

PANORAMIC

**INTELLECTUAL
PROPERTY &
ANTITRUST 2026**

LEXOLOGY

Intellectual Property & Antitrust 2026

Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights, including into intellectual property law, the nexus between competition and IP rights, and consideration of industry standards; competition law, including such issues as interactions with copyright exhaustion or first sale doctrines; merger review; specific examples of competition law violations; remedies; economics and application of competition law; recent cases, remedies and sanctions; and other recent trends.

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INTELLECTUAL PROPERTY

Intellectual property law

- 1 | Under what statutes, regulations or case law are intellectual property rights granted? Are there restrictions on how IP rights may be enforced, licensed or otherwise transferred? Do the rights exceed the minimum required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

As China is a civil law country, any protection afforded to IP rights derives from statutes. Since the 1980s, China has gradually introduced laws and regulations to protect IP rights, covering patents, trademarks, copyrights and other types of IP.

The protection of patent rights in China is provided for in [the Patent Law](#) and the most important rules for the application of the Patent Law are set out in the [Detailed Rules for the Implementation of the Patent Law](#). Under Chinese law, patents include invention patents, utility models and design patents. An 'invention' refers to any new technical solution relating to a product, or a process or improvement thereof. 'Utility model' refers to any new technical solution relating to a product's shape or structure, or a combination of the two, that is fit for practical use. A 'design patent' protects a novel design that involves the shape or pattern, or a combination of both, as well as the integration of colour, shape and pattern. This protection applies to the entire product or a part of it, provided the design is aesthetically pleasing and suitable for industrial use.

The rules for the protection of trademarks are set out in the [Trademark Law](#) and the [Regulation on the Implementation of the Trademark Law](#).

The [Copyright Law](#) protects eight categories of original work:

- written works;
- oral works;
- musical, dramatic, operatic, dance and acrobatic works;
- fine art and architectural works;
- photographic works;
- audiovisual works;
- graphic works and model works, such as engineering designs, product designs, maps and schematic diagrams; and
- computer software and other intellectual results with similar characteristics.

While the protection for these copyrighted works is conferred upon the completion of the creation of the works, China has adopted a voluntary registration system, which provides certain convenience for authors in the enforcement of their rights.

Chinese law also protects other types of IP. Specifically, the [New Plant Variety Protection Regulations](#) stipulate detailed rules for the protection of new plant varieties. Integrated circuit layout designs are protected under the [Regulations on the Protection of Integrated Circuit Layout Design](#). Geographical indications are protected under both the Trademark Law (as certification marks or collective marks) and the [Regulations on the Protection](#)

[of Geographical Indications](#). In addition to the above-mentioned statutes, trade secrets are protected under the [Anti-Unfair Competition Law](#), which supplements the protection of IP rights by prohibiting acts of unfair competition, including passing off, trade secret misappropriation and false advertising.

China's IP rights system generally meets, and in some cases exceeds, the minimum TRIPs requirements. For example, the Chinese Patent Law provides 20 years of protection for inventions, in line with the TRIPs Agreement (which requires that inventions be protected for at least 20 years).

Law stated - 22 October 2025

Responsible authorities

2 | Which authorities are responsible for granting, administering or enforcing IP rights?

China has established a multi-tiered system involving administrative, judicial and enforcement bodies to grant, administer and enforce IP rights. These authorities work collaboratively to ensure the effective protection and utilisation of IP.

The China National Intellectual Property Administration (CNIPA) is responsible for granting and administering patents, trademarks and geographical indications. Local IP offices at the provincial and municipal levels are generally responsible for handling administrative IP enforcement, including patent and trademark infringement disputes. On 26 May 2021, the CNIPA issued the [Administrative Ruling Measures for Major Patent Infringement Disputes](#), which officially delineated the scope of patent infringement cases that should be reviewed by the CNIPA instead of local IP offices.

While the National Copyright Administration of China is responsible for administering copyright and related rights, the registration of copyright is the responsibility of the China Copyright Protection Center.

The State Administration for Market Regulation (SAMR) is responsible for enforcing IP rights, particularly in cases of unfair competition and trademark infringement.

The General Administration of Customs is responsible for enforcing IP rights at the borders by detaining counterfeit or infringing goods.

Courts adjudicate any civil actions relating to all IP rights initiated by private parties. They also review and examine the decisions issued by the various administrative authorities in administrative actions and adjudicate IP-related criminal cases.

Law stated - 22 October 2025

Proceedings to enforce IP rights

3 | What types of legal or administrative proceedings are available for enforcing IP rights? To the extent your jurisdiction has both legal and administrative enforcement options for IP rights, briefly describe their interrelationship, if any?

To enforce IP rights in China, both civil and administrative proceedings are available to the rights owner.

IP rights holders are free to choose either administrative or judicial proceedings for their enforcement actions, depending on the nature of the case and desired outcomes. Under the law, a party would not be precluded from pursuing judicial remedies after choosing administrative enforcement, and vice versa. In fact, some IP rights holders strategically choose to file an administrative complaint first, as this may expedite obtaining an injunction and gathering evidence, then file a civil case to claim damages. For example, in trade secret misappropriation cases, filing administrative actions first can benefit the civil case. The local Administration of Market Regulation (AMR) can conduct an investigation that helps the rights holder gather crucial evidence. Findings of misappropriation and sanctions issued by the AMR strongly support the rights holder's position in the civil action.

Civil proceedings

The most common approach to enforcing IP rights in China is to initiate civil actions. Judicial proceedings are handled by courts, including specialised IP courts in Beijing, Shanghai, Guangzhou and Hainan, and IP tribunals in the intermediate level courts in other regions. In court proceedings, civil IP cases are handled in a more sophisticated manner by specialised IP judges compared to the methods used by the relevant administrative authorities. First instance proceedings generally take between one and a half and three years. Remedies offered by the courts include injunctions and damages. In China, injunctions to cease IP infringements are generally awarded upon the finding of infringement, and there are no additional prerequisites for courts to award permanent injunctions. Injunctions are rarely rejected by the court, except where public interest may be affected by enforcement of the injunction.

Administrative proceedings

Administrative complaints for patent, trademark or copyright infringement can be filed with agencies such as local IP offices or the AMR. Customs also has the authority to instigate and sanction IP infringement activities.

Generally speaking, administrative proceedings are faster and more cost-effective than judicial proceedings. However, no damages can be awarded to the rights owner through administrative proceedings, and injunctions issued by administrative authorities are usually limited compared with those issued by courts.

Law stated - 22 October 2025

Remedies

- 4 | What remedies are available to a party whose IP rights have been infringed? Do these remedies vary depending on whether one utilises judicial or administrative review or enforcement?

The main remedy available to an IP rights owner in an administrative action is an injunction. By contrast, in a civil action a plaintiff can seek both an injunction and damages.

In a civil IP case, a plaintiff may be awarded a permanent injunction to cease the infringement, as well as a preliminary injunction, upon the plaintiff's request, during the court's adjudication of the case. Monetary damages are calculated based on the actual losses suffered by the IP owner, or the profits gained by the infringer. If the actual damages cannot be determined, the courts may award statutory damages based on the nature of the infringement within the statutory limits, the maximal amount of which is 5 million yuan. In cases of wilful infringement involving severe harm, the Chinese courts may award punitive damages of up to five times the actual damages. Court awards may also include the plaintiffs' legal costs, covering attorneys' fees and evidence collection and investigation expenses, in the final damages award.

In administrative actions, the primary remedy is an injunction (ie, an order issued by the administrative authorities, such as local IP offices or the SAMR, demanding that the infringer cease the infringing acts). The administrative authorities may award additional remedies, such as fines or orders to destroy the counterfeit goods or materials. No monetary compensation would be awarded to the rights holder in administrative proceedings.

Law stated - 22 October 2025

Nexus between competition and IP rights

- 5 | Do any statutes, regulations or case law in your jurisdiction address the interplay between competition law and IP law?

Article 68 of the [Anti-Monopoly Law](#) provides that 'an undertaking's abuse of IP right, excluding and restricting competition' shall be subject to the Anti-Monopoly Law. This is echoed in article 20 of the Patent Law, which states that 'any abuse of patent rights, excluding or restricting competition, which constitute monopolistic activities' shall be handled in accordance with the Anti-Monopoly Law. This confirms that, in China, even if IP is involved, the analysis should still be carried out in accordance with the traditional framework of competition law.

To provide guidance to the competition law enforcement authorities, the Anti-Monopoly Committee of the State Council promulgated the [Guidelines of the Antitrust Committee of the State Council on the Field of Intellectual Property](#) in 2019; the SAMR issued the [Regulations on Prohibiting the Abuse of Intellectual Property Rights to Eliminate and Restrict Competition](#) in June 2023 and the [Anti-Monopoly Guidelines for Standard Essential Patents](#) in November 2024, which also directly regulate IP rights from a competition law perspective.

In the specific domain of standard-essential patents (SEPs), it is widely accepted that the fair, reasonable and non-discriminatory (FRAND) principle is embedded in the Chinese legal framework through article 24 of the [Interpretation \(II\) of the Supreme People's Court](#)

[on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Disputes](#) (amended in 2020).

Law stated - 22 October 2025

Patent cooperation treaties and other agreements

6 | Does your jurisdiction participate in any patent cooperation treaties or other similar agreements?

China is a party to numerous bilateral and multilateral agreements, including:

- the Patent Cooperation Treaty;
- the Patent Law Treaty;
- the TRIPs Agreement;
- the Paris Convention for the Protection of Industrial Property;
- the Regional Comprehensive Economic Partnership; and
- the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

Law stated - 22 October 2025

Remedies for deceptive practices

7 | With respect to trademarks, do competition or consumer protection laws provide remedies for deceptive practices?

The Anti-Unfair Competition Law provides remedies for deceptive practices relating to trademarks and unfair competition:

- article 6 prohibits businesses from engaging in misleading use of trademarks, trade names or trade dress that may confuse or mislead consumers over the source of the products or the relationship between brands; and
- article 8 prohibits businesses from making false or misleading statements about their goods or services, which can include misrepresentation of trademarks to deceive consumers.

If businesses violate the above provisions, the administrative authorities (eg, the SAMR) can impose fines, order the cessation of deceptive activities and confiscate illegal gains. In addition, civil lawsuits can be filed to seek compensation for losses caused by the unfair practice.

The [Consumer Rights Protection Law](#) provides remedies for consumers who have been misled by deceptive practices. The Law also imposes penalties on businesses that engage in deceptive practices, such as false advertising or selling counterfeit goods.

Law stated - 22 October 2025

Technological protection measures and digital rights management

- 8** | With respect to copyright protection, is WIPO protection of technological protection measures (TPMs) and digital rights management (DRM) enforced in your jurisdiction? Do statutes, regulation or case law limit the ability of manufacturers to incorporate TPM or DRM protection limiting the platforms on which content can be played? Has TPM or DRM protection been challenged under the competition laws?

China's Copyright Law (2020) provides robust protection for technological protection measures and digital rights management, enabling authors to incorporate these technologies to protect their content. We have yet to see any statutes, regulations or case law in China explicitly regulating or limiting these tools.

Law stated - 22 October 2025

Industry standards

- 9** | What consideration has been given in statutes, regulation or case law to the impact of the adoption of proprietary technologies in industry standards?

Article 24 of the Interpretation (II) of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Disputes (amended in 2020) is widely regarded as the legal foundation for the FRAND principle in SEP licensing practice under Chinese law. It provides the basic rules of when an injunction can be awarded in a SEP infringement case and clarifies that a Chinese court has the authority to adjudicate SEP royalty setting cases.

Law stated - 22 October 2025

COMPETITION

Competition legislation

- 10** | What statutes set out competition law?

The Anti-Monopoly Law governs competition law in China. Its aim is to prevent and restrain monopolistic conduct, protect fair market competition, encourage innovation, improve economic efficiency, safeguard the interests of consumers and the public, and promote the sound development of the market economy.

Detailed guidance is provided in the judicial interpretations issued by the Supreme People's Court, the administrative regulations issued by the State Council and the regulatory rules issued by the State Administration for Market Regulation (SAMR).

The Anti-Unfair Competition Law, while not directly relating to antitrust law, outlines regulations for various activities that can disrupt market competition. These activities include but are not limited to passing off, false advertising, trade secret misappropriation and commercial defamation.

Law stated - 22 October 2025

IP rights in competition legislation

11 | Do the competition laws make specific mention of any IP rights?

Article 68 of the Anti-Monopoly Law stipulates that the Law applies to the abuse of any IP rights that excludes or restricts market competition.

Law stated - 22 October 2025

Review and investigation of competitive effects from exercise of IP rights

12 | Which authorities may review or investigate the competitive effect of conduct related to exercise of IP rights?

The competitive effect of licensing or transfer of IP rights would be reviewed by the SAMR in merger filing cases involving IP transactions. However, if the merger does not involve an IP transaction or the IP transaction does not have any merger filing background, a proactive review would not be triggered. Although the China National Intellectual Property Administration handles the registration of patent assignments, which is essential for the successful transfer of patent rights, it does not perform any competition law compliance reviews for these transactions. Private parties may bring civil cases to court if the exercise of IP rights constitutes any violation of the Anti-Monopoly Law. This type of case is typically handled by IP judges.

Law stated - 22 October 2025

Competition-related remedies for private parties

13 | Can a private party recover for competition-related damages caused by the exercise, licensing or transfer of IP rights?

Yes. If a private party's lawful rights and interests are damaged by any act of unfair competition, it may file a lawsuit in a people's court and require that the infringer bear civil liability. Where an undertaking engages in monopolistic conduct that causes loss to others, it shall also bear civil liability in accordance with the law.

Law stated - 22 October 2025

Competition guidelines

- 14** | Have the competition authorities, or any other authority, issued guidelines or other statements regarding the overlap of competition law and IP?

There are several departmental rules and guidelines focusing on regulating competition in the IP field. The Anti-Monopoly Committee of the State Council, as the authority responsible for organising, coordinating and guiding anti-monopoly legislation in China, has issued the Guidelines of the Antitrust Committee of the State Council on the Field of Intellectual Property. The SAMR has issued the Regulations on Prohibiting the Abuse of Intellectual Property Rights to Eliminate and Restrict Competition as well as the Anti-Monopoly Guidelines for Standard Essential Patents.

Law stated - 22 October 2025

Exemptions from competition law

- 15** | Are there aspects or uses of IP rights that are specifically exempt from the application of competition law?

There is no exemption specifically designed for IP rights. The traditional competition law analysis framework applies to all IP-related activities. For example, if an IP rights owner unilaterally excludes others from using its IP, this would not be subject to any competition law scrutiny as long as the owner is not in a position of market dominance. The rationale is that, while 'refusal to trade' constitutes an abuse of market dominance under Chinese law, the relevant market must first be defined and market dominance must be established as a prerequisite.

Law stated - 22 October 2025

Copyright exhaustion

- 16** | Does your jurisdiction have a doctrine of, or akin to, 'copyright exhaustion' (EU) or 'first sale' (US)? If so, how does that doctrine interact with competition laws?

The exhaustion doctrine is accepted in the exercise of IP rights in China. For patent rights, article 75.1 of the Patent Law provides that using, promising to sell, selling or importing any patented product or product directly obtained under the patented process after the product has been sold by the patentee or by its licensees shall not be deemed an infringement of a patent right. Although the exhaustion doctrine is not explicitly referred to in either the Trademark Law or the Copyright Law, after a copyrighted work or a product bearing a trademark has been sold, the owner of the work or product is entitled to sell it again without requiring authorisation from the trademark or copyright holder.

