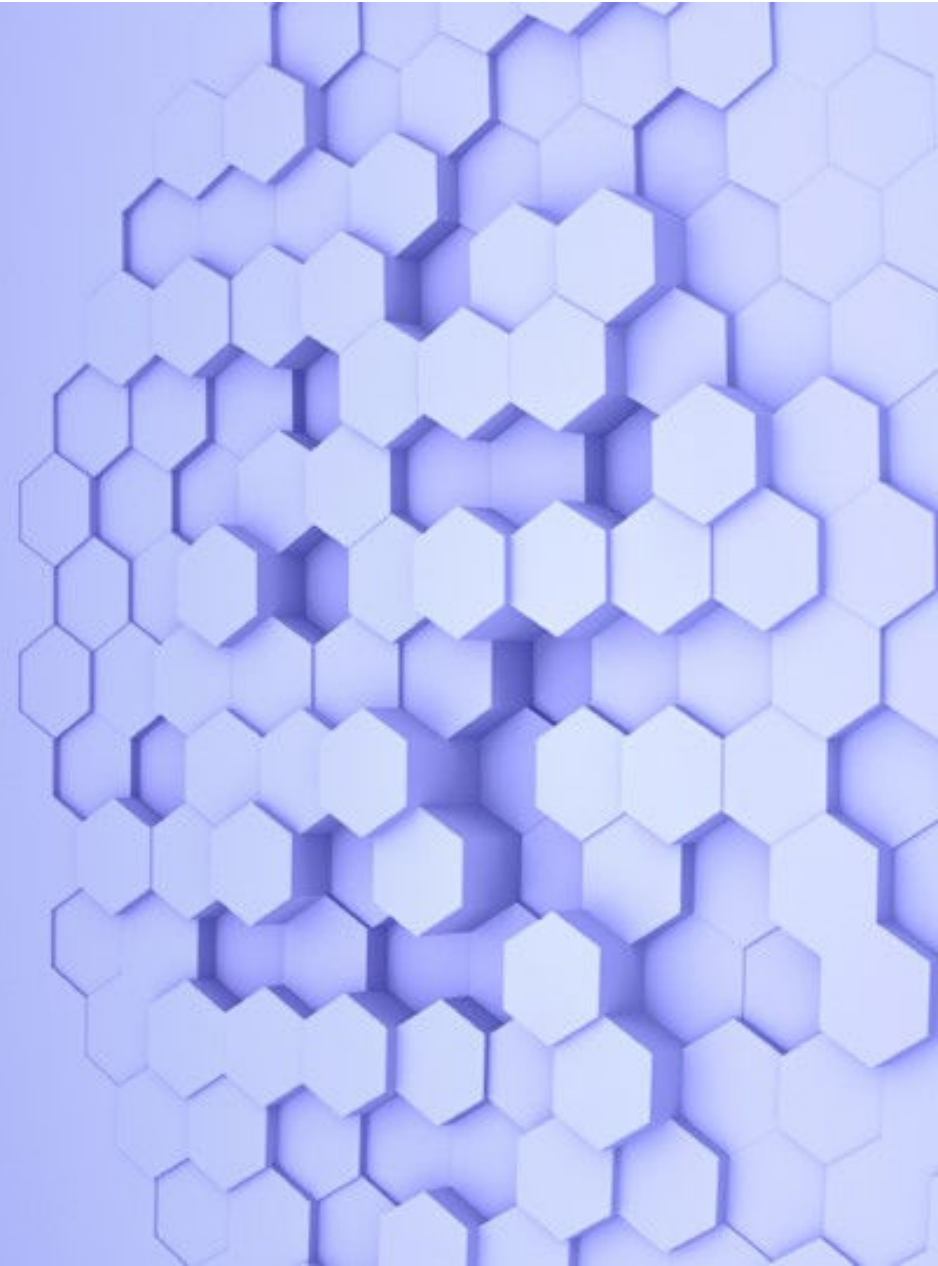


**Baker
McKenzie.**

**Annual Compliance
Conference 2024**





Annual Compliance Conference 2024

01 Antitrust compliance
30 April – 1 May 2024

02 Sanctions and export controls
7 – 9 May 2024

03 Customs and key compliance developments
14 – 16 May 2024

04 Anti-bribery and corruption and economic crime
22 – 23 May 2024

05 ESG, supply chain and product compliance
3, 5 and 6 June 2024



**Baker
McKenzie.**

Antitrust compliance

30 April – 1 May 2024



