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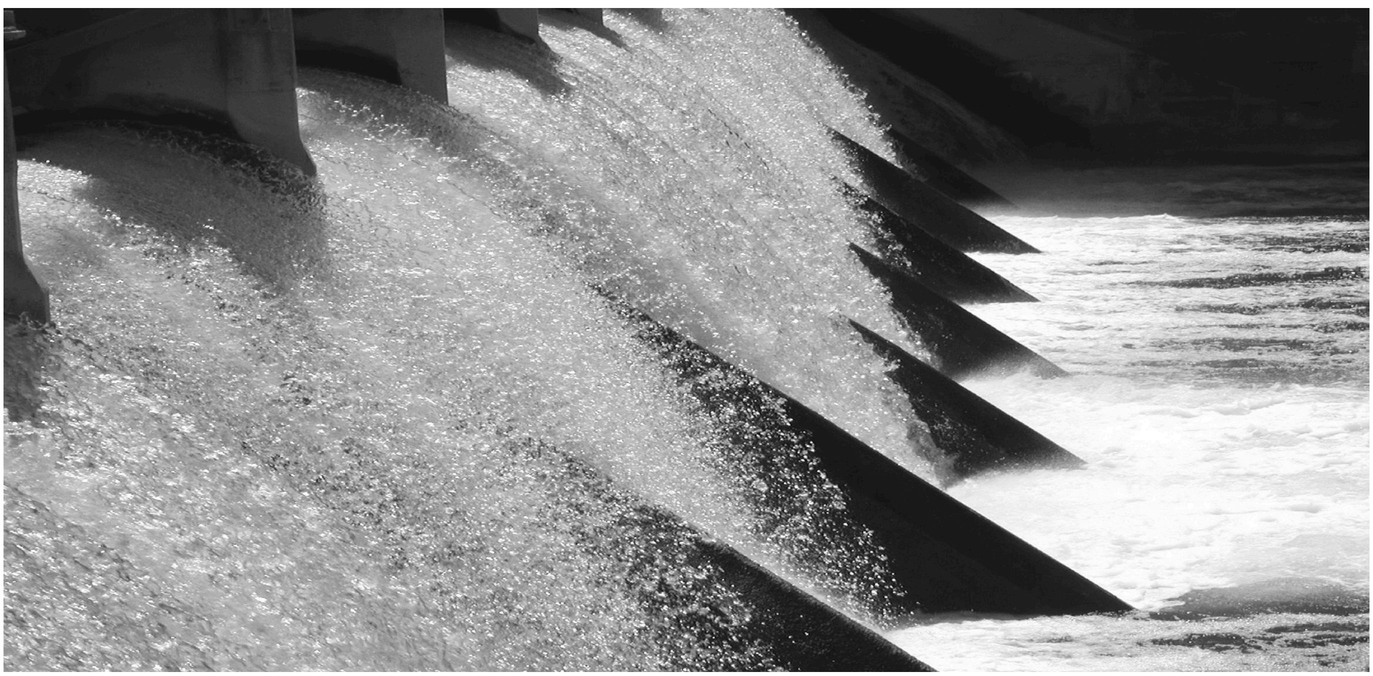
ARTICLE

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



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Global antitrust enforcement report