We are unaware of any judicial cases in which contractual attempts to override this principle (eg, requiring buyers not to resell or imposing geographic restrictions) have

been confirmed as having an anticompetitive effect under the Anti-Monopoly Law or the Anti-Unfair Competition Law. That said, courts in various regions have shown differing tendencies in their interpretations of this doctrine. Some courts have favoured a more thorough application of the exhaustion principle, while others have adopted a narrower scope for the doctrine.

Law stated - 22 October 2025

Import control

- 17** | To what extent can an IP rights holder prevent 'grey-market' or unauthorised importation or distribution of its products?

Parallel importing is not considered an infringement of IP rights under Chinese law. However, judicial practice in China indicates that trademark infringement may be found if the trademark is used in ways beyond the mere sales of the imported products.

Law stated - 22 October 2025

Jurisdictional interaction between competition laws and IP rights

- 18** | Are there authorities with exclusive jurisdiction over IP-related or competition-related matters? For example, are there circumstances in which a competition claim might be transferred to an IP court to satisfy subject matter jurisdiction? Are there circumstances where the resolution of an IP dispute will be handled by a court of general jurisdiction?

In China, the specialised IP courts and tribunals established within the intermediate level courts handle first instance proceedings of all technical IP cases, some soft IP cases (generally, complex copyright and trademark cases) and all antitrust IP cases. All competition cases automatically go to the IP courts and tribunals. Technical IP cases include disputes over ownership and infringement of invention patents, utility model patents, new varieties of plants, layout designs of integrated circuits, know-how and computer software. Soft IP cases reviewed by the IP courts and tribunals include disputes over ownership and infringement of design patents and civil and administrative cases involving the determination of whether a trademark is famous. All other soft IP cases go to the primary courts, unless the damages claimed by the plaintiff in these cases reach certain levels set by the Supreme People's Court.

Law stated - 22 October 2025

MERGER REVIEW

Powers of competition authority

- 19** | Does the competition authority have the same authority with respect to reviewing mergers involving IP rights as it does with respect to any other merger?

Under the Regulations on Prohibiting the Abuse of Intellectual Property Rights to Eliminate and Restrict Competition and the [Notice of the State Administration for Market Regulation on Authorisation f or Anti-Monopoly Law Enforcement](#), the State Administration for Market Regulation (SAMR) oversees anticompetitive conduct in IP-related mergers and acquisitions, particularly in complex, multi-provincial or nationally significant cases. The SAMR can delegate enforcement to provincial authorities within their respective jurisdictions or directly handle cases, as needed.

Law stated - 22 October 2025

Analysis of the competitive impact of a merger involving IP rights

- 20** | Does the competition authority's analysis of the competitive impact of a merger involving IP rights differ from a traditional analysis in which IP rights are not involved? If so, how?

In addition to the standard framework for traditional mergers, the competitive impact analysis of IP-related mergers considers the unique characteristics of IP. It does not automatically assume market dominance based on IP ownership. The analysis also evaluates the potential positive effects on efficiency and innovation, considering the specific circumstances of each case.

Law stated - 22 October 2025

Challenge of a merger

- 21** | In what circumstances might the competition authority challenge a merger involving the transfer or concentration of IP rights? Does this differ from the circumstances in which the competition authority might challenge a merger in which IP rights were not a focus?

When a merger involves the transfer or concentration of IP rights, where one undertaking gains control over, or the ability to exert decisive influence on, another undertaking through transactions involving IP, the competition authority may intervene. Generally, the following factors are considered:

- whether the IP constitutes an independent line of business;
- whether the IP generated stand-alone and quantifiable revenue in the previous fiscal year; and
- the terms and duration of IP licensing arrangements.

Similar to cases in which IP rights are not the primary focus, these transactions require a merger filing and competition review under the Anti-Monopoly Law if they meet the following thresholds:

-

the global turnover of the undertakings exceeds 12 billion yuan or the turnover within China exceeds 4 billion yuan; and

- at least two undertakings involved had an annual turnover of over 800 million yuan in China during the previous fiscal year.

Law stated - 22 October 2025

Remedies to address the competitive effects of mergers involving IP

- 22** | What remedies are available to address competitive effects generated by a merger when those effects revolve around the transfer of IP rights?

The SAMR may impose restrictive conditions to address the competition effects generated by a merger involving the transfer of IP rights. Remedies may be structural or behavioural and the SAMR may impose a combination of these.

Structural conditions include restrictive conditions such as divesting IP rights or businesses involving IP rights. The divestiture should be made in an effective, feasible and timely manner, to avoid impacting market competition.

Behavioural remedies may include granting IP licences, maintaining independent operations for IP-related businesses or constraining IP licensing conditions, including requiring undertakings to observe fair, reasonable and non-discriminatory obligations.

Comprehensive remedies combine structural and behavioural remedies, allowing for tailored solutions to address competitive concerns effectively.

Generally, the SAMR would require the undertaking to comply with certain principles while licensing out their IP rights rather than imposing the compulsory licence directly.

Law stated - 22 October 2025

SPECIFIC COMPETITION LAW VIOLATIONS

Conspiracy

- 23** | Can the exercise, licensing or transfer of IP rights create price-fixing or conspiracy liability?

The exercise, licensing or transfer of IP rights might create price-fixing or conspiracy liability. Therefore, the abuse of IP rights is regulated by the competition laws. If the licensing or transfer of IP rights between competitors aims to preclude or restrict competition, it may constitute an illegal cartel.

According to article 2 of the Guidelines of the Antitrust Committee of the State Council on the Field of Intellectual Property, the review of abuse of IP rights generally follows the same regulatory standard as for other property rights, as well as the relevant provisions of the Anti-monopoly Law. It will also take into consideration the attributes of the IP right and the impact of the relevant conduct on efficiency and innovation. An undertaking cannot be

presumed to have a dominant market position in the relevant market solely because of its ownership of an IP right.

Law stated - 22 October 2025

Scrutiny of settlement agreements

- 24** | How would a settlement agreement terminating an IP infringement dispute be scrutinised from a competition perspective? What are the key factors informing such an analysis?

To evaluate the potential competition law compliance risks of a settlement agreement terminating an IP infringement dispute, the traditional legal framework of the Anti-Monopoly Law would be used. Key factors to consider include whether enforcing the settlement agreement could result in abuse of market dominance or whether the settlement agreement itself could constitute a monopolistic agreement.

To determine abuse of market dominance, the following factors must be considered: whether the owner of the IP could be considered as having market dominance in the defined markets and whether the termination could preclude or restrict competition (eg, by the IP owner refusing to provide a licence to the implementer). If the IP owner does not have market dominance, it is permitted to require the other party to cease using the IP.

To establish whether the agreement could constitute a monopolistic agreement, it must first be established whether a horizontal or vertical relationship exists between the parties before analysing it using the traditional legal framework.

Law stated - 22 October 2025

Reverse payment patent settlements

- 25** | How have the competition laws been applied to reverse payment patent settlements in your jurisdiction?

The people's courts evaluate the competitive implications of a reverse payment patent settlement to determine whether it constitutes a monopoly agreement. *AstraZenecaAB v Aosaikang* ((2021) Zui Gao Fa Zhi Min Zhong No. 388) was the first case in China to scrutinise reverse payment patent settlements from an anti-monopoly perspective. In this case, the Supreme People's Court considered the potential for patent invalidation, prompted by requests by generic drug applicants, and assessed the extent of competitive harm caused by the agreement to determine whether it might hinder or limit competition.

Patent pools and standard-setting bodies must also act within the scope of competition laws. According to the Antitrust Guidelines for Standard Essential Patents, standard-setting bodies, patent pool management or operation entities, standard essential patent (SEP) owners, standard implementers and other operators should strengthen anti-monopoly compliance to prevent monopoly risks. Copyright collectives must also comply with the

provisions of the competitive laws and cannot exercise copyright with the aim of precluding or restricting competition.

The anti-monopoly review of reverse payment patent settlement generally follows the relevant provisions of the Anti-Monopoly Law, taking into consideration the attributes of the IP right, the impact of the relevant conduct on efficiency and innovation, and the conduct of the involved parties.

In the pharmaceutical field specifically, the [Anti-Monopoly Guidelines of the State Council Anti-Monopoly and Anti-Unfair Competition Committee on the Pharmaceutical Sector](#) have incorporated the judicial experience from the *AstraZeneca AB v Aosaikang* case. It explicitly states that reverse payments may constitute monopoly agreements and lists several factors for determining the illegality, including:

- whether the benefit compensation given or undertaken to be given by the patentee of the generic pharmaceutical to the applicant for the generic pharmaceutical evidently exceeds the cost of resolving the dispute over the patent of the generic pharmaceutical and no reasonable explanation can be made;
- whether the agreement substantially extends the market exclusive time of the patentee of the generic pharmaceutical or obstructs or affects the entry of the generic pharmaceutical into the relevant market; and
- other factors that exclude or restrict competition in the relevant market.

Law stated - 22 October 2025

(Resale) price maintenance

26 | Can the exercise, licensing, or transfer of IP rights create liability under (resale) price maintenance statutes or case law?

Article 17 of the Anti-Monopoly Law prohibits resale price maintenance (RPM), making it illegal to fix resale prices or restrict the minimum resale price of goods. This prohibition is strict and applies to all forms of RPM, including those involving IP rights.

In *Shanghai Huaming Power Equipment Co, Ltd v Wuhan Taipu Transformer Switch Co, Ltd* ((2021) SPC Zhi Min Zhong No.1298), the Supreme People's Court held that:

[a] settlement agreement reached due to a patent infringement dispute, if it lacks substantial relevance to the scope of protection of the patent involved, involves products beyond the scope of the suspected infringement, and its core is not to protect and exercise patent rights, but to use the exercise of patent rights as a cover, and actually aims to divide the sales market, restrict the quantity of goods production and sales, fix prices, etc., can be identified as a horizontal monopoly agreement.

In *Yangtze River Pharmaceutical Group et al v Hipi Pharma Tech et al, Ltd* ((2020) SPC Zhi Min Zhong No.1140), the Supreme People's Court held that, when analysing unfair high prices involving patents, more factors should be considered, particularly the reasonable innovation returns that patented drugs should have, and a three-step approach to determining unfair high prices has been proposed.

Law stated - 22 October 2025

Exclusive dealing, tying and leveraging

- 27** | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to exclusive dealing, tying and leveraging?

Article 22 of the Anti-Monopoly Law prohibits exclusive dealing and tying arrangements, making it illegal to restrict the purchase or sale of goods or services on the condition that the buyer or seller refrain from dealing with certain competitors. This prohibition applies to all forms of these arrangements, including those involving IP rights. More specific regulations can be found in the Anti-Monopoly Guidelines for Standard Essential Patents and the Regulations on Prohibiting the Abuse of Intellectual Property Rights to Eliminate and Restrict Competition.

In China, the exercise of IP rights may be treated differently from non-IP-related conduct in certain circumstances. For example, according to article 68 of the Anti-Monopoly Law, if a company exercises its IP rights in accordance with the law and does not abuse them to exclude or restrict competition, it is not subject to the Anti-Monopoly Law. However, if there is an abuse of IP rights to exclude or restrict competition, the Anti-Monopoly Law will apply.

Law stated - 22 October 2025

Abuse of dominance

- 28** | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to monopolisation or abuse of dominance?

In *Yangtze River Pharmaceutical Group et al v Hipi Pharma Tech et al* ((2020) SPC Zhi Min Zhong No.1140), the Supreme People's Court ruled that the defendant's exclusive provision of a patented raw material and restriction imposed on the plaintiff to trade solely with them during the patent term were justified by the statutory exclusivity of the patent and did not exceed the scope of patent rights. Therefore, these actions were not considered abuse of dominance under antitrust law.

The Supreme Court has stated that, in terms of IP, a cautious approach should be taken to identify and regulate unfair high pricing. If a high pricing action does not clearly exclude or restrict competition, or harm consumer welfare, it should not be automatically considered an abuse of market dominance. The reasoning is that the lack of clear anticompetitive effects suggests that the market may self-correct, and the complex analysis of high pricing

should consider actual or potential anticompetitive effects without discouraging investment and innovation, which could negatively impact consumer welfare.

The Anti-Monopoly Guidelines on Intellectual Property Rights and the Regulations on Prohibiting the Abuse of Intellectual Property Rights to Eliminate and Restrict Competition contain additional, specific regulations on abuse of dominance.

Law stated - 22 October 2025

Refusal to deal and essential facilities

- 29** | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to refusal to deal and refusal to grant access to essential facilities?

In *Hitachi Metals, Ltd v Ningbo Ketian Magnetics Co, Ltd* ((2020) SPC Zhi Min Zhong No.1398), the Ningbo Intermediate People's Court issued a first instance decision in 2021, largely supporting the plaintiffs' main claims, which stated that Hitachi Metals' refusal to license was an abuse of IP rights and constituted a 'refusal to deal' under antitrust law. Hitachi Metals appealed and in December 2023, the Supreme People's Court issued a final judgment, overturning the first instance ruling. The Supreme Court found that Hitachi Metals did not have a dominant position in the relevant market and thus its refusal to license was not an abuse of a dominant market position. The case highlights the complexity of applying antitrust law to IP rights, especially in the context of non-standard essential patents. It underscores the importance of carefully defining the relevant market and exercising caution towards applying the essential facilities doctrine in China. The Supreme Court's decision reflects a cautious approach to applying antitrust laws to IP rights, emphasising the need to balance innovation protection with competition law.

Law stated - 22 October 2025

REMEDIES

Remedies for violations of competition law involving IP

- 30** | What sanctions or remedies can the competition authorities or courts impose for violations of competition law involving IP?

Penalties can include injunctions, compensation and fines. Specifically, in competition law investigations, the State Administration for Market Regulation may order the cessation of mergers, require divestiture of shares or assets within a specified period, mandate the transfer of business operations or take other necessary measures to restore the state of competition to its pre-merger status. Similarly, courts may impose legal obligations on parties to take necessary action to restore competition.

Law stated - 22 October 2025

Competition law remedies specific to IP

31 | Do special remedies exist under your competition laws that are specific to IP matters?

Although the law does not explicitly stipulate remedies specific to IP matters, the legal framework is broadly defined, allowing competition authorities or courts to exercise discretion based on the circumstances of each case.

Law stated - 22 October 2025

ECONOMICS AND APPLICATION OF COMPETITION LAW

Economics

32 | What role has competition economics played in the application of competition law in cases involving IP rights?

Competition law and IP protection share a common objective of safeguarding competition and fostering innovation, thereby improving economic efficiency, protecting consumer interests and promoting public welfare. Consequently, cases involving IP rights require an economic analysis similar to that employed in general antitrust cases.

In IP cases, the economic analysis often involves examining the technology's characteristics, its applications, licensing fees, compatibility, the duration of the relevant IP rights, and the feasibility and cost of switching to alternative technologies. In IP merger cases, if the merger is deemed likely to violate competition law and necessitates the imposition of restrictive conditions, the parties must provide detailed explanations of the methods used to calculate royalty rates, the payment terms for licensing fees, and the conditions and opportunities for fair negotiations.

Law stated - 22 October 2025

RECENT CASES AND SANCTIONS

Recent cases

33 | Have there been any recent high-profile cases dealing with the intersection of competition law and IP rights?

