gov/opa/pr/justice-department-sues-apple-monopolizing-smartphone-markets.

[436] United States v. Apple, Inc., 24-cv-04055 (D.N.J. Mar 21, 2024).

[437] United States v. Google LLC, 20-cv-03010 (D.D.C. 2020); United States v. Google LLC, 23-cv-00108 (E.D. Va. 2023); Texas v. Google LLC, 20-cv-00957 (E.D. Tex. 2020); In re: Google Digital Advertising Antitrust Litig., 21-md-03010 (S.D.N.Y. 2021).

[438] Memorandum Opinion, United States v. Google LLC, 20-cv-03010 (D.D.C. Aug. 5, 2024).

[439] Memorandum Opinion, United States v. Google LLC, 23-cv-00108 (E.D. Va. Apr. 17, 2025).

control over in-app purchases and app distribution on their platforms.[440] Apple won on 9 of 10 claims, only being enjoined from its anti-steering practices. In January 2024, the Supreme Court denied cert. In October, the District Court found for Epic in the Google suit but lifted the injunction pending Google's appeal to the Fourth Circuit.

In September 2024, Particle Health Systems, sued Epic Systems Corporation, alleging that Epic is illegally monopolizing the payer platform market.[441] Particle alleges that Epic, which controls around 94% of all U.S. patients' medical records, is using that resource to exert control over payer platforms, the technologies used by insurance companies to store patients' medical records.

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[440] Epic Games, Inc. v. Apple, Inc. No. 21-16506 (9th Cir. 2023), cert. denied, No. 23-344 (2024); Epic Games, Inc. v. Google, LLC, No. 3:20-cv-05671 (N.D. Cal. 2023), appeal docketed, No. 24-6274 (9th Cir. Oct. 16, 2024).

[441] Complaint, Particle Health Inc. v. Epic Systems Corp., No. 1:24-cv-07174 (S.D.N.Y. Sep 23, 2024).