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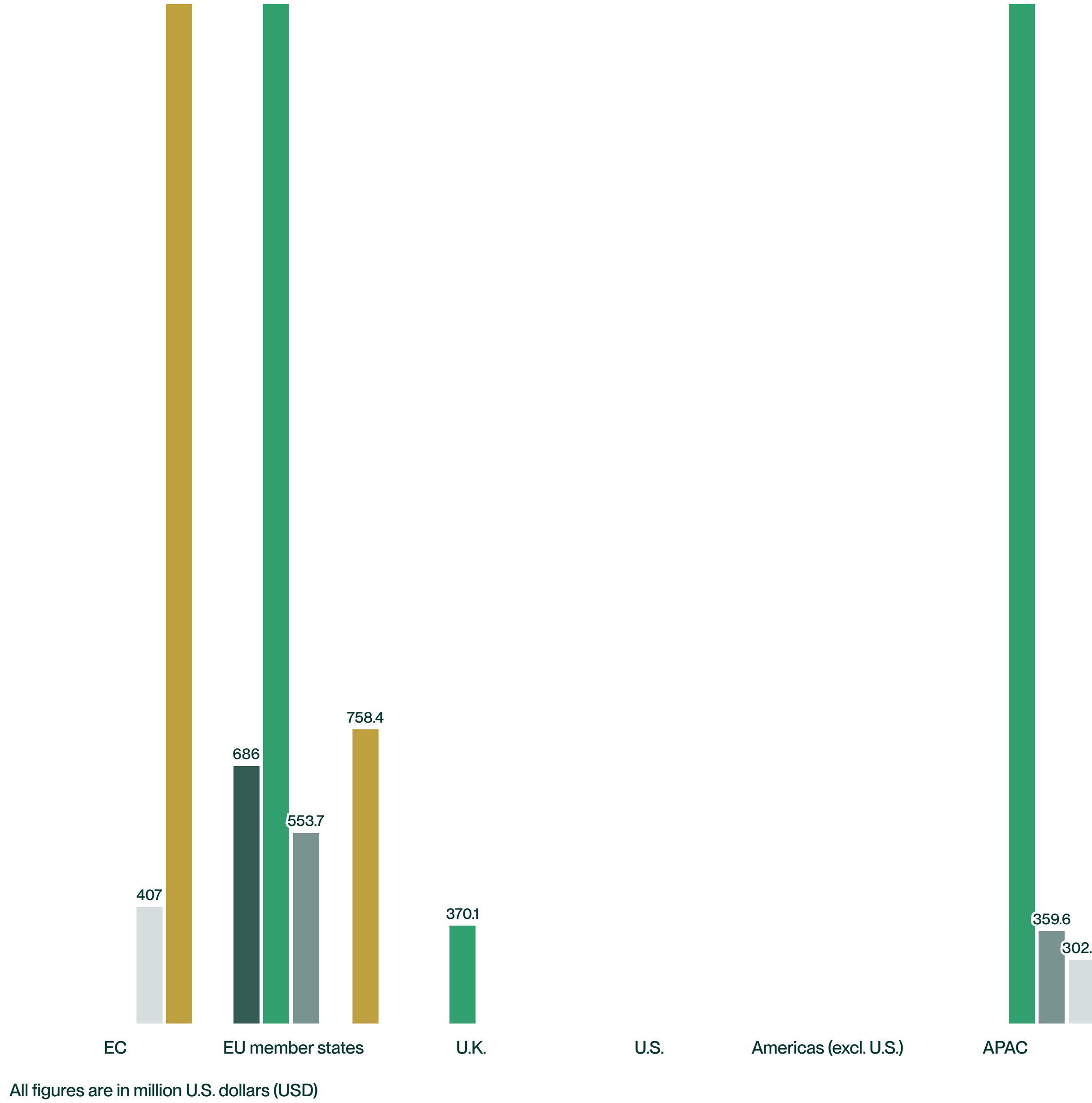
2024 saw a significant increase in the total fines imposed in abuse of dominance cases compared to 2023, reversing a trend of decline in recent years. The rise in fine volumes was spread across all regions of the world, with the exception of APAC.

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

Regional abuse of dominance fine comparison

2024 total: 4.3bn

2020 2021 2022 2023 2024



Key statistics

Abuse of dominance decisions by The European Commission (EC) accounted for over 75% of the overall global fine volume in 2024. The six EC decisions comprised three fines of almost or EUR500 million, including against Apple and Meta (see further details below), and three decisions where parties avoided fines by agreeing commitments. The EC also [fined Mondelēz International over EUR330m] for a number of breaches of competition law, including abuse of its dominant position by refusing to supply a trader in Germany in order to prevent the resale of chocolate tablet products in certain jurisdictions where prices were higher.