In recent years, China has actively engaged in the interdisciplinary area of competition law and IP issues, delivering a series of landmark decisions that provide significant guidance for commercial practices. For instance, in the dispute between Hitachi Metals and several Ningbo-based companies ((2021) SPC Min Zhong Nos. 1398, 1413, 1449, 1482), the Supreme Court overruled the first instance decision and held that a commercially essential patent is distinct from a standard essential patent (SEP) and that the owner of the commercially essential patents in which no process of standardisation is involved has no market dominance.

Another milestone case was the determination of royalties for Nokia's SEPs for OPPO by the Chongqing No. 1 Intermediate People's Court ((2021) Yu 01 Min Chu No. 1232). It was the first Chinese court decision on global SEP licence rates. It provided a detailed economic analysis and offered significant guidance on applying fair, reasonable and non-discriminatory (FRAND) principles in antitrust evaluations. Although the Court's analysis is based on FRAND principles rather than the Anti-Monopoly Law, the reasoning, analysis and ultimate decision provide valuable insights into the antitrust evaluation of excessive pricing and abuse of market dominance.

It is worth noting that the administrative authorities have also taken actions in recent years. For example, on 10 October 2025 the State Administration for Market Regulation announced an antitrust investigation into Qualcomm's acquisition of Autotalks Ltd.

Law stated - 22 October 2025

Remedies and sanctions

34 | What competition remedies or sanctions have been imposed in the IP context?

In judicial practice, monetary compensation continues to be the most prevalent remedy for competition violations. In the only SEP-related antitrust case in China in which a final decision has been rendered (*Huawei v InterDigital* (2013) Yue Gao Fa Min San Zhong Zi No. 306), the court ruled that InterDigital had engaged in abusive practices involving its SEPs, including excessive pricing and tying, which constituted abuse of market dominance. The court ordered InterDigital to compensate Huawei for losses amounting to 20 million yuan. The court considered factors such as the nature of InterDigital's infringing actions, the degree of subjective fault, the duration of the infringement and the impact of the damage. The court also took into account the reasonable expenses incurred by Huawei in investigating and curbing the monopolistic behaviour. This case alone does not provide sufficient guidance on how to calculate damages for abusive activities relating to SEP licensing and it is expected that Chinese judicial practice may suggest different methodologies in the future.

Law stated - 22 October 2025

UPDATE AND TRENDS

Key developments

35 | Are there any emerging trends or hot topics in the law of IP and antitrust policy? Have changes occurred recently or are changes expected in the near future that will have an impact on the application of competition law to IP rights?

In recent years, China has demonstrated increased legislative activity in the fields of IP and antitrust law, particularly reflecting greater openness toward the protection of international IP rights. For instance, on 13 March 2025 the State Council issued the [Provisions of the State Council on the Settlement of Foreign-related IP Disputes](#). Additionally, on 27 June 2025 China amended its Anti-Unfair Competition Law,



introducing, among other changes, an 'extraterritorial jurisdiction' mechanism to address unfair competition acts committed outside China.

Chinese courts have also been actively exploring methods to determine fair, reasonable and non-discriminatory royalties for standard essential patents (SEPs), including issuing first anti-anti-suit injunction (AASI) decisions. As SEP royalty disputes in China expand to new industries, including the internet of things and automobile industries, we anticipate more detailed guidance from future judicial practice.

Law stated - 22 October 2025

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INTELLECTUAL PROPERTY

Intellectual property law

- 1 | Under what statutes, regulations or case law are intellectual property rights granted? Are there restrictions on how IP rights may be enforced, licensed or otherwise transferred? Do the rights exceed the minimum required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

Indonesian laws and regulations recognise and protect two main categories of intellectual property (IP) – namely, industrial IP and communal IP. Each category is further divided into specific types of IP, governed by various laws and regulations, as discussed below in turn.

Industrial IP

Trademarks

Law No. 20 of 2016 regarding Trademarks and Geographical Indications (the Trademarks and Geographical Indications Law), as amended by the Job Creation Law (Law No. 6 of 2023) and annotated by Constitutional Court Decision No. 144/PUU-XXI/2023 dated 30 July 2024, serves as the main law governing trademarks in Indonesia.

A trademark protects any signs that can be represented graphically, such as device marks, logos, names, words, letters, numbers or colour arrangements, in two or three dimensions, sound, hologram, or a combination of two or more of those elements, used to distinguish the source of goods or services in the course of trade. In Indonesia, trademark rights arise from registration, as opposed to use. Therefore, the trademark owner must file an application for registration of trademark protection with the Directorate General of Intellectual Property (DGIP), under the Ministry of Law (MOL), which is authorised to administer IP registration and recordation in Indonesia. Trademark protection commences once the trademark is registered, and the protection is applied retroactively from the filing date for a 10-year period. Trademark protection can be renewed perpetually and each protection period is for 10 years.

Patents

Law No. 13 of 2016 regarding Patents, as amended by the Job Creation Law and Law No. 65 of 2024 regarding the Third Amendment to the Patent Law (the Third Amendment of the Patent Law) (collectively referred to as the Patent Law), serves as the main law governing patents in Indonesia.

Patents protect 'inventions', defined as the ideas of an inventor embodied in specific problem-solving activities in the field of technology, which may take the form of products and/or process, improvements and/or developments of products and/or processes, as well as systems, methods and uses.

The Patent Law recognises protection of general patents and simple patents. General patent rights are granted to inventions that are novel, involve inventive steps and are

industrially applicable. In comparison, simple patent rights are granted to inventions that are novel, improve existing products or processes, provide practical use and are industrially applicable.

The term of protection is 20 years from the filing date for a general patent and 10 years for a simple patent. Neither can be renewed.

Copyrights and neighbouring rights

Law No. 28 of 2014 regarding Copyrights, as annotated by Constitutional Court Decision No. 84/PUU-XX/2023 dated 29 February 2024 (the Copyright Law), serves as the primary law governing copyright protection in Indonesia. The House of Representatives is scheduled to deliberate the draft amendments to the Copyright Law in early November 2025, with the promulgation of an amended law expected by early 2026.

Copyright protection applies to scientific, artistic and literary works resulting from inspiration, ability, thoughts, imagination, dexterity, skill or expertise expressed in a tangible form. It constitutes an exclusive right vested automatically based on the declarative principle once a work is embodied in a tangible form.

Copyright protection that is held or owned by a natural person (the copyright holder is a natural person) is valid for 70 years post mortem auctoris, which exceeds the minimum 50 years of post mortem auctoris copyright protection under the Berne Convention and the WTO TRIPs Agreement. The Copyright Law also includes provisions on neighbouring rights (also known as 'related rights'), such as the exclusive rights of performers, phonogram producers and broadcasting organisations.

Industrial designs

Law No. 31 of 2000 regarding Industrial Designs (the Industrial Design Law) serves as the primary law governing industrial designs in Indonesia. The industrial design right gives protection to any novel two- or three-dimensional shape, configuration, the composition of lines or colours or a combination thereof that creates an aesthetic impression, can be realised in a two- or three-dimensional pattern and can be used to produce products, goods, industrial commodities or handicrafts. Protection under the Industrial Design Law is granted for a period of 10 years from the filing date and cannot be renewed.

Trade secrets

Law No. 30 of 2000 regarding Trade Secrets (the Trade Secret Law) serves as the primary law governing trade secrets in Indonesia. It protects confidential information in the fields of technology or business that is not publicly known, has economic value due to its utility in business and whose confidentiality is actively maintained by its owner. The protection applies indefinitely, so long as the information retains its economic value and remains confidential.

Layout design of integrated circuits

Law No. 32 of 2000 regarding Layout Designs of Integrated Circuits (the Layout Designs of Integrated Circuit Law) serves as the primary law governing the protection of layout designs of integrated circuits in Indonesia. An 'integrated circuit' refers to a finished or semi-finished product containing various elements, at least one of which is active, which are partly or entirely interconnected and integrated into a semiconductor to produce electronic functions. A 'layout design' is a three-dimensional design formed by various elements, including at least one active element, of which parts of or all of the interconnections in a circuit and the three-dimensional layout are intended for the preparation of making an integrated circuit. Protection for layout designs of integrated circuits is valid for 10 years from the filing date.

Plant variety protection

Law No. 29 of 2000 regarding Plant Variety Protection, as amended by the Job Creation Law, (the Plant Variety Protection Law) serves as the primary law governing plant variety protection in Indonesia. Plant variety protection grants exclusive rights to plant breeders for new plant varieties that are unique, uniform, stable and named plant species that they developed through plant breeding activities. The protection is granted for 20 years from the granting of the plant variety protection for seasonal plants and 25 years for annual plants.

Communal IP

Communal IP is generally governed under Government Regulation No. 56 of 2022 regarding Communal Intellectual Property (GR 56/2022). GR 56/2022 further classifies communal IP into the following types.

Traditional cultural expressions

This type of communal IP protects all forms of expression of creative works, whether in the form of objects or intangibles, or a combination of both, that shows the existence of a traditional culture that is held communally and across generations.

Traditional knowledge

This type of communal IP protects ideas or concepts in society that contain local values as a result of real experience in interacting with the environment, are developed continuously and are passed on to the next generation.

Genetic resources

Genetic resources are genetic material originating from plants, animals or microorganisms containing units that function as carriers of hereditary traits that have real or potential value.

Appellations of origin

Appellation of origin is a characteristic of the origin of goods and/or services that is not directly related to natural factors and is protected as a sign that shows the true origin of goods and/or services and is used in trade.

Potential geographical indications

The potential geographical indication refers to goods and/or products that, due to geographical environmental factors, including natural factors, human factors or a combination of both factors, give a certain reputation to the goods and/or products produced, which have the potential to be protected by geographical indications and are not yet registered as a geographical indication.

Geographical indications

Aside from the foregoing, relevant to potential geographical indications, the Trademarks and Geographical Indications Law also governs geographical indications, which are defined as signs that indicate the area of origin of goods and/or products that, due to geographical environmental factors, including natural factors, human factors or a combination of both, give a certain reputation, quality and characteristics to the goods and/or products produced.

The laws referred to above are collectively referred to as the 'IP Laws'.

Aside from the IP Laws, the legal basis against unfair competition in Indonesia is provided in the general provisions on unlawful acts stipulated in articles 1365 and 1366 of the Indonesian Civil Code, article 382-bis of the prevailing Indonesian Criminal Code and article 500 of the New Indonesian Criminal Code, which prohibit unfair business conduct.

For completeness, please note that the Indonesian government promulgated a new Indonesian Criminal Code under Law No. 1 of 2023 regarding the Indonesian Criminal Code (the New Indonesian Criminal Code) on 2 January 2023. Article 624 of the New Indonesian Criminal Code stipulates that the New Indonesian Criminal Code will come into force three years after the Code's promulgation, which means that it is set to come into force on 2 January 2026.

Notwithstanding the foregoing, in practice, we are unaware of any standalone unfair competition case that has been brought before the courts. Parties seeking to pursue unfair competition claims typically do so where there is a nexus with conventional IP rights and, most commonly, trademark rights, which consequently leads such matters to be treated as a trademark (or other IP) case rather than as an independent unfair competition case.

Concerning the limitation on the licensing of IP rights, as a general rule, article 6 of Government Regulation No. 36 of 2018 regarding the Recordation of IP Licence Agreements (GR 36/2018) stipulates that an IP licence agreement should not contain any provision that may:

- harm Indonesia's economy or national interest;
- contain any restriction that impedes Indonesian people from transferring, controlling or developing technology;
- cause unfair business competition; or

- contradict the provisions of laws and regulations, religious values, decencies or public order.

Additionally, the Copyright Law prohibits the outright sale or indefinite transfer of books, literary works, songs and music, with or without lyrics. If such a sale or indefinite transfer occurs, the copyright in the work in question will automatically revert to the author 25 years after the assignment or the outright sale becomes effective. Similarly, the rights of performers in their songs and/or music that are assigned or sold will revert to the performers in question 25 years after the assignment or sale becomes effective.

Law stated - 11 November 2025

Responsible authorities

2 | Which authorities are responsible for granting, administering or enforcing IP rights?

The DGIP is responsible for granting and administering IP rights in Indonesia. Its functions include receiving, examining and granting or rejecting trademarks, patents, industrial designs, geographical indications and layout designs of integrated circuit applications.

For copyrights and trade secrets, where protection does not stem from registration, the DGIP facilitates recordation, which serves as prima facie evidence of ownership and is also a prerequisite for recording licence agreements. The DGIP also administers the recordation of IP licences, assignments and changes in proprietors' addresses and names.

In relation to plant variety protection, the authority to grant and administer rights lies with the Plant Variety Protection Office under the Ministry of Agriculture .

Enforcement of IP rights is divided between commercial and district courts. The commercial courts handle civil cases, such as cancellation claims, deletion (non-use cancellation) claims, claims for damages and claims to cease the infringement for all IP rights except trade secrets and plant variety protections, which fall under the jurisdiction of district courts.

District courts also hear criminal proceedings related to IP infringement. Investigations may be conducted by officers of the Indonesian National Police and civil servant investigators from the MOL.

In the realm of copyright infringement, in addition to the DGIP and MOL, the Ministry of Communication and Digital Affairs (MOCDA) also plays a role in enforcing copyright and related rights. This authority is governed by the Joint Regulation of the Minister of Law and Human Rights (now Minister of Law) and Minister of Communication and Informatics (now Minister of Communication and Digital Affairs) No. 14 of 2015 and No. 26 of 2015 regarding the Implementation of Content Blocking and/or User Access Termination for Copyright and/or Related Rights Infringements in Electronic Systems (Joint Regulation on Content Blocking). This Joint Regulation on Content Blocking allows authors, copyright holders, related right owners, collective management organisations (CMOs), authorised associations or other authorised parties to report copyright and/or related rights infringements committed through electronic systems for commercial purposes that directly or indirectly cause losses to the authors, copyright holders or related rights owners.

The report is submitted to the MOL through the DGIP, which conducts an administrative review. If the report passes this review, a verification team comprising representatives from the DGIP, the MOCDA and relevant copyright and related rights associations will verify the report. If an infringement is confirmed, the DGIP recommends that the MOCDA block the site, remove the infringing content and/or disable user access involved in the copyright or related rights infringements.

Law stated - 11 November 2025

Proceedings to enforce IP rights

- 3** | What types of legal or administrative proceedings are available for enforcing IP rights? To the extent your jurisdiction has both legal and administrative enforcement options for IP rights, briefly describe their interrelationship, if any?

At the administrative level, rights holders and interested third parties may file oppositions with the DGIP against applications for trademarks, patents and industrial designs on the grounds that the applied trademarks, patents or industrial designs should not be registered.

An appeal against the granted patent may also be filed with the Patent Appeal Commission within nine months of the patent's grant date.

In addition, the DGIP and the MOCDA jointly provide a mechanism through which authors, copyright holders, related right owners, CMO, authorised associations or other authorised parties may report copyright and/or related rights infringements committed through electronic systems for commercial purposes and request content blocking and/or user access termination for the infringing content.

The commercial courts, which are specialised chambers within district courts, have jurisdiction over civil proceedings relating to IP matters, including IP infringement matters, except those involving trade secrets and plant variety protections, which fall under the jurisdiction of district courts. Currently, there are five commercial courts in Indonesia – namely, those located in the District Courts of Central Jakarta, Semarang (Central Java province), Surabaya (East Java province), Medan (North Sumatra province) and Makassar (South Sulawesi province).