Antitrust enforcement - verticals: The rocky road to market

Tuesday 30 April 2024





Speakers



Mara Ghiorghies
Partner (Chair)
London



Laura Liu
Partner
Beijing



Lena Sersiron
Partner
Paris



Katharina Spenner
Partner
Munich



Roma McCool
Associate
Brussels





Agenda

Antitrust enforcement

01 Resale price maintenance

02 Territorial and/or customer resale restrictions

03 Online sales restrictions

04 Litigation

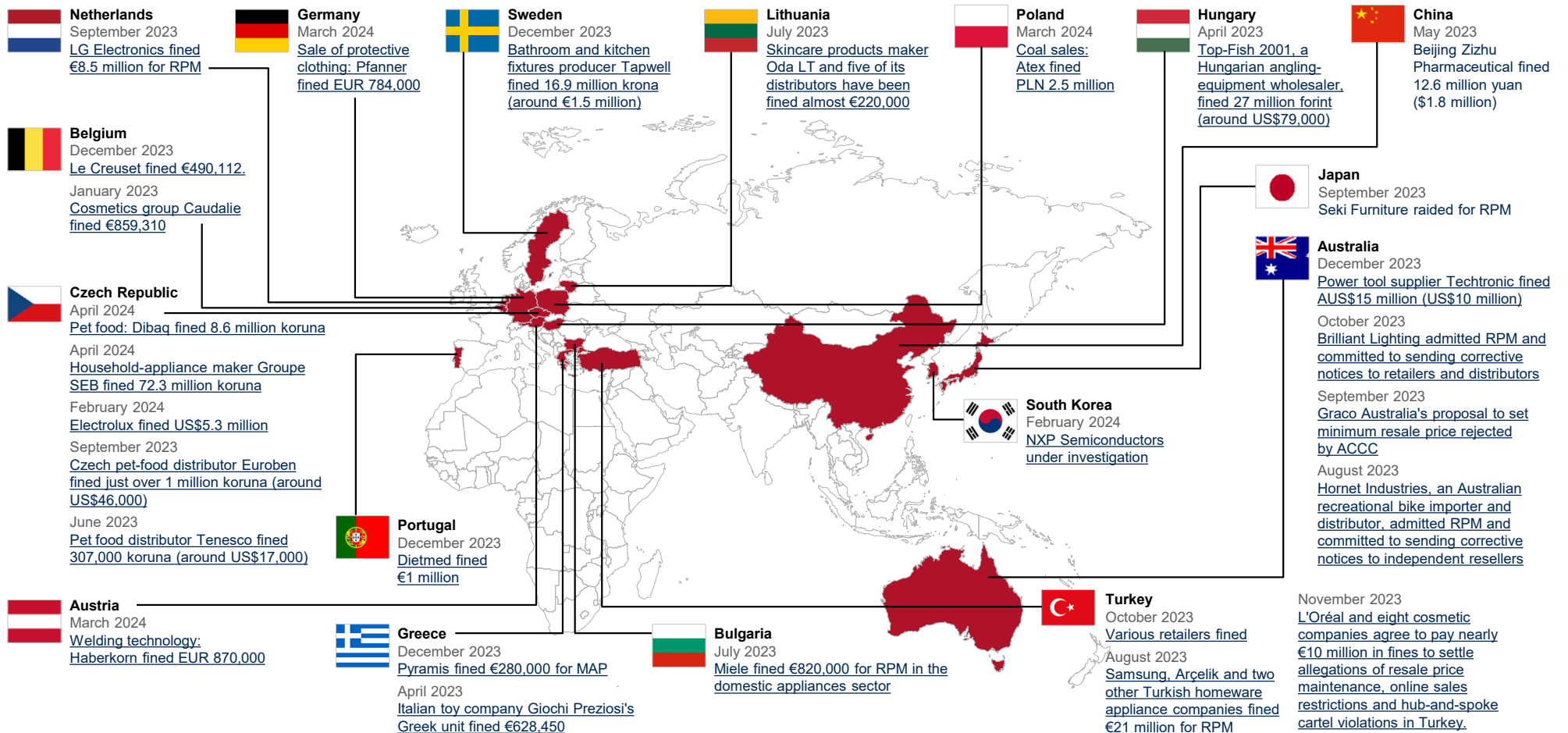
05 Risk mitigation and compliance programmes