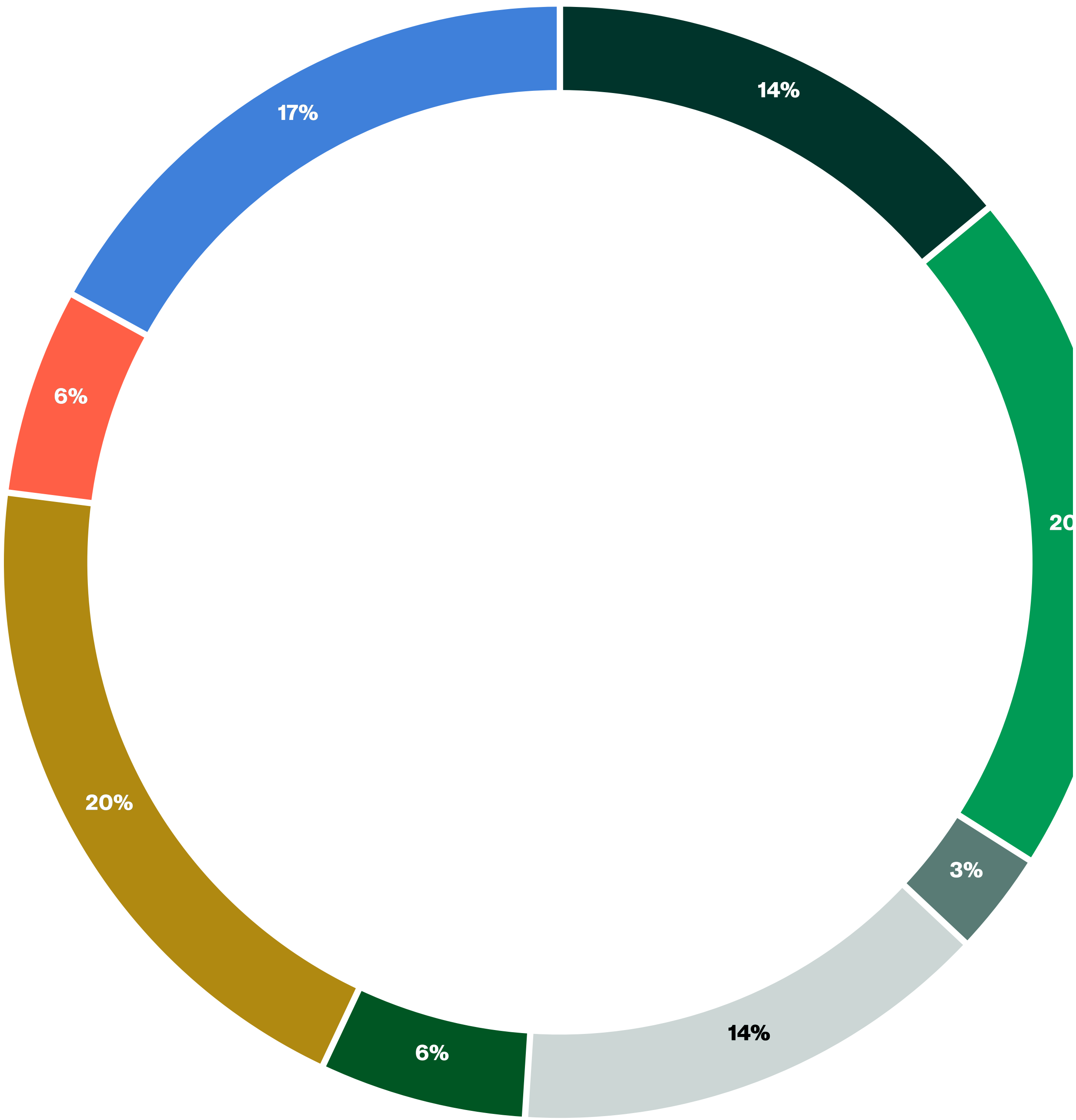
Fines across the EU member states in 2024 were at their highest level since 2021. This was primarily due to two significant fines. First, the Spanish antitrust authority imposed a record EUR413m fine on Booking.com for abusing its dominant position on the Spanish market of online booking intermediation services to hotels by online travel agencies. The authority found exploitative and exclusionary abuse and also imposed behavioural measures on Booking.com. Booking.com is appealing the decision. Second, the French antitrust authority fined Alphabet and its Google subsidiaries EUR250m for failing to abide by commitments made in 2022.