Aside from plant variety protection-related disputes, IP disputes can also be resolved through alternative dispute resolution methods, such as arbitration, negotiation, mediation and conciliation.

Law stated - 11 November 2025

Remedies

- 4** | What remedies are available to a party whose IP rights have been infringed? Do these remedies vary depending on whether one utilises judicial or administrative review or enforcement?

Generally, the remedies available to parties suffering from IP rights infringement include claims for damages and orders to cease the infringing activity. Such claims shall be filed with the commercial courts, except for those infringement of trade secrets and plant variety protection, which fall under the jurisdiction of the district courts.

In addition to these civil remedies, criminal sanctions are also available for IP infringements. All criminal offences involving IP rights are complaint-based offences. Therefore, the aggrieved party must file a claim to the police or civil servant investigators from the MOL before the case can proceed.

Trademarks

Article 100 of the Trademarks and Geographical Indications Law sets out criminal sanctions for the infringement of registered trademarks – namely:

- a maximum of five years' imprisonment or a maximum fine of 2 billion rupiahs, or both, for unlawful use of a mark that is similar in its entirety to another party's registered trademark for similar goods or services that are produced or traded;
- a maximum of four years' imprisonment or a maximum fine of 2 billion rupiahs, or both, for unlawful use of a mark that is similar in principle to another party's registered trademark for similar goods or services that are produced or traded; and
- a maximum of 10 years' imprisonment or a maximum fine of 5 billion rupiahs, or both, for unlawful use of a mark for types of goods that can cause health and environmental problems or death.

Patents

Article 161 of the Patent Law sets out the criminal sanctions for general patent infringement. These sanctions are a maximum of four years' imprisonment, a maximum fine of 1 billion rupiahs, or both. Article 162 sets forth criminal sanctions for simple patent infringement – namely, a maximum of two years' imprisonment, a maximum fine of 500 million rupiahs, or both.

If such patent infringement causes health or environmental problems, it is punishable by a maximum of seven years' imprisonment, a maximum fine of 2 billion rupiahs, or both (article 163(1) of the Patent Law). If the violation results in a person's death, it is punishable by a maximum of 10 years' imprisonment, a maximum fine of 3.5 billion rupiahs, or both (article 163(2) of the Patent Law).

Copyright and neighbouring rights

Articles 112 to 120 of the Copyright Law regulate criminal sanctions for unlawful acts relating to copyright and neighbouring rights, with a minimum imprisonment of one year, a minimum fine of 100 million rupiahs, a maximum imprisonment of 10 years and a maximum fine of 4 billion rupiahs.

Industrial designs

Article 54 of the Industrial Design Law stipulates that infringement of the rights of an industrial design holder is punishable by a maximum of four years' imprisonment or a maximum fine of 300 million rupiahs, or both.

Trade secrets

Article 17 of the Trade Secret Law stipulates that infringement of the rights of a trade secret holder is punishable by a maximum of two years' imprisonment or a maximum fine of 300 million rupiahs, or both.

Layout designs of integrated circuits

Article 42(1) of the Layout Designs of Integrated Circuit Law regulates that infringement against the right holder's layout design of integrated circuits is punishable by a maximum of three years' imprisonment or a maximum fine of 300 million rupiahs, or both.

Plant variety protections

Article 71 of the Plant Variety Protection Law stipulates that infringement of the rights of a plant variety protection holder is punishable by a maximum of seven years' imprisonment or a maximum fine of 2.5 billion rupiahs, or both.

Geographical indications

Criminal sanctions for infringement of geographical indications are outlined in article 101 of the Trademarks and Geographical Indications Law. These sanctions are a maximum of four years' imprisonment or a maximum fine of 2 billion rupiahs, or both, for the unlawful use of a sign that is similar in its entirety or in principle to the registered geographical indication for similar goods or products.

At the administrative level, remedies in the form of content blocking, removal of infringing material and access blocking are also available in cases of copyright and/or related infringement in electronic systems.

Law stated - 11 November 2025

Nexus between competition and IP rights

- 5** | Do any statutes, regulations or case law in your jurisdiction address the interplay between competition law and IP law?

To date, Law No. 5 of 1999 regarding the Prohibition of Monopolistic Practices and Unfair Business Competition, as amended by the Job Creation Law and annotated by Constitutional Court Decision No. 85/PUU-XIV/2016 (the Anti-Monopoly Law), exempts agreements related to IP rights, such as licences and franchises, from the scope of its regulation. This provision is set out in article 50 of the Anti-Monopoly Law.

For completeness, the Business Competition Supervisory Commission (KPPU) issued Regulation No. 2 of 2009 regarding Guidelines for Exceptions to the Implementation of the Anti-Monopoly Law in Relation to IP-Related Agreements (KPPU Reg 2/2009). KPPU Reg 2/2009 stipulates that licence agreements related to IP are exempt from the Anti-Monopoly Law if they do not contravene the principles and purposes set out in articles 2 and 3 of the Anti-Monopoly Law, as follows:

- the activities of business actors in Indonesia must be based on economic democracy, with due observance of the equilibrium between the interests of business actors and the interests of the public;
- the purposes of the Anti-Monopoly Law are to:
 - safeguard the interests of the public and improve national economic efficiency for the sake of people's welfare;
 - create a conducive business climate through the regulation of fair business competition to ensure the certainty of equal business opportunities for large, medium-sized and small business actors in Indonesia;
 - prevent monopolistic practices and unfair business competition by business actors; and
 - create effectiveness and efficiency in business activities.

KPPU Reg 2/2009 further stipulates that the exempted IP-related licences must comply with IP Laws and have been recorded at the DGIP.

Notwithstanding the foregoing, it is important to note that the Indonesian House of Representatives is currently deliberating the draft of a new anti-monopoly law (Draft Anti-Monopoly Law), which will replace the current Anti-Monopoly Law. The Draft Anti-Monopoly Law currently in circulation does not contain a provision exempting IP agreements, including licences, patents, trademarks, copyrights, industrial designs, layout designs of integrated circuits and trade secrets. Thus, if the Draft Anti-Monopoly Law is passed in its current form, IP-related agreements will no longer be exempted from the scope of the Anti-Monopoly Law.

Law stated - 11 November 2025

Patent cooperation treaties and other agreements

6 | Does your jurisdiction participate in any patent cooperation treaties or other similar agreements?

Yes. Indonesia has been a contracting party to the World Intellectual Property Organization's Patent Cooperation Treaty since 5 September 1997. Indonesia is also a member of the Paris Convention, which allows applicants to claim priority rights for patent applications filed in other Paris Convention member states.

In addition, Indonesia has entered into bilateral patent prosecution highway (PPH) agreements with the Japan Patent Office (JPO) and the Korean Intellectual Property Office (KIPO), enabling applicants to request accelerated examination for patent applications filed

with the DGIP by using the examination results of corresponding patents examined by the JPO or KIPO as a reference.

Law stated - 11 November 2025

Remedies for deceptive practices

- 7 | With respect to trademarks, do competition or consumer protection laws provide remedies for deceptive practices?

Article 9(a) and (d) of Law No. 8 of 1999 regarding Consumer Protection (the Consumer Protection Law) sets out provisions that prohibit business actors from offering, promoting or advertising goods or services incorrectly or as if such goods or services have met quality standards, or have a particular style, mode or characteristic, or as if a corporation produced such goods or services with a sponsor, approval or affiliation. In theory, it should be possible to apply these provisions to deceptive practices concerning trademarks. However, the general (preamble) section of the Consumer Protection Law's elucidation stipulates that IP rights violations by business actors do not fall within the scope of the Consumer Protection Law. Consequently, the Consumer Protection Law cannot be used as grounds for seeking remedies against deceptive practices concerning trademarks.

Further, there is no specific provision in the Anti-Monopoly Law regulating remedies for deceptive practices.

Law stated - 11 November 2025

Technological protection measures and digital rights management

- 8 | With respect to copyright protection, is WIPO protection of technological protection measures (TPMs) and digital rights management (DRM) enforced in your jurisdiction? Do statutes, regulation or case law limit the ability of manufacturers to incorporate TPM or DRM protection limiting the platforms on which content can be played? Has TPM or DRM protection been challenged under the competition laws?

Article 6 of the Copyright Law contains a provision on copyright management information (CMI), which states that authors may use CMI and copyright electronic information to protect their moral rights. CMI includes information on methods or systems that can identify the originality of the author's works and the information code and access code. Article 7(3) of the Copyright Law stipulates that CMI and copyright electronic information owned by the authors are prohibited from being removed, changed or damaged.

Article 52 of the Copyright Law prohibits anyone from damaging, destroying, eliminating or disabling the function of TPMs used as safeguards for copyrighted works or related rights products, except for state defence and security purposes and other grounds according to the provisions of laws and regulations, or as otherwise agreed.

There is no provision restricting the ability of manufacturers to incorporate TPM or DRM protections to limit the platforms on which content can be played.

We are unaware of any challenge under competition laws against TPM or DRM protection.

Law stated - 11 November 2025

Industry standards

- 9 | What consideration has been given in statutes, regulation or case law to the impact of the adoption of proprietary technologies in industry standards?

Article 82 of the Patent Law allows for an interested party to file an application to the MOL to obtain a compulsory licence. The MOL may issue a decree approving the issuance of a compulsory licence on the following grounds:

- the patent holder has not carried out its obligation to make products or use processes in Indonesia within 36 months of when the patent was granted, as obliged by article 20 of the Patent Law;
- the patent has been used by the patent holder or licensee in a manner that is detrimental to the public interest; or
- the patent resulted from the development of a previously granted patent and cannot be implemented without using another party's patent that is still protected.

The Third Amendment of the Patent Law introduces new and enhanced provisions with respect to the compulsory licence, including the following:

- Compulsory licences are granted based on the principle of utility and are non-exclusive.
- The granting of compulsory licences is subject to the following provisions:
 - the scope of the compulsory licence is limited according to the purpose of granting the compulsory licence; and
 - the duration of the compulsory licence is limited according to the purpose of granting the compulsory licence.
- The granting of compulsory licences is prioritised to meet domestic market needs.
- The compulsory licence cannot be assigned except in relation to a part or asset of the company holding the compulsory licence.
- If the compulsory licence is granted for a patent resulting from the development of a previously granted patent that cannot be implemented without using another party's patent that is still under protection, the following rules apply:
 - the invention claimed in the second patent must involve a significant technical improvement with meaningful economic significance, in relation to the invention claimed in the first patent;
 - the patent holders have the right to grant each other licences to use each other's patents under reasonable terms; and
 - the compulsory licence for the first patent cannot be assigned except together with the second patent.

- The provisions on prioritising compulsory licences to meet domestic market needs and limiting the duration of compulsory licences according to the purpose for which they were granted do not apply where there is a final and binding decision from the Indonesian Competition Supervisory Commission indicating that the implementation of the patent has proven to result in or cause monopolistic practices and unfair competition.
- In addition to the existing grounds under the Patent Law for ceasing a compulsory licence, the Third Amendment of the Patent Law provides an additional ground – namely, if the grant of a compulsory licence proves unable to prevent the implementation of the patent in a manner or form that harms public interests within two years of the date of the grant of the compulsory licence in question, or of the date of the first grant of the compulsory licence if multiple compulsory licences are granted.

Law stated - 11 November 2025

COMPETITION

Competition legislation

10 | What statutes set out competition law?

Competition law in Indonesia is governed by the Anti-Monopoly Law and its implementing regulation, Government Regulation No. 57 of 2010 regarding the Mergers or Consolidation of Business Entities and the Acquisition of Company Shares that Results in Monopolistic Practices and Unfair Business Competition (GR 57/2010).

Indonesia's Business Competition Supervisory Commission (KPPU) has also issued several implementing regulations providing guidance on several provisions of the Anti-Monopoly Law.

Law stated - 11 November 2025

IP rights in competition legislation

11 | Do the competition laws make specific mention of any IP rights?

Article 50(b) of the Anti-Monopoly Law specifically mentions IP rights, expressly exempting agreements related to IP, such as licences, patents, trademarks, copyrights, industrial designs, integrated electronic circuits, trade secrets and franchises, from its scope.

However, the Draft Anti-Monopoly Law in its current form does not contain such an exemption for IP rights and franchises. The removal of the exemption for any agreements related to IP rights and franchises from the Draft Anti-Monopoly Law is stipulated in the general preamble of the elucidation of the Draft Anti-Monopoly Law. Aside from this reference, we have not sighted any other mention of IP rights and franchise in the Draft Anti-Monopoly Law.

Law stated - 11 November 2025

Review and investigation of competitive effects from exercise of IP rights

12 | Which authorities may review or investigate the competitive effect of conduct related to exercise of IP rights?

First, we note that article 6(c) of GR 36/2018 prohibits IP licence agreements from containing any provision that could cause unfair business competition. Article 11(2) of GR 36/2018 stipulates that the examination of an application for the recordation of an IP licence is only conducted to check the completeness and conformity of the required documents as specified in article 10(4) of GR 36/2018 – namely:

- a copy of the licence agreement;
- a copy of the official citation of the certificate of registration for the patent, trademark, industrial design or layout design of the integrated circuit, or evidence of ownership of copyright and related rights, or evidence of the trade secret that is licensed and its validity;
- power of attorney if the application is filed through an IP consultant (a prerequisite for foreign parties); and
- evidence of payment.

In theory, as part of the examination process for recording the licence agreement at the Directorate General for Intellectual Property (DGIP), the licence agreement should be examined to determine that it does not contain any provision that may cause unfair business competition. However, we are unaware whether the DGIP conducts any such examination in practice.

If a licence agreement is deemed to contain provisions that may cause unfair business competition or contravene the principles and purposes set out in articles 2 and 3 of the Anti-Monopoly Law, the KPPU has the authority to investigate the competitive effects of the conduct related to the licence agreement. Such an investigation may be initiated by the KPPU on its own initiative, or based on reports from the public or official letters from government institutions regarding alleged violation of the Anti-Monopoly Law.

Moreover, the Third Amendment of the Patent Law stipulates that the KPPU may revoke granted compulsory licences if it determines that the implementation of the patent under the compulsory licence has resulted in monopolistic practices and unfair business competition.

Law stated - 11 November 2025

Competition-related remedies for private parties

13 | Can a private party recover for competition-related damages caused by the exercise, licensing or transfer of IP rights?

As a rule of thumb, since agreements related to IP rights, including IP licence agreements and franchise agreements, are exempt from the Anti-Monopoly Law, a private party cannot recover competition-related damages resulting from the exercise, licensing or transfer of IP rights. However, if such licence or assignment agreements contain provisions that may lead to unfair business competition, they would, in theory, not be exempt from the Anti-Monopoly Law. In such cases, a private party may seek to recover competition-related damages resulting from the exercise, licensing or transfer of IP rights.

Law stated - 11 November 2025

Competition guidelines

- 14** | Have the competition authorities, or any other authority, issued guidelines or other statements regarding the overlap of competition law and IP?

KPPU Reg 2/2009 sets out guidelines for implementing the exceptions of the Anti-Monopoly Law on IP-related agreements. The guidelines stipulate that IP-related licence agreements can be exempted from the Anti-Monopoly Law if such agreements do not contravene the principles and purposes set out in articles 2 and 3 of the Anti-Monopoly Law, as follows:

- the activities of business actors in Indonesia must be based on economic democracy, with due observance of the equilibrium between the interests of business actors and the interests of the public; and
- the purposes of the Anti-Monopoly Law are to:
 - safeguard the interests of the public and improve national economic efficiency for the sake of people's welfare;
 - create a conducive business climate through the regulation of fair business competition to ensure the certainty of equal business opportunities for large, medium-sized and small business actors in Indonesia;
 - prevent monopolistic practices and unfair business competition that business actors may commit; and
 - create effectiveness and efficiency in business activities.