01 Resale price maintenance














RPM enforcement (January 2023 – April 2024)*



*Key RPM cases as of 9 April 2024

Vertical restrictions in key APAC jurisdiction

	 AUS	 CHN	 HKG	 IDN	 JPN	 MYS	 PHL	 SGP	 TWN	 THA	 VNM
RPM	✗	✗	✗ (in most cases)	○	✗	✗	Rule of reason analysis	○	✗ unless justified	✗ unless justified	✓
RRP	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
MRP	✓	✓	✓	✓	✗ unless justified	✓	✓	○	✗ unless justified	✓	✓
Exclusive reseller	✓	✓	✓	✓	✓	✓	✓	○	✓	✓	✓
Territorial restrictions	✓ (in most cases)	✓ (in most cases)	✓ (in most cases)	✗	✓ (in most cases)	✓ (in most cases)	✓ (in most cases)	○	✓ (in most cases)	✓ (in most cases)	✓ (in most cases)

- ✓ - permissible regardless of market power
- - permissible as long as it does not amount to an abuse of a dominant position
- ✗ - prohibited regardless of market power

Vertical restrictions in China

Signals of loosening restrictions on RPM?

RPM still illegal/hardcore violation in the current legal framework and enforcement

Safe harbour rule is not in place and effect-based justifications are difficult

- Introduction of a 15% market threshold **was eventually deleted from** the final version of the Draft Regulation for Prohibiting Monopoly Agreement

RPM still an enforcement focus in practice:

- **Kairui Alliance Education** fined **CNY 0.94 million** (USD 0.14 million) in July 2022
- **Straumann** fined **CNY 34.4 million** (USD 5 million) in December 2022
- **Zizhu Pharma** fined **CNY 12.6 million** (USD 1.8 million) in May 2023

Non-Price related vertical restraints

Generally lawful absent dominance; "rule of reason" analysis on a case-by-case basis

Note specific rules in auto sectors – e.g., **Automobile Industry** set restrictions on passive sale prohibitions and unreasonable requirements imposed on dealers