The Chilean antitrust authority levied a record-breaking USD28.1m fine on the Chilean football channel Canal del Futbol for abusing its dominant position in the live football match transmission market by enforcing anticompetitive practices on pay-TV operators such as minimum guaranteed payments, tied selling, promotion limitations, and minimum resale prices. This is the highest-ever fine imposed by the Chilean antitrust authority and accounted for over 75% of the overall fine volume in the Americas.

APAC was the only region to oversee a decrease in abuse of dominance fines. India was the standout enforcer in 2024. The Competition Commission of India (CCI) imposed a USD25.6m fine on Meta after finding that an update to WhatsApp's privacy policy in 2021 constituted an abuse by forcing users to consent to the sharing of their data, without offering any choice to opt out. In addition to the fine, the CCI imposed behavioral remedies, ordering WhatsApp to stop sharing its user data with other Meta companies for advertising purposes for five years and issuing directives in relation to the sharing of user data for purposes other than advertising. China was the second most prolific enforcer in APAC, with a fine total of USD12.3m over seven decisions.

Abuse of dominance decisions by sector

Consumer and retail Energy and natural resources Financial services
Industrial and manufacturing Life sciences TMT Transport and infrastructure
Other


14%
20
3%
14%
6%
20%
6%
17%

Big fines for Big Tech

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

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

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

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

Surge in number of decisions in energy and natural resources sector

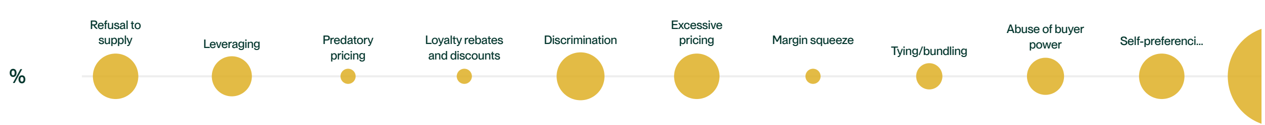
There were 14 abuse of dominance decisions in the energy & natural resources sector, the joint highest with TMT. However, none of these fines were above USD10m, with the largest fine (USD9.1m) being imposed by the Chinese antitrust authority on a water supplier for abusing its dominant position in an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

Divisional game ruled offside in life sciences sector

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

2025 may see the life sciences sector further under the microscope. Already, in January 2025, the Romanian antitrust authority announced that it had fined a pharmaceutical company EUR25.81m for abusing its dominant position on the market for drugs used to treat chronic obstructive pulmonary disease. The authority alleges that the company operated a promotion strategy to influence doctors to prematurely prescribe their more complex and expensive medicine over cheaper generics. We may also see further developments in the EC's unprecedented probe into animal health company Zoetis. Opened in March 2024, the EC alleges that Zoetis may have prevented the market launch of a competing novel biologic medicine used to treat chronic pain in dogs. It is the EC's first formal investigation into a potential abuse relating to the exclusionary termination of a pipeline product which was to be commercialized by a third party.

Forms of abuse of dominance



Discrimination the dominant form of abuse

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

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

Self-preferencing under scrutiny in online sphere

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

Increasing enforcement against 'disparagement' abuses

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

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

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

Looking forward—developments in abuse of dominance

EC opts for presumption-based approach to exclusionary conduct

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

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

Wider prohibition: Abuse of economic dependence

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

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

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