KPPU Reg 2/2009 further stipulates that, to be exempt from the scope of the Anti-Monopoly Law, IP-related licences must comply with the requirements set out in the IP Laws and be recorded with the DGIP.

GR 36/2018 sets out the minimum information required for IP licences – namely:

- date, month, year and place where the licence agreement was signed;
- name and address of the licensor and the licensee;
- object of the licence agreement;
- provisions on the exclusivity or non-exclusivity of the licence, including sublicensing;
- term (duration) of the licence agreement;

- territorial scope of the licence agreement; and
- party that will attend to the patent annuity fees (for patent licence).

Licence agreements executed in other languages must be translated into the Indonesian language.

Law stated - 11 November 2025

Exemptions from competition law

- 15** | Are there aspects or uses of IP rights that are specifically exempt from the application of competition law?

Article 50(b) of the prevailing Anti-Monopoly Law explicitly exempts from its scope any agreements related to IP rights, including licences, patents, trademarks, copyrights, industrial designs, layout designs of integrated circuits, trade secrets and agreements related to franchises, provided that such agreements do not contravene the principles and purposes of the Anti-Monopoly Law, comply with the requirements set out in the IP Laws and are recorded with the DGIP. Additionally, KPPU Reg 2/2009 sets out guidelines on how IP licence agreements may qualify for exemption under the Anti-Monopoly Law.

Law stated - 11 November 2025

Copyright exhaustion

- 16** | Does your jurisdiction have a doctrine of, or akin to, 'copyright exhaustion' (EU) or 'first sale' (US)? If so, how does that doctrine interact with competition laws?

Article 11(1) of the Copyright Law stipulates that the economic right to distribute a work or its copies no longer applies once the work or its copies have been sold or assigned (transferred). However, the Copyright Law is silent on the issue of parallel importation of copyrighted works. In the absence of a specific provision on parallel imports, there is no clear mechanism to prevent grey market activities in the IP sphere.

Law stated - 11 November 2025

Import control

- 17** | To what extent can an IP rights holder prevent 'grey-market' or unauthorised importation or distribution of its products?

Due to the absence of a specific provision on parallel importing in IP Laws and regulations, there is no mechanism in place to prevent grey marketing in the IP sphere.

Further, the Patent Law exempts the parallel importing of pharmaceutical products from its criminal provisions and civil claims.

Law stated - 11 November 2025

Jurisdictional interaction between competition laws and IP rights

- 18** | Are there authorities with exclusive jurisdiction over IP-related or competition-related matters? For example, are there circumstances in which a competition claim might be transferred to an IP court to satisfy subject matter jurisdiction? Are there circumstances where the resolution of an IP dispute will be handled by a court of general jurisdiction?

The commercial courts have exclusive jurisdiction over civil proceedings related to IP (except for trade secrets and plant variety protection). Meanwhile, competition matters fall under the authority of the KPPU.

Following the amendment of the Anti-Monopoly Law by the Job Creation Law, appeals of KPPU decisions are now filed with and heard by the commercial courts. Previously, such appeals were filed and heard by the district courts.

Law stated - 11 November 2025

MERGER REVIEW

Powers of competition authority

- 19** | Does the competition authority have the same authority with respect to reviewing mergers involving IP rights as it does with respect to any other merger?

The Anti-Monopoly Law does not specifically distinguish mergers involving IP rights from other types of mergers. Therefore, the general rules on mergers apply. The Business Competition Supervisory Commission (KPPU) is the authority responsible for reviewing mergers.

Law stated - 11 November 2025

Analysis of the competitive impact of a merger involving IP rights

- 20** | Does the competition authority's analysis of the competitive impact of a merger involving IP rights differ from a traditional analysis in which IP rights are not involved? If so, how?

According to article 1(17) of KPPU Regulation No. 3 of 2023 regarding the Assessment of Mergers, Consolidations, or Acquisitions of Shares and/or Assets Which May Result in Monopolistic Practices and/or Unfair Business Competition (KPPU Reg 3/2023), 'assets' means all movable or immovable objects, both tangible and intangible, that have economic value. In that case, IP rights owned by a business actor should also be deemed as assets.

To the best of our knowledge, the KPPU does not assess the competitive impact of a merger involving IP rights any differently from any other merger.

Law stated - 11 November 2025

Challenge of a merger

- 21** | In what circumstances might the competition authority challenge a merger involving the transfer or concentration of IP rights? Does this differ from the circumstances in which the competition authority might challenge a merger in which IP rights were not a focus?

There is no explicit stipulation in the Anti-Monopoly Law on the challenge of a merger involving the transfer or concentration of IP rights. However, the Anti-Monopoly Law requires the KPPU to be notified of any merger, consolidation or acquisition involving an asset value or sales value, or both, exceeding a certain threshold no later than 30 days from the date of such merger, consolidation or acquisition.

The above thresholds are stipulated in article 5(2) of GR 57/2010, as follows:

- asset value of 2.5 trillion rupiahs; and
- turnover of 5 trillion rupiahs.

In addition to meeting the above threshold, notification to the KPPU is required if the following criteria are met:

- the transaction results in a change of control;
- it is not a transaction conducted between affiliated business actors; and
- the transaction involves business actors with assets and/or turnover in Indonesia.

Furthermore, in the case of an asset acquisition, an additional test applies – namely, whether the acquisition of the targeted assets increases the acquiring party's control of market share in the relevant market.

Although the Anti-Monopoly Law and GR 57/2010 only use the term 'shares' in relation to acquisitions, in its Guidance on the Evaluation of Mergers, Consolidations, and Acquisitions, the KPPU says that acquisitions also include, among others, asset transfers and acquisitions of participating interest.

Moreover, KPPU Reg 3/2023 clearly mentions assets as the object of a merger, consolidation or acquisition. Under KPPU Reg 3/2023, 'assets' are defined as movable and immovable objects, both tangible and intangible, that have economic value. In such case, IP rights owned by a business actor are also deemed as assets.

If an asset transfer meets the above criteria, such transfer falls within the scope of KPPU supervision and must be notified to the KPPU.

Aside from the above inclusion of IP as an asset, there is no specific provision to challenge a merger involving the transfer or concentration of IP rights. Therefore, the general rules for challenging a merger apply.

The KPPU evaluation of a merger, consolidation or acquisition that meets the above-mentioned thresholds is a two-step process, those being a preliminary and/or thorough evaluation.

The preliminary evaluation is conducted using market concentration analysis. Market concentration is a preliminary indicator to evaluate whether a merger, consolidation or acquisition results in a monopoly and/or unfair business competition. Analysis of changes in market concentration before and after a merger, consolidation or acquisition that is horizontal in nature may be conducted using the Herfindahl-Hirschman Index or concentration ratio, or both. In comparison, analysis of a vertical merger, consolidation or acquisition takes into account whether there is any market power or dominance in the upstream or downstream market.

A thorough evaluation will be conducted using the following analysis.

Entry barriers

Barriers to market entry are costs that are higher than reasonable or other barriers that prevent new business actors from entering the relevant market. This entry barrier provides benefits to existing business actors because it protects the income and profits of these business actors.

The evaluation of whether there are entry barriers is based on:

- the historical data of the number of business actors in the relevant market from time to time;
- the number of business actors that may potentially enter the relevant market; and
- the ratio between the costs incurred to enter the relevant market and the estimated revenue and the estimated time to gain such revenue.

The analysis will consider:

- the ease of entry by new business actors into the relevant market;
- whether new business actors are able to put competitive pressure on existing business actors; and
- the time needed to enter the relevant market.

If these factors seem satisfactory, competition in the relevant market is likely to be maintained, and the KPPU will not object to the transaction.

Potential anti-competitive behaviour

The KPPU will analyse the potential anti-competitive behaviour that would result from the merger based on the following factors:

- Unilateral effect: the KPPU will identify whether there will be a dominant business entity resulting from the merger that would have the ability to abuse its dominant power. One of the elements the KPPU analyses is buyers' bargaining power in the relevant market and whether this would be impacted by the potential existence of such dominant power.

- Coordinated effect: the KPPU will identify whether there will be coordination between the surviving entity and its main competitors. In other words, even if no dominant business entity results from the merger, the KPPU will still try to anticipate whether the merger would create potential coordination between the resulting entity and its main competitors.
- Market foreclosure: the KPPU will analyse any vertical mergers that would increase a rival's costs to enter the same market. As vertical mergers may give rise to the closure of access by new competitors, the KPPU will also try to identify whether the merger would create a possible cost-raising strategy, which would be borne by new competitors entering the same market.

Efficiency

If the business actor justifies the acquisition on the grounds of efficiency, the KPPU will examine such claim and the effect on competition.

The business actor may be called upon to support its argument with calculations of efficiency and the advantages enjoyed by customers after the transaction. The efficiency argument may include cost savings, increases in capacity and increases in marketing or quality of the product post-transaction. The KPPU will evaluate this argument in detail. The most important factor in the KPPU's evaluation is whether customers will enjoy lower prices.

Bankruptcy

If the merger is conducted to avoid bankruptcy, the KPPU will determine whether consumers would suffer if the business entity went bankrupt. If consumers are likely to suffer a greater loss if the business entity goes bankrupt than the loss caused by the merger, the transaction will likely be found not to have an anti-competitive effect on the relevant market. The KPPU will evaluate whether:

- the company's financial problems are such that without the acquisition, the company would likely go bankrupt;
- it is possible to conduct a reorganisation to save the company; or
- there is no other alternative that could save the company that would not have an anti-competitive effect.

Aside from the above analysis, the KPPU may also conduct the evaluation using the following analysis:

- policies to increase competitiveness and strengthen national industries: the merger, consolidation or acquisition is conducted in relation to government policy to increase competitiveness, strengthen national industries, or both;
- technology and innovation development: the merger, consolidation or acquisition is conducted to develop technology or to innovate the parties' product;
-

protection of micro, small and medium enterprises: the evaluation will consider whether the merger, consolidation or acquisition will have a positive impact on micro, small and medium enterprises;

- impact on workforce: the evaluation will consider whether the merger, consolidation or acquisition will have a positive impact on the workforce or employment, or both, in Indonesia; and
- implementation of laws and regulations: the KPPU will consider whether the merger, consolidation or acquisition is conducted pursuant to laws and regulations.

Law stated - 11 November 2025

Remedies to address the competitive effects of mergers involving IP

22 | What remedies are available to address competitive effects generated by a merger when those effects revolve around the transfer of IP rights?

If the KPPU assessment indicates that an acquisition will substantially decrease competition in the relevant market, the parties may be asked to propose remedies.

The types of remedies that can be proposed are as follows:

- structural remedies:
 - divestment of assets;
 - shares; or
 - other actions that can create business competition; and
- behavioural remedies:
 - the acquiring business actor may provide its IP licences;
 - competition can be promoted by eliminating such barriers as exclusive contracts, consumer switching costs, bundling or tie-in of certain products or other barriers to supply or purchase;
 - disclosure of the price and amount of production or output; or
 - other actions that support competition.

The KPPU will review the proposed remedies and assess whether they are effective. If the KPPU accepts the proposal, it will issue an opinion that there is no monopolistic practice or unfair business competition resulting from the acquisition, with notes to conduct certain actions that the business actor must fulfil. If the KPPU rejects the proposed remedies, it will issue an opinion that monopolistic practice or unfair business competition will result from the acquisition.

Law stated - 11 November 2025

SPECIFIC COMPETITION LAW VIOLATIONS

Conspiracy

- 23** | Can the exercise, licensing or transfer of IP rights create price-fixing or conspiracy liability?

The exercise, licensing and transfer of IP rights are not specifically regulated under the conspiracy provisions of articles 22 to 24 of the Anti-Monopoly Law. However, according to the IP Laws, Government Regulation No. 36 of 2018 and Business Competition Supervisory Commission (KPPU) Reg 2/2009, licence agreements should not contain provisions that may cause unfair business competition.

Law stated - 11 November 2025

Scrutiny of settlement agreements

- 24** | How would a settlement agreement terminating an IP infringement dispute be scrutinised from a competition perspective? What are the key factors informing such an analysis?

Enforcement measures taken to protect one's IP rights should not be regarded as a violation of the Anti-Monopoly Law. However, if a settlement agreement contains a provision that, for example, prevents a party from competing with a patented product, it may be considered a monopolistic practice and unfair business competition under article 17(2)(b) of the Anti-Monopoly Law. This article stipulates that business actors may be reasonably suspected or deemed to control the production and marketing of goods or services if they cause other business actors to be unable to enter the business competition for the same goods or services.

Law stated - 11 November 2025

Reverse payment patent settlements

- 25** | How have the competition laws been applied to reverse payment patent settlements in your jurisdiction?

We are not aware of any case where competition laws have been applied to reverse payment of a patent settlement in Indonesia.

Law stated - 11 November 2025

(Resale) price maintenance

- 26** | Can the exercise, licensing, or transfer of IP rights create liability under (resale) price maintenance statutes or case law?

Article 8 of the Anti-Monopoly Law prohibits business actors from entering into agreements with other business actors that require parties receiving goods or services not sell or resupply the goods or services received by them at a price lower than the agreed price, where such arrangements may lead to unfair business competition. In line with this, the KPPU has issued KPPU Regulation No. 8 of 2011 regarding Guidance on Article 8 of the Anti-Monopoly Law on Resale Price Arrangements.

For completeness, the Anti-Monopoly Law prohibits the following types of minimum resale price maintenance agreements:

- manufacturers or suppliers determine the minimum selling price for the resale of their products;
- manufacturers or suppliers require retailers not to sell their products for less than a determined minimum selling price;
- producers or suppliers enter into an agreement with distributors or retailers for the procurement of goods where there are requirements regarding a certain minimum selling price;
- manufacturers or suppliers will stop or withhold the supply of goods to distributors or retailers unless the distributors or retailers agree not to sell the goods for less than a specified minimum selling price; and
- manufacturers or suppliers withhold the supply of goods to distributors or retailers that have sold the product for less than a determined minimum selling price.

If an IP licence agreement contains clauses on minimum resale price, especially if such clauses are drafted in any of the above forms, the agreement can be viewed as anti-competitive, which falls under the scope of the Anti-Monopoly Law.

Law stated - 11 November 2025

Exclusive dealing, tying and leveraging

27 | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to exclusive dealing, tying and leveraging?

Although in general IP-related agreements are exempted from the scope of the Anti-Monopoly Law, if such agreements incorporate clauses that may be deemed anti-competitive, according to KPPU Regulation 2/2009, such agreements are not exempted from the Anti-Monopoly Law and, therefore, may create liability under the Anti-Monopoly Law.

KPPU Regulation 2/2009 shares some guidance in assessing whether an IP-related agreement contains exclusive dealings provisions, tying and leveraging that may create unfair business competition – namely, in relation to the provisions set out below.

Pooling licensing and cross-licensing

In principle, the licensor may use pool and cross-licences to streamline its business activities. However, if this results in the production or marketing of a product being dominated by a particular business actor, which subsequently hampers other business actors from competing effectively, the clause may be viewed as anti-competitive.