Watch out: Hub and Spoke

02 Territorial and/or customer resale restrictions



Recent and ongoing cases relating to territorial and/or customer restrictions

Pierre Cardin



Mondelez



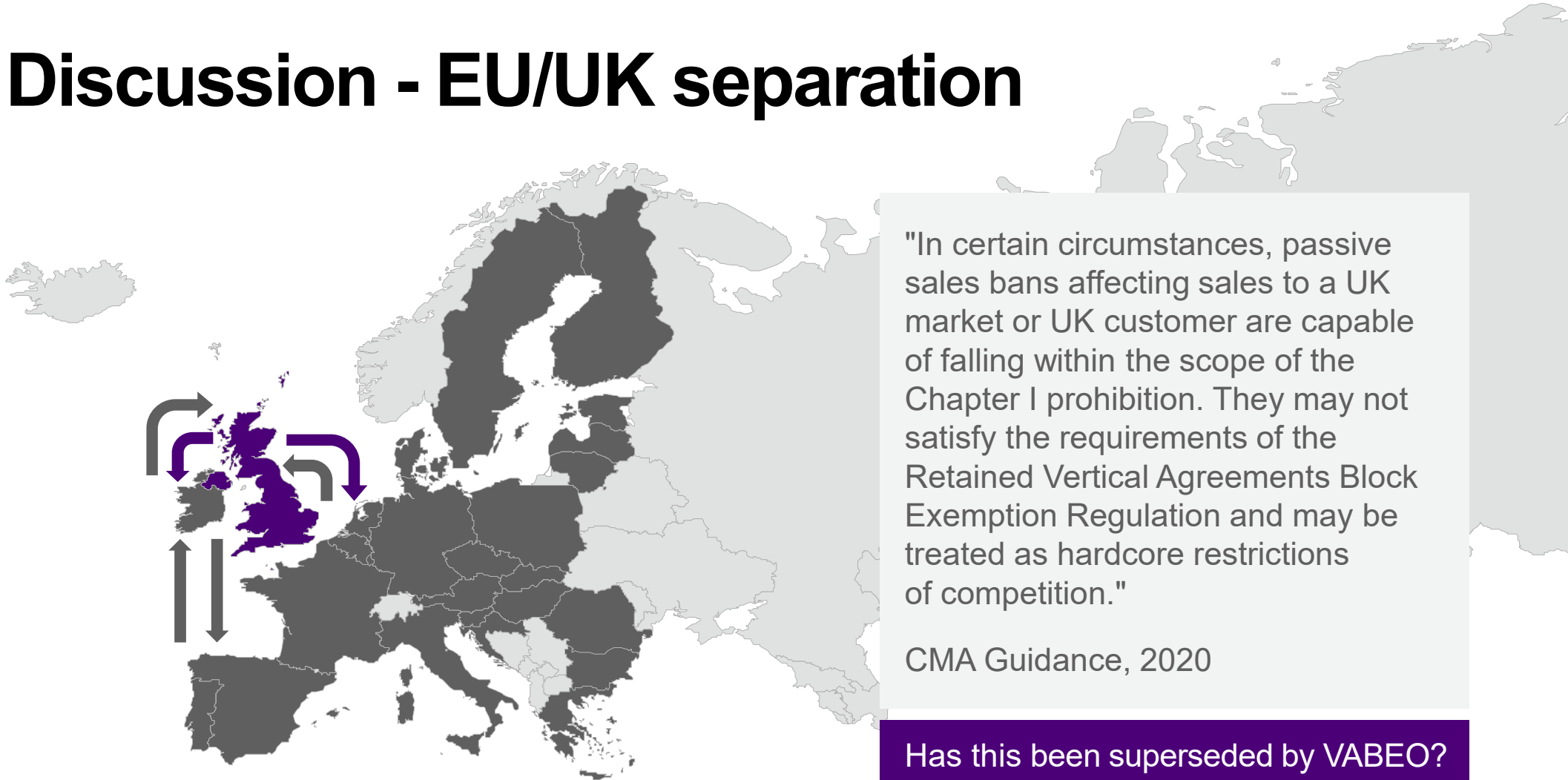
Valve – General Court decision



Swiss WEKO enforcement



Discussion - EU/UK separation



"In certain circumstances, passive sales bans affecting sales to a UK market or UK customer are capable of falling within the scope of the Chapter I prohibition. They may not satisfy the requirements of the Retained Vertical Agreements Block Exemption Regulation and may be treated as hardcore restrictions of competition."

CMA Guidance, 2020

Has this been superseded by VABEO?

03 Online sales restrictions



Intense scrutiny in France

French Competition Authority continues to demonstrate particular vigilance when it comes to online sales

Mariage Frères



11 December 2023:
€4 million fine

Rolex



19 December 2023:
€91.6 million fine

De Neuville



6 February 2024:
€2.3 million fine

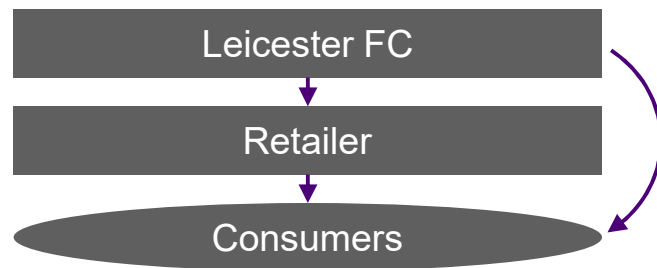
Essilor



October 2022:
€81 million fine

And in the UK

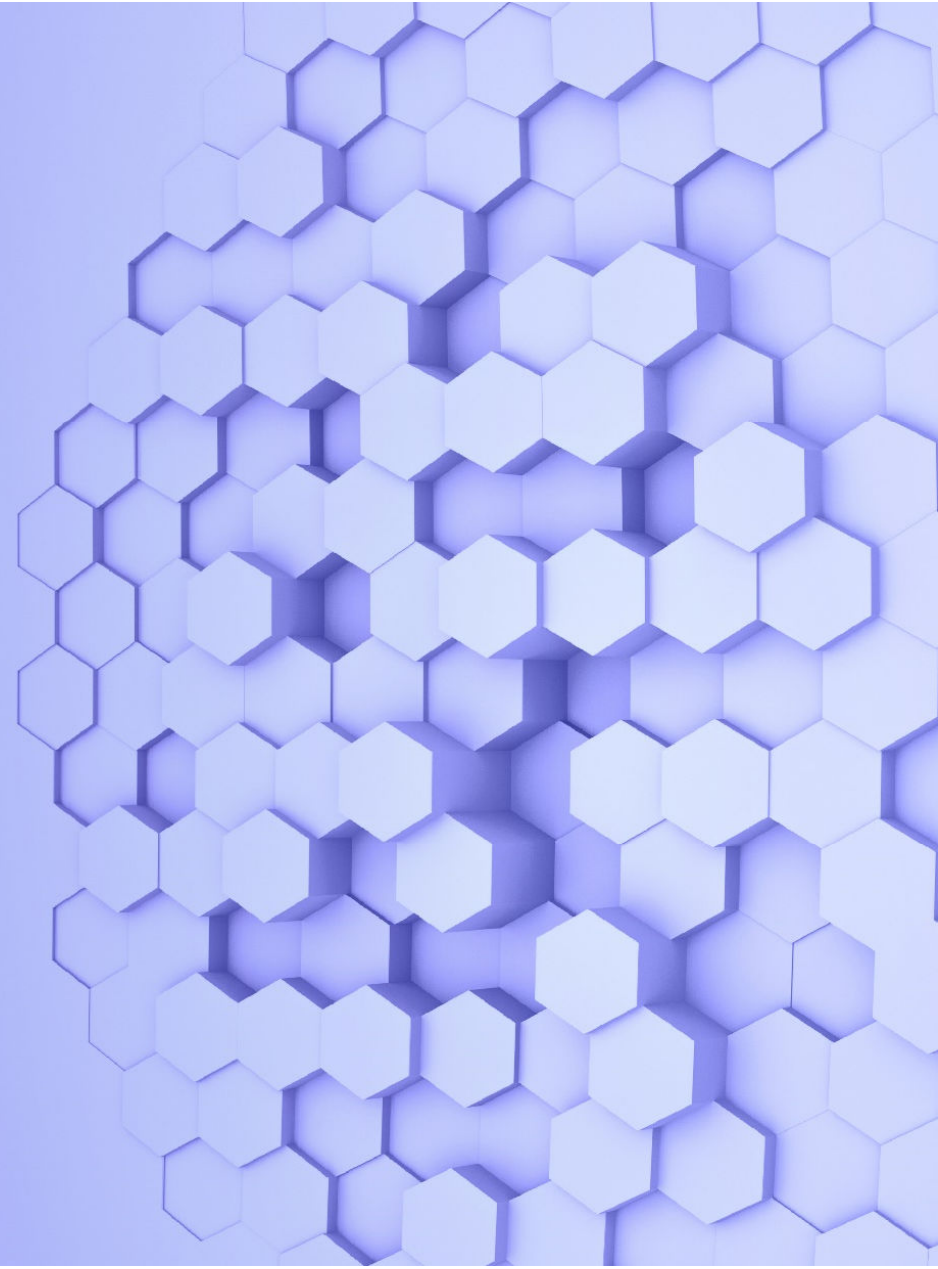
Online sales restrictions - Leicester City Football Club Limited and JD Sports