Tying arrangement

In principle, the licensor may combine two or more of its products that have been protected by IP rights to sell to consumers. However, consumers should be given the option to buy only one product. If there is an obligation for the licensee to sell the combined products to consumers as an integral product, such that consumers cannot buy one product only, the clause may be deemed anti-competitive.

Limitation on raw materials

If there is a clause in the licence agreement that obliges the licensee to use raw materials that are exclusively determined by the licensor, while similar raw materials are available domestically in an adequate amount, price and quality, the clause can be deemed anti-competitive.

Limitation on production and sale

In principle, the licensor can set limitations on the area or number of products produced using the licensee's technology that may be marketed. However, if the limitations prevent the licensee from innovating technology, this can make product development inefficient. Therefore, a clause in the licence agreement that contains limitations on the area and number of products that can be marketed, which is proven to hinder the licensee from making technological innovations, so that product development becomes inefficient, can be viewed as anti-competitive.

Limitation on selling price and reselling price

Clauses in the licence agreement that contain restrictions on selling prices and resale prices by setting a lower price can be viewed as anti-competitive.

Grant-back licensing

Grant-back provisions require the licensee always to disclose and transfer information regarding improvements made to the licensed product and know-how related to the development of the licensed technology or product to the licensor. If this impedes the licensee in advancing and controlling the technology by legitimising the licensor in owning IP rights that it does not create, the clause may be deemed anti-competitive.

Law stated - 11 November 2025

Abuse of dominance

I

28 | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to monopolisation or abuse of dominance?

Since agreements related to IP rights, including IP licence agreements and franchise agreements, are exempt from the Anti-Monopoly Law, the exercise, licensing or transfer of IP rights is not considered monopolisation or an abuse of dominance, provided that such licensing of IP does not contain provisions that may lead to unfair business competition, complies with the IP Laws and regulations, and is registered at the Directorate General of Intellectual Property.

Law stated - 11 November 2025

Refusal to deal and essential facilities

29 | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to refusal to deal and refusal to grant access to essential facilities?

According to KPPU Reg 2/2009, if particular IP rights are deemed essential facilities, a refusal to license such rights may be assessed on the potential for unfair business competition. However, if the IP rights are not considered essential facilities, the refusal to grant a licence is lawful.

Further, article 82 of the Patent Law allows an interested party to apply to the Ministry of Law (MOL) for a compulsory licence. The MOL may issue a decree approving the issuance of a compulsory licence on the following grounds:

- the patent holder has not carried out its obligation to make products or use processes in Indonesia within 36 months of the date the patent was granted, as obliged by article 20 of the Patent Law;
- the patent holder or licensee has used the patent in a form and manner that is detrimental to the public interest; or
- patents resulting from the development of previously granted patents cannot be implemented without using another party's patent that is still protected.

Law stated - 11 November 2025

REMEDIES

Remedies for violations of competition law involving IP

30 | What sanctions or remedies can the competition authorities or courts impose for violations of competition law involving IP?

One of the behavioural remedies that the Business Competition Supervisory Commission (KPPU) may impose on business actors is the requirement to grant access to IP rights related to essential facilities. In practice, this may be implemented through

compulsory licences, which may serve as one of the measures to remedy violations of the Anti-Monopoly Law.

Law stated - 11 November 2025

Competition law remedies specific to IP

31 | Do special remedies exist under your competition laws that are specific to IP matters?

Neither the Anti-Monopoly Law, GR 57/2010 nor KPPU Reg 3/2023 expressly stipulates remedies specific to IP. However, one form of remedy that may be imposed on business actors is a behavioural remedy. In its Guidelines on the Assessment of Mergers, Consolidations and Acquisitions issued 6 October 2020, the KPPU identifies behavioural remedies as including the granting of access to IP rights related to essential facilities. Accordingly, although not explicitly provided for under the law or its implementing regulations, the KPPU's guidance recognises that behavioural remedies may include granting access to IP rights associated with essential facilities.

Law stated - 11 November 2025

ECONOMICS AND APPLICATION OF COMPETITION LAW

Economics

32 | What role has competition economics played in the application of competition law in cases involving IP rights?

The Anti-Monopoly Law was drawn up based on the principles of the Indonesian state philosophy, Pancasila, the 1945 Constitution and economic democracy. It seeks to balance business interests and the interests of the public to:

- safeguard the public interest and protect consumers;
- develop a conducive business climate through the creation of fair business competition;
- ensure equal business opportunities for every person;
- prevent monopolistic practices and unfair business competition created by business actors; and
- ensure effective and efficient business activities to improve the national economy's efficiency and the people's welfare.

IP rights, in general, do not contradict the principles and purposes of the Anti-Monopoly Law. On the contrary, the robust protection of IP rights supports the purposes of the Anti-Monopoly Law to ensure effective and efficient business activities to improve the national economy's efficiency and the people's welfare.

Such argument is also supported by the fact that agreements related to IP rights, including licences, patents, trademarks, copyrights, industrial designs, integrated electronic circuits and trade secrets, as well as agreements related to franchises, are exempted from the scope of the prevailing Anti-Monopoly Law, as stipulated in article 50(b) of the Anti-Monopoly Law.

For IP protection and competition law, the IP Laws contain provisions requiring that IP licence agreements should not include any provision that could cause unfair business competition.

The Business Competition Supervisory Commission, in its Regulation No. 2 of 2009, also issued guidelines on IP licence agreements that cannot be exempted from the scope of competition laws due to their anti-competitive nature.

Law stated - 11 November 2025

RECENT CASES AND SANCTIONS

Recent cases

- 33** | Have there been any recent high-profile cases dealing with the intersection of competition law and IP rights?

In its 2025 decision in a high-profile case, the Business Competition Supervisory Commission (KPPU) did not expressly address IP issues. However, the intersection between competition law and IP rights can be observed in the integration of a major search engine's brand with its proprietary payment system bearing the same brand.

The KPPU's decision concerned the conduct of a major search engine company related to the mandatory implementation of its proprietary payment system in Indonesia. The case originated from a 2020 policy requiring app developers distributing digital goods or services through the company's app marketplace to use its branded payment system for in-app transactions, with service fees ranging from 15 per cent and 30 per cent. The KPPU found that the policy potentially restricted competition, as the company's app marketplace dominates the digital app distribution market in Indonesia and is deeply integrated with its mobile operating system, which itself holds a dominant market position.

The KPPU determined that the company controlled both its mobile ecosystem and app marketplace, limiting the ability of developers and consumers to choose alternative payment systems or app stores.

In its decision, the KPPU stated that the company was lawfully and convincingly proven to have exercised control resulting in other business actors being unable to enter into competition in the same goods and/or services market (violation of article 17 of the Anti-Monopoly Law) and used its dominant position to restrict the market and technological development (violating article 25(1)(b) of the Anti-Monopoly Law). Accordingly, the KPPU ordered the company to cease requiring users to use its branded payment system within its app marketplace and to pay a fine of 202.5 billion rupiah.

Law stated - 11 November 2025

Remedies and sanctions

34 | What competition remedies or sanctions have been imposed in the IP context?

The KPPU ordered the company to cease requiring users to use its branded payment system within its app marketplace and to pay a fine of 202.5 billion rupiah.

Law stated - 11 November 2025

UPDATE AND TRENDS

Key developments

35 | Are there any emerging trends or hot topics in the law of IP and antitrust policy? Have changes occurred recently or are changes expected in the near future that will have an impact on the application of competition law to IP rights?

The Indonesian House of Representatives is currently deliberating the Draft Anti-Monopoly Law, which would replace the current Anti-Monopoly Law. The Draft Anti-Monopoly Law currently in circulation no longer contains a provision exempting intellectual property agreements, including licences, patents, trademarks, copyrights, industrial designs, layout designs of integrated circuits and trade secrets. Thus, if the Draft Anti-Monopoly Law is passed in its current form, IP-related agreements will fall within the scope of the Anti-Monopoly Law.

The Draft Anti-Monopoly Law also contains new provisions on the following:

- the scope of business entity subject to the Draft Anti-Monopoly Law;
- reclassification of prohibited agreements and business activities;
- a leniency programme by which the Business Competition Supervisory Commission (KPPU) may grant amnesty or reduce any punishment, or both, for business entities that confess to or report any conduct that contravenes the relevant provisions on prohibited agreements, except in the case of any closed agreements;
- pre-notification, which would be a change from the current post-notification system. The House of Representatives is deliberating a pre-notification system that would require companies to seek official approval from the KPPU before conducting any merger, consolidation or acquisition of shares or assets, as well as establishing any joint venture company;
- abuse of dominant business and bargaining positions;
- the authority of the KPPU. The Draft Anti-Monopoly Law contemplates enhanced KPPU authority not only to investigate and adjudicate cases involving alleged monopolistic and unfair business practices, but also to conduct searches and/or seizures, assess mergers and/or the consolidation of companies, acquisitions of shares and assets, as well as the establishment of any joint venture, and to draft guidelines for the anti-trust law;
- procedural anti-trust law; and

- criminal sanctions.

In the IP realm, royalty collection has recently become one of most debated issues in Indonesia, particularly concerning the collection, pooling and distribution of royalties by the National Collective Management Organisation (*Lembaga Manajemen Kolektif Nasional* or LMKN). In principle, the LMKN's role is beneficial for authors, copyright holders and related rights owners, as it eliminates the need to negotiate individually with numerous users. However, concerns have arisen regarding the disproportionate distribution of royalties, allegedly due to inefficiencies in the flow from LMKN to collective management organisations (CMOs) and the 20 per cent operational fund, which has sparked public debate.

This discourse ultimately prompted the issuance of Minister of Law Regulation No. 27 of 2025 regarding the Implementation of Government Regulation No. 56 of 2021 regarding the Management of Royalties for Copyright in Songs and/or Music (MOL Reg 27/2005) as the new implementing regulation for GR 56/2021, replacing Minister of Law Regulation No. 9 of 2022 and Minister of Law Regulation No. 36 of 2018 regarding the Procedures for the Application and Issuance of Operational Licenses as well as the Evaluation of CMOs.

The House of Representatives is also scheduled to deliberate draft amendments to the Copyright Law in early November 2025, with the promulgation of an amended law expected by early 2026.

Concurrently, the Ministry of Communication and Digital Affairs (MOCDA) is preparing a Presidential Regulation on AI, while the Directorate General of Intellectual Property is working closely with the MOCDA to harmonise the AI-related provisions of the draft Copyright Law with those of the forthcoming Presidential Regulation on AI.

Law stated - 11 November 2025



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INTELLECTUAL PROPERTY

Intellectual property law

- 1 | Under what statutes, regulations or case law are intellectual property rights granted? Are there restrictions on how IP rights may be enforced, licensed or otherwise transferred? Do the rights exceed the minimum required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

IP rights are granted under the following statutes:

- the Patent Act (No. 121 of 1959);
- the Utility Model Act (No. 123 of 1959);
- the Design Act (No. 125 of 1959);
- the Trademark Act (No. 127 of 1959);
- the Plant Variety Protection and Seed Act (No. 83 of 1998);
- the Act on the Circuit Layout of Semiconductor Integrated Circuits (No. 43 of 1985);
- the Copyright Act (No. 48 of 1970); and
- the Unfair Competition Prevention Act (No. 47 of 1993).

For patent, utility model, design and trademark rights to be granted, registration at the Patent Office is required. For the registration of breeders' rights under the Plant Variety Protection and Seed Act, registration at the Ministry of Agriculture, Forestry and Fisheries (MAFF) is required; and for rights to the layout of semiconductor integrated circuits, registration is required at the Software Information Centre as designated by the Ministry of Economy, Trade and Industry (METI). As for copyrights and trade secrets, no registration is required.

Licensing of IP rights generally becomes effective upon agreement between a licensor and a licensee, without registration with governmental authorities. However, the relevant Acts state that an exclusive licence of the registrable rights described above shall not become effective without registration with the competent authorities. In reality, many licensees refrain from registering exclusive licences to save registration costs. An exclusive licensee with registration may statutorily claim the licence against third parties (eg, an infringer). If a third party infringes the relevant IP right, an exclusive licensee without registration may be entitled to damages, but such a licensee cannot seek injunctive relief against the infringer.

The transfer, waiver or restriction on the disposability of the registrable rights must be registered with the relevant authorities. The creation, transfer, change, extinction or restriction on the disposability of the registered exclusive rights must also be registered. Unless so registered, no such transfer will be effective against third parties.

If two or more people share the registrable rights described above, the transfer or licensing of such rights requires the consent of all holders.

The protection of IP rights in Japan exceeds the minimum requirements under the TRIPs Agreement.

Law stated - 22 October 2025

Responsible authorities

2 | Which authorities are responsible for granting, administering or enforcing IP rights?

The Patent Office, an extra-ministerial bureau of the METI, is the responsible authority for administering the Patent Act, the Utility Model Act, the Design Act and the Trademark Act, including granting the relevant registrable IP rights. The MAFF is responsible for administering the Plant Variety Protection and Seed Act, including granting the relevant registrable IP rights. The METI is responsible for administering the Act on the Circuit Layout of Semiconductor Integrated Circuits and the Unfair Competition Prevention Act, including granting the relevant registrable IP rights. The Agency for Cultural Affairs, an extra-ministerial bureau of the Ministry of Education, Culture, Sports, Science and Technology, is responsible for administering the Copyright Act. All these IP rights are ultimately enforced through judicial proceedings conducted by the courts.

Law stated - 22 October 2025

Proceedings to enforce IP rights

3 | What types of legal or administrative proceedings are available for enforcing IP rights? To the extent your jurisdiction has both legal and administrative enforcement options for IP rights, briefly describe their interrelationship, if any?

In legal proceedings, civil lawsuits are available. A civil action of first instance relating to a patent right, utility model right, right of layout designs of integrated circuits or an author's right over a computer program shall be subject exclusively to the jurisdiction of the Tokyo District Court or the Osaka District Court, depending on the location of the court in which the action could otherwise be filed (article 6, paragraph 1 of the Code of Civil Procedure), and any such action is assigned to one of the court divisions that exclusively handle IP-related cases. An appeal to the court of second instance against the final judgment of the court of first instance in such an action shall be subject to the exclusive jurisdiction of the Tokyo High Court (article 6, paragraph 3 of the Code of Civil Procedure) (specifically, the Intellectual Property High Court, a special branch of the Tokyo High Court, handles such cases).

In administrative proceedings, the holders of a patent, utility model, design, trademark, copyright, or neighbouring or breeders' rights may request the customs director to initiate proceedings to prohibit the importation of goods that they believe infringe their rights. If a person finds that a certain indication (eg, trade names, registered or unregistered trademarks or packaging) or shape of goods to be imported are identical or similar to his or her own, that person may also make the same request (article 69-13, paragraph 1 of the Customs Act). When such goods are being imported, the customs director may confiscate and discard them, or may order an importer to reload them (article 69-11, paragraph 2).

The holder of the relevant IP rights may choose which proceedings described above to initiate first and there is no procedural interrelationship between them.

Law stated - 22 October 2025

Remedies

- 4 | What remedies are available to a party whose IP rights have been infringed? Do these remedies vary depending on whether one utilises judicial or administrative review or enforcement?

Available civil remedies include compensation for damages, injunctions and preliminary injunctions. An injunction may include the destruction of the objects that have been created by the act of infringement, the removal of the machines and equipment used for the act of infringement, or other measures necessary to suspend and prevent the infringement.

In administrative proceedings at customs, the available remedies would be the confiscation and discard of the infringing goods by customs, or an order to an importer to reload them.