Wide MFN clauses - Compare the Market



04 Litigation

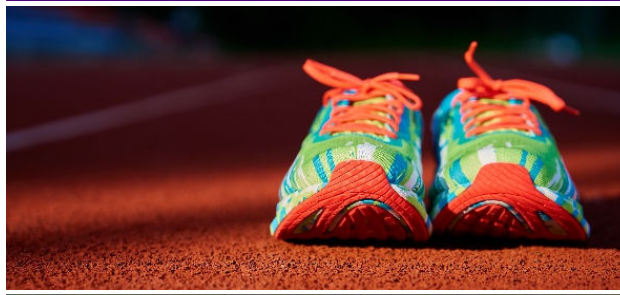


Substantive new risk: Litigation

Belle Lingerie claim against
Wacoal EMEA



Up and Running claim against
Deckers UK



Class action brought against
Apple and Amazon



Sports Direct claim against
Newcastle United Football Club



Class action brought against
musical instrument manufacturer



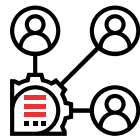
05 Risk mitigation and compliance programmes



Mitigating risk



Competition compliance policy and guidance to cover vertical restrictions particularly in high risk industries



Tailored training to sales and marketing teams on vertical restrictions – include case studies, specific examples of interactions with resellers



Focus on high risk scenarios: promotions, brand protection, cross-border arbitrage, complaints from resellers



Periodic audits in collaboration with the business



China is granting credit to antitrust compliance

SAMR issued official amendment to its **2020 Antitrust Compliance Guidelines** on 26 April 2024, with the most eye-catching content - granting credit to antitrust compliance

- Who will be benefited from this?
 - Business operators active in China
- What credit will be available?
 - i) penalty exemption; ii) agreeing with a commitment without imposing any penalties; iii) greater leniency; iv) reduction of monetary fines
- When the antitrust compliance credit can be applied/granted?
 - Pre-investigation; during commitment procedure; during leniency application; before penalty decision issued
- How to apply?
 - Business operators can make application, the SAMR then will conduct substantial review, and make decision to grant credit or not
 - The antitrust compliance program set up and implemented should (i) be well designed, (ii) be applied earnestly and in good faith, and (iii) work

Questions





Tomorrow's session

Managing compliance risks in the transactional context
Wednesday 1 May, 3.00 - 4.00 pm BST | 4.00 - 5.00 pm CEST | 10.00 - 11.00 am EDT



Baker McKenzie delivers integrated solutions to complex challenges.

Complex business challenges require an integrated response across different markets, sectors and areas of law. Baker McKenzie's client solutions provide seamless advice, underpinned by deep practice and sector expertise, as well as first-rate local market knowledge. Across more than 70 offices globally, Baker McKenzie works alongside our clients to deliver solutions for a connected world.

bakermckenzie.com

Baker & McKenzie is a member firm of Baker & McKenzie International, a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

© 2024 Baker McKenzie