An infringer may be criminally punished, but in some cases only if the holder of relevant rights files a criminal complaint with the investigative authorities in a timely manner.

Law stated - 22 October 2025

Nexus between competition and IP rights

- 5 | Do any statutes, regulations or case law in your jurisdiction address the interplay between competition law and IP law?

The Intellectual Property Basic Act (No. 122 of 2002) (IPBA) refers to competition. Article 10 (consideration of promotion of competition) of the IPBA stipulates that in promoting measures regarding the protection and use of IP, ensuring fair use and the public interest shall be taken into consideration, as shall the promotion of fair and free competition. However, because this provision makes only a general statement about the relationship between IP rights and competition, it is unlikely to affect any specific interpretation of IP law or competition law.

Law stated - 22 October 2025

Patent cooperation treaties and other agreements

- 6 | Does your jurisdiction participate in any patent cooperation treaties or other similar agreements?

Japan is a party to, among others, the following patent cooperation treaties or other similar agreements:

- the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks;

- the Nice Agreement Concerning the International Classification of Goods and Services for Purposes of the Registration of Marks;
- the Trademark Law Treaty;
- the Singapore Treaty on the Law of Trademarks;
- the Paris Convention for the Protection of Industrial Property;
- the Convention Establishing the World Intellectual Property Organization;
- the Strasbourg Agreement Concerning the International Patent Classification;
- the Patent Cooperation Treaty;
- the Patent Law Treaty;
- the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
- the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- the Berne Convention for the Protection of Literary and Artistic Works;
- the Universal Copyright Convention;
- the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms;
- the World Intellectual Property Organization Copyright Treaty;
- the World Intellectual Property Organization Performances and Phonograms Treaty; and
- the TRIPs Agreement.

Law stated - 22 October 2025

Remedies for deceptive practices

- 7 | With respect to trademarks, do competition or consumer protection laws provide remedies for deceptive practices?

Remedies against certain deceptive practices are provided for in the Unfair Competition Prevention Act (UCPA) with respect to trademarks. Where the UCPA is applicable, the person whose business interest is damaged may invoke its provisions regarding injunction rights and compensation of damages. Certain acts of this type also give rise to criminal liability.

Law stated - 22 October 2025

Technological protection measures and digital rights management

- 8 | With respect to copyright protection, is WIPO protection of technological protection measures (TPMs) and digital rights management (DRM) enforced in your jurisdiction? Do statutes, regulation or case law limit the ability of manufacturers to

incorporate TPM or DRM protection limiting the platforms on which content can be played? Has TPM or DRM protection been challenged under the competition laws?

Both TPMs and DRM are enforced in Japan under the Copyright Act. The technological measures corresponding to TPMs and DRMs are defined as ‘technological protection measures’ and ‘technological exploitation restriction measures’ in terms of their general function and nature under the Copyright Act. A person who intends to privately copy those copyrighted works that are protected by TPMs must obtain the consent of a copyright holder, which is an exception to the general rule that private copying is permitted without the copyright holder’s consent (article 30, paragraph 1, item 2). A person who provides devices or programs that are designed to circumvent these measures to the general public or manufactures, imports or owns them for the purpose of provision to the general public, or who on a regular basis circumvents those measures upon the request of the general public, may be sentenced to a maximum of three years’ imprisonment or a fine of ¥3 million, or both (article 120-2, items 1 and 2 of the Copyright Act). In addition, the act of circumventing technological exploitation restriction measures (except where it does not unduly harm the interests of the rights holder), and the act of assigning codes to circumvent TPMs or technological exploitation restriction measures to the general public, or manufacturing such codes for the purpose of assignment to the general public, etc, constitute a deemed infringement of a copyright (article 113, paragraphs 6 and 7), and the latter is also subject to criminal punishment of a maximum of three years’ imprisonment or a fine of ¥3 million, or both (article 120-2, item 4).

No legislation or case law limits the ability of manufacturers to incorporate TPM or DRM protection, limiting the platforms on which the content can be played. TPM or DRM protection is not generally considered anticompetitive, and we understand that the mere use of TPM or DRM would not be challenged under competition laws. Further, we understand that TPM or DRM protection has not been challenged under the competition laws.

Law stated - 22 October 2025

Industry standards

9 | What consideration has been given in statutes, regulation or case law to the impact of the adoption of proprietary technologies in industry standards?

Neither statutes nor regulations have given special consideration to the impact of proprietary technologies in industry standards.

There is no compulsory licensing of technologies in industry standards; however, the Guidelines for the Use of Intellectual Property under the Anti-Monopoly Act (2007) (the IP Guidelines) published by the Japan Fair Trade Commission (JFTC) do provide such consideration, and stipulate that refusal of a licence can be deemed a violation of the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (No. 54 of 1947) (the Anti-Monopoly Act (AMA)) under certain circumstances. Further, the JFTC amended the IP Guidelines in January 2016 to address the situation where a refusal to grant a licence or claim for injunction to a party who is willing to take a licence, by a fair, reasonable and

non-discriminatory (FRAND)-encumbered standard essential patent (SEP) holder, can be deemed a violation of the AMA. In short, the amended Guidelines provide that the following may be considered private monopolisation or unfair trade practice:

- the refusal to grant a licence or claim for an injunction by a FRAND-encumbered SEP holder to a party who is willing to take a licence; or
- the refusal to grant a licence or claim for an injunction by a FRAND-encumbered SEP holder who has withdrawn its FRAND declaration for that SEP to a party who is willing to take a licence.

The amendment further states that the determination that a certain party is willing to take a licence on FRAND terms should be judged based on the situation of each case in light of the behaviour of both sides in licensing negotiations, etc – for example, (1) the presence or absence of the presentation of the infringement designating the patent and specifying the way in which it has been infringed; (2) the presence or absence of the offer for a licence on the conditions accompanied by a reasonable basis for such conditions; and (3) the correspondence attitude to the offers such as prompt and reasonable counter-offers and whether or not the parties undertake licensing negotiations in good faith in light of normal business practice. The amendment also notes that the mere fact that a potential licensee challenges the validity, essentiality or infringement of the SEP would not be considered grounds to deny that such party is a ‘willing licensee’ as long as the party undertakes licensing negotiations in good faith in light of normal business practice. The above would be applied regardless of whether the conduct is taken by the SEP holder, by a party that accepted the assignment of the SEP or by a party that was entrusted to manage the SEP.

While it is not necessarily clear, the language used in the amendment suggests that the JFTC had taken into account the Intellectual Property High Court decision (May 2014) concerning an injunction claim brought by Samsung against Apple, which ruled that a patent holder that had made FRAND declarations in relation to a SEP is not permitted to seek injunctive relief against a manufacturer that intends to obtain the relevant licence from the patent holder under FRAND terms and conditions. As this court decision was not based on competition law grounds, it is yet to be determined whether a competition law-based approach (as suggested by the amendment) would be accepted by the courts. On 23 June 2025, the Tokyo District Court rendered the first decision in Japan that grants an injunction based on a FRAND-encumbered SEP, finding that the defendant was an unwilling licensee (at the time of writing, the case was pending at the Intellectual Property High Court on appeal). The decision is characterised by its consideration of settlement discussions conducted under court supervision, but does not specifically refer to any competition law perspective.

Another example of a violation arising from the refusal of a licence is where many companies are jointly developing a standard for certain products, and one of the companies has its technology adopted as a part of the standard by inappropriate measures (eg, misrepresentation of possible terms and conditions of a licence of such technology to be applied after it is adopted as the standard); and, after successfully having the technology adopted, it then refuses to license the technology to other companies. Such refusal of a licence may constitute private monopolisation or unfair trade practice.

By contrast, it seems logical to interpret the IP Guidelines to mean that mere refusal to license technologies cannot be a violation of the AMA, even if such technologies have

been adopted in certain standards, unless the owner of such technologies has employed inappropriate measures in doing so.

Law stated - 22 October 2025

COMPETITION

Competition legislation

10 | What statutes set out competition law?

The Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (No. 54 of 1947) (the Anti-Monopoly Act (AMA)) sets out the basic rules of competition law. Broadly, the AMA prohibits three types of activity, as follows:

- private monopolisation (activities to exclude or control the business activities of other entrepreneurs);
- unreasonable restraint of trade (activities to restrict or conduct business activities mutually with other entrepreneurs in such a manner as to fix, maintain or increase prices, limit production or products, or other similar matters); and
- unfair trade practices (boycott, unjust price discrimination, predatory pricing, resale price maintenance, abuse of a superior bargaining position and other practices).

While private monopolisation and unreasonable restraint of trade require the level of restriction on competition to be substantial, a tendency to impede fair competition would be considered sufficient for the purpose of unfair trade practices. Private monopolisation corresponds largely to the abuse of a dominant position under EU competition law, and unreasonable restraint of trade includes almost all illegal cartels.

Other important acts with aspects of competition law include the Act against Unjustifiable Premiums and Misleading Representations (No. 134 of 1962), which prevents unjustifiable premiums and representations regarding the trade of goods and services, and the Unfair Competition Prevention Act, which provides for measures to prohibit unfair competition and special rules regarding compensation of damages.

Law stated - 22 October 2025

IP rights in competition legislation

11 | Do the competition laws make specific mention of any IP rights?

Article 21 of the AMA provides that the Act shall not apply to such acts recognisable as the exercise of rights under the Copyright Act, Patent Act, Utility Model Act, Design Act or Trademark Act. However, holders of IP rights should not rely on this provision without careful consideration of competition law, as this provision is quite general.

Law stated - 22 October 2025

Review and investigation of competitive effects from exercise of IP rights

- 12** | Which authorities may review or investigate the competitive effect of conduct related to exercise of IP rights?

The Japan Fair Trade Commission (JFTC), an independent administrative committee responsible for competition-related matters, has general jurisdiction to review and investigate the competitive effects of certain conduct, including those related to IP rights. For this administrative process, the Tokyo District Court is the court of first instance for reviewing the JFTC's orders upon an appeal filed by a recipient. The courts may also review the competitive effect of business practices if civil or criminal lawsuits filed with the court contain issues involving an effect on competition.

Law stated - 22 October 2025

Competition-related remedies for private parties

- 13** | Can a private party recover for competition-related damages caused by the exercise, licensing or transfer of IP rights?

Private parties can claim for competition-related damages caused by the exercise, licensing or transfer of IP rights under article 709 of the Civil Code, or article 25 of the AMA, whereby a defendant may not be discharged even if his or her act was not intentional or negligent, which is contrary to general rules under article 709 of the Civil Code. However, the claim under article 25 of the AMA is not always useful because it can be made only once the JFTC's formal order finding a violation of the addressee has become final and conclusive.

Law stated - 22 October 2025

Competition guidelines

- 14** | Have the competition authorities, or any other authority, issued guidelines or other statements regarding the overlap of competition law and IP?

Apart from comparative or industry-specific research, the JFTC has issued three guidelines and one report regarding the overlap of competition law and IP rights.

The Guidelines for the Use of Intellectual Property under the Anti-Monopoly Act (2007, last amended in 2016) discuss how to analyse legal issues arising from the interaction of competition law and IP rights.

The Guidelines concerning Joint Research and Development under the Anti-Monopoly Act (1993, last amended in 2017) provide that joint research activity itself is normally lawful if the total market share of participants is not more than 20 per cent, but further provide that whether covenants ancillary to joint research activities are lawful or not shall be determined by taking various relevant factors into consideration, and not limiting it to the total market

share alone. The Guidelines on Standardisation and Patent Pool Arrangements (2005, last amended in 2007) specify the circumstances where the formation of patent pools or licensing for standardisation through patent pools may give rise to antitrust concerns.

'Views on Software Licensing Agreements, etc, under the Anti-Monopoly Act (2002)' – an interim report rather than guidelines – cover various issues arising from software licensing agreements, including abusive conduct by developers of operating systems software and restrictive covenants in software licensing agreements.

Other than the JFTC, no authority had issued such guidelines until June 2018, when the Japan Patent Office released the Guide to Licensing Negotiations involving Standard Essential Patents regarding FRAND-encumbered standard-essential patents (last amended in June 2022). This Guide, however, is not binding in law and is only intended to summarise the issues concerning licensing negotiations as objectively as possible based on items such as the current state of court rulings from various jurisdictions, the judgment of competition authorities and licensing practices. That said, the Guide covers items such as offering an explanation of what actions companies can take to make it more likely for them to be recognised as negotiating in good faith, which may help implementers to avoid an injunction and rights holders to secure appropriate compensation. It is possible that future licensing negotiations, relevant court disputes and competition law cases could evolve around this Guide. In 2022, the Ministry of Economy, Trade and Industry (METI) published the Good Faith Negotiation Guidelines for Standard Essential Patent Licenses, which set out more subjective guidelines from a Japanese industrial policy perspective. The METI Guidelines do not have any binding effect either, so we have yet to see how the practice will evolve around these Guidelines from an IP and competition perspective.

Further, the JFTC and the METI jointly issued the Guidelines on Business Partnership Contracts with Startups in 2021, and updated them, as well as renamed them the 'Guidelines on Business Partnership Contracts with Startups and Investments into Startups'. The Guidelines identify potential issues that may arise in agreements concluded between start-ups and partner businesses and aim to present best practices, in particular covering non-disclosure agreements, proof of concept agreements, joint research and development agreements, and licensing agreements. In December 2022, the JFTC published a report named 'Results of the Investigation on Transactions Involving Startups', which explains, among other things, what kinds of problematic trade practices by partners working with start-ups were observed. These include (1) requiring a start-up company to disclose its trade secrets without entering into an NDA, (2) requiring that the rights to the results of a joint research with a start-up company belong exclusively to the partner, and (3) delay in payment of joint research fees. In the report, the JFTC explains that it sent warning letters to certain companies engaged in these trade practices.

Law stated - 22 October 2025

Exemptions from competition law

- 15** | Are there aspects or uses of IP rights that are specifically exempt from the application of competition law?

Generally not, except that resale price maintenance of copyrighted works between entrepreneurs is exempt from the AMA (article 23, paragraph 4). The JFTC's interpretation is that 'copyrighted works' for the purpose of this provision include only the following six items: books, magazines, newspapers, music records, music tapes and music CDs. DVDs, for example, are not exempt.

Law stated - 22 October 2025

Copyright exhaustion

16 | Does your jurisdiction have a doctrine of, or akin to, 'copyright exhaustion' (EU) or 'first sale' (US)? If so, how does that doctrine interact with competition laws?

The Copyright Act explicitly lays down a doctrine of exhaustion (article 26-2, paragraph 2) with respect to copyrighted works other than cinematographic works, and the same doctrine is recognised by a Supreme Court decision with respect to cinematographic works. The Act on the Circuit Layout of Semiconductor Integrated Circuits (article 12, paragraph 3) and the Plant Variety Protection and Seed Act (article 21, paragraph 2) have similar provisions. Notably, the Copyright Act specifically refers to 'international exhaustion', but the act of importing records lawfully sold outside of Japan for the purpose of resale in Japan is deemed to be copyright infringement under certain circumstances (article 113, paragraph 10).

In practice, the doctrine of exhaustion has been disputed mainly with respect to patents and trademarks, particularly in the field of parallel import (or 'grey market'). Regardless of the lack of specific provisions on the exhaustion doctrine in the Patent Act and Trademark Act, domestic exhaustion has been taken for granted. As to international exhaustion, the courts have recognised the doctrine and rejected claims of injunction by patent holders or trademark holders (or their licensees) against parallel importers that import genuine products (regarding patents, *BBS Kraftfahrzeugtechnik v Racimex Japan* (Supreme Court, 1997); regarding trademarks, *NMC v Shriro Trading* (Osaka District Court, 1970) and *3M v Hit Union* (Supreme Court, 2003)).

Law stated - 22 October 2025

Import control

17 | To what extent can an IP rights holder prevent 'grey-market' or unauthorised importation or distribution of its products?

An IP rights holder cannot prevent grey-market activity by exercising his or her IP rights against parallel importers. Moreover, the Guidelines concerning Distribution Systems and Business Practices under the Anti-Monopoly Act (the Distribution Guidelines 1991, last amended in 2017) stipulate that it may be a violation of the AMA for an authorised general agent of imported products or a foreign manufacturer of the products (who may or may not be an IP rights holder) to do the following to maintain the price of the authorised products:

- prevent foreign distributors from selling products to the grey market;

- prevent domestic distributors from handling products imported through the grey market;
- prevent wholesalers from selling the products to retailers handling products imported through the grey market;
- defame by stating that products imported through the grey market are not genuine products;
- buy up the products imported through the grey market; and
- prevent newspapers or other media from carrying advertisements of parallel importers.

The Distribution Guidelines also stipulate that it would be a violation of the AMA for an authorised general agent to refuse, or have distributors refuse, for the purpose of maintaining the price of the authorised products, to repair products imported through the grey market or to supply repair parts for products imported through the grey market when it is extremely difficult for people or companies other than an authorised general agent or a retailer to repair the products or procure repair parts for the products.

Law stated - 22 October 2025

Jurisdictional interaction between competition laws and IP rights

- 18** | Are there authorities with exclusive jurisdiction over IP-related or competition-related matters? For example, are there circumstances in which a competition claim might be transferred to an IP court to satisfy subject matter jurisdiction? Are there circumstances where the resolution of an IP dispute will be handled by a court of general jurisdiction?

A civil action of first instance relating to a patent right, a utility model right, the right of layout designs of integrated circuits or an author's right over a computer program shall be subject exclusively to the jurisdiction of the Tokyo District Court or the Osaka District Court, depending on the location of the court in which the action could otherwise be filed. An appeal to the court of second instance against the judgment on such action shall be subject to the exclusive jurisdiction of the Tokyo High Court – more specifically the Intellectual Property High Court, a special branch of the Tokyo High Court. These rules on the exclusive jurisdiction equally apply regardless of whether the case involves a competition claim or not. Additionally, cases (regardless of whether the cases involve a competition claim or not) over which the Tokyo High Court has jurisdiction may be transferred to the Intellectual Property High Court if the cases require specialised knowledge of IP for examination of the major points at issue.

Law stated - 22 October 2025

MERGER REVIEW

Powers of competition authority

- 19** |

Does the competition authority have the same authority with respect to reviewing mergers involving IP rights as it does with respect to any other merger?

The Japan Fair Trade Commission (JFTC) has the same authority with respect to reviewing mergers involving IP rights as in any other merger.

Law stated - 22 October 2025

Analysis of the competitive impact of a merger involving IP rights

20 Does the competition authority's analysis of the competitive impact of a merger involving IP rights differ from a traditional analysis in which IP rights are not involved? If so, how?

The standard for review by the JFTC of the competitive impact of a merger is always the same (whether or not the merger 'may be substantially to restrain competition'), irrespective of whether the merger involves IP rights. We have observed in horizontal cases that the role of IP may be limited given that factors such as the result of the Herfindahl-Hirschman Index before and after the merger and whether the party after a merger can increase the price at its own will are likely to carry more practical importance for the review. IP rights could play a significant role in vertical and conglomerate cases. The JFTC explicitly confirmed this when it revised its Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (the Merger Guidelines) in 2019, in relation to mergers that involve a party that has certain important assets for competition, including IP.

Law stated - 22 October 2025

Challenge of a merger

21 In what circumstances might the competition authority challenge a merger involving the transfer or concentration of IP rights? Does this differ from the circumstances in which the competition authority might challenge a merger in which IP rights were not a focus?

We understand that the JFTC has never challenged a merger solely because the parties have IP rights resulting in a strong competitive edge.

Law stated - 22 October 2025

Remedies to address the competitive effects of mergers involving IP

22 What remedies are available to address competitive effects generated by a merger when those effects revolve around the transfer of IP rights?

The JFTC may order any measures necessary to eliminate acts in violation of the provisions regarding mergers (the Act on Prohibition of Private Monopolisation and

Maintenance of Fair Trade (No. 54 of 1947) (the Anti-Monopoly Act), article 17-2, paragraph 1). Therefore, theoretically, compulsory licences may be ordered as a remedy.

In the course of a merger review, antitrust concerns are sometimes dealt with by the parties that promise to take certain measures to alleviate such concerns. Some of these remedies are IP-specific. When the JFTC revised the Merger Guidelines in 2019 to address potential input foreclosure concerns in vertical and conglomerate mergers that may be caused by a merging party in the upstream market holding important data that would be used in the downstream market (or in one of the markets holding important data that would be used in the other market), it explicitly said that its approach to data that can be traded in the market would also be applicable to input goods such as IP rights that are important for competition purposes. While there has not yet been a case directly applicable to IP rights, in a recent vertical and conglomerate merger case involving the potential input foreclosure of data, the JFTC investigated a consummated merger (share acquisition) that was non-reportable and cleared the case, with conditions based on the remedies proposed by the parties, where they would continue provision of such data to competitors and refrain from discriminatory treatment of their competitors in terms of the prices and other trade terms concerning such data for an indefinite period of time (in *re Acquisition by M3, Inc of the Shares in Nihon Ultmarc Inc*, 24 October 2019). This case could be of reference for future mergers involving IP.

Law stated - 22 October 2025

SPECIFIC COMPETITION LAW VIOLATIONS

Conspiracy

23 | Can the exercise, licensing or transfer of IP rights create price-fixing or conspiracy liability?

Yes. The Guidelines for the Use of Intellectual Property under the Anti-Monopoly Act (2007, last amended in 2016) (the IP Guidelines) and the Guidelines concerning Joint Research and Development under the Anti-Monopoly Act (1993, last amended in 2017) (the Joint Research and Development Guidelines) introduce a number of useful examples. As to patent pools, because they have a pro-competitive effect, the 'rule of reason' test would be applied. Patent pools can constitute an unreasonable restraint of trade if members of the patent pools share the understanding that they have accepted common restrictions on trade conditions such as sales prices and sales areas, and such restrictions substantially restrict competition in a market, or if the members mutually restrict the area of research and development or prospective licensees of the IP rights and such restrictions substantially restrict competition in a market.

Patent pools may also be regarded as private monopolisation or unfair trade practices. For example, if members of patent pools refuse to grant a licence and effectively exclude competitors, such a refusal may constitute private monopolisation.

It will not be considered as cartel conduct for competitors to jointly license their IP rights to a certain licensee. However, if competitors jointly refuse to license their IP rights without reasonable grounds, it may be considered illegal cartel conduct.

In this context, the exercise of IP rights is treated no differently from non-IP conduct.

Law stated - 22 October 2025

Scrutiny of settlement agreements

- 24** | How would a settlement agreement terminating an IP infringement dispute be scrutinised from a competition perspective? What are the key factors informing such an analysis?

We are not aware of any published case to date where the Japan Fair Trade Commission (JFTC) has applied competition laws to a settlement agreement terminating an IP infringement dispute. However, the JFTC is likely to rely on existing laws and guidelines to scrutinise such a situation, and thus the IP Guidelines and the Joint Research and Development Guidelines are likely to be of relevance. For example, the IP Guidelines provide guidance for situations where the licensor restricts the licensee from manufacturing or selling competing products or adopting competing technologies, suggesting the possibility of applying 'unfair trade practices (dealing on exclusive terms or dealing on restrictive terms)'. Therefore, in a situation where the parties to a patent infringement claim enter into a settlement agreement whereby one party agrees not to compete with respect to the patented product, if they also enter into a licensing agreement, the guidelines above may be referenced from a vertical restriction perspective. However, if there is no such licensing agreement, then the application of 'unreasonable restraint of trade' may be considered from a horizontal restriction perspective.

Law stated - 22 October 2025

Reverse payment patent settlements

- 25** | How have the competition laws been applied to reverse payment patent settlements in your jurisdiction?

We understand that the JFTC has never officially applied the competition laws to reverse payment patent settlements in Japan. Reverse payment patent settlements do not seem to be very common in Japan. This is because there are no regulations in Japan similar to the US Hatch-Waxman Act, whereby a patent holder is practically forced to bring an infringement lawsuit upon notice from a generic manufacturer. It is difficult to predict the result of the application of the competition laws to reverse payment patent settlements in Japan, because it may be difficult to define the relevant market and determine whether any restraint on competition is substantial. Having said that, the JFTC may be interested in applying 'unfair trade practices (dealing on restrictive terms)', which only require a tendency to impede fair competition and do not necessarily require a substantial restraint of competition. It is advisable to carefully consider the pro-competitive and anticompetitive effects arising from the contemplated arrangements.

The JFTC and the Competition Policy Research Center published a joint research report titled 'Competition and R&D Incentives in the Pharmaceutical Product Market - Based on

the analysis of the effect on the market by the entry of generic pharmaceutical products' in 2015. The report concludes that while a reverse payment situation that has raised significant competition law issues in the European Union and the United States is unlikely to arise in Japan under the current regulatory system and market structure for pharmaceutical products, the incentives to engage in a reverse payment scheme might increase in the event that the market share of generic pharmaceuticals further increases in the near future, and suggests that the JFTC should continue to monitor the situation and be prepared to proactively enforce the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (No. 54 of 1947) (the Anti-Monopoly Act (AMA)) as necessary.

Law stated - 22 October 2025

(Resale) price maintenance

26 | Can the exercise, licensing, or transfer of IP rights create liability under (resale) price maintenance statutes or case law?

Yes. If a licensor sets minimum resale prices for its licensees, the licensor's act is, in principle, considered to be an unfair trade practice (dealing on restrictive terms). It should be noted that such vertical restraint is not generally regulated as an unreasonable restraint of trade in Japan. In this context, the exercise of IP rights is treated no differently from non-IP conduct.

Law stated - 22 October 2025

Exclusive dealing, tying and leveraging

27 | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to exclusive dealing, tying and leveraging?

Yes. An IP rights holder that restricts a licensee from manufacturing or using competing products or adopting competing technologies may be considered to have committed unfair trade practices (dealing on exclusive terms or dealing on restrictive terms) if such a restriction tends to impede fair competition in a market. In particular, if such a restriction is imposed after the expiry of the licensing agreement, it is highly likely that such a restriction will constitute an unfair trade practice.

An IP rights holder that obliges a licensee to obtain a package licence for more than one IP right may be considered to have committed unfair trade practices (tie-in sales), if such an obligation may have an adverse effect on competition in a market. For instance, in 1998 the JFTC provided a recommendation decision to Microsoft Co Ltd, a Japanese subsidiary of Microsoft Corporation, that it should not tie its MS Word and Outlook software with its MS Excel software with regard to its licensing arrangements with PC manufacturers.

In this context, the exercise of IP rights is treated no differently from non-IP conduct.

Law stated - 22 October 2025

Abuse of dominance

28 | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to monopolisation or abuse of dominance?

Yes. Private monopolisation under the AMA is similar to the abuse of a dominant market position under EU competition law. If an entrepreneur or a combination of entrepreneurs in a dominant position excludes or controls the business activities of other entrepreneurs and thereby causes a substantial restraint to competition, such an abusive act will constitute a private monopolisation. In the *Paramount Bed* case (1998), a dominant manufacturer of beds for medical use approached an official of the Tokyo metropolitan government and made the local government adopt a specification for beds that contained its IP rights by misrepresenting that the specification somehow could also be reasonably satisfied by its competitors, effectively excluding the business activities of its competitors. The JFTC held that the activities of Paramount Bed Co., Ltd. constituted private monopolisation (exclusionary type).

In addition, it is becoming more likely than before that even where the level of restriction on competition is not substantial, exploitation-type conduct taking advantage of a predominant bargaining position will be considered 'abuse of superior bargaining position', which is one of the 'unfair trade practices'. Although there has been no precedent in which the JFTC has declared its policy to take such an approach with regard to IP rights, caution should be used in a potential patent hold-up case, for example, particularly given that a surcharge (a type of administrative fine) shall be imposed on an abuse of superior bargaining position if it occurs on a regular basis.

With respect to the abuse of superior bargaining position, it should also be noted that exploiting the counterparty that is the owner of know-how and IP may amount to a violation of the AMA. In 2019, the JFTC published the 'Report on Fact-Finding Survey on Abuse of Superior Bargaining Position Involving Know-How and Intellectual Property of Manufacturers', which includes a comprehensive list of cases gathered during the survey that may amount to an abuse of superior bargaining position by unjustly taking up know-how and IP developed by manufacturers.

In this context, the exercise of IP rights is treated no differently from non-IP conduct.

Law stated - 22 October 2025

Refusal to deal and essential facilities

29 | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to refusal to deal and refusal to grant access to essential facilities?

An entrepreneur's mere refusal to license IP rights is generally thought to be beyond the scope of the AMA, unless the entrepreneur has:

- purchased the IP rights knowing that they are used by other entrepreneurs;
- collected IP rights that may be used by its competitors but not for its own use; or

- employed inappropriate measures to have the IP rights incorporated into a standard.

No court judgment or JFTC decision has ever held a genuine unilateral refusal to license as being against the AMA. Moreover, no JFTC decision or court judgment has ever explicitly mentioned the essential facilities doctrine. Theoretically, however, if an IP rights holder singularly refuses to provide a licence to another entrepreneur and the entrepreneur faces difficulty in doing business because of the essential nature of the refused IP, the possibility that such a refusal to license could constitute private monopolisation or unfair trade practice (other refusal to deal) cannot be ruled out. In this context, the exercise of IP rights is treated no differently from non-IP conduct.

Law stated - 22 October 2025

REMEDIES

Remedies for violations of competition law involving IP

- 30** | What sanctions or remedies can the competition authorities or courts impose for violations of competition law involving IP?

In cases of violation of competition law involving IP, the Japan Fair Trade Commission (JFTC) may issue a cease-and-desist order to take any measures necessary to eliminate such violation. However, while the term 'necessary measures' suggests that such drastic measures as compulsory licensing or divestiture of IP rights are possible, whether or not the JFTC is of the view that such aggressive enforcement policy is needed is unclear; to date, the JFTC has not ordered compulsory licensing or divestiture of IP rights. If the violation is private monopolisation whereby a violator controls other enterprises' business activities, subject to some additional requirements, the JFTC should impose a surcharge (a type of administrative fine) on the violators. In addition, if the violation is private monopolisation whereby a violator excludes other enterprises' business activities or certain types of unfair trade practices, the JFTC will impose a surcharge on the violators. Private parties who have been harmed by such acts of violation may seek an injunction or compensation of damages in court or report the alleged violation to the JFTC, or any combination of the foregoing, subject to certain other requirements.

Law stated - 22 October 2025

Competition law remedies specific to IP

- 31** | Do special remedies exist under your competition laws that are specific to IP matters?

Article 100 of the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (No. 54 of 1947) lays down special sanctions that are specific to IP matters – that is, when the court pronounces a criminal sentence on people who have committed private monopolisation or unreasonable restraint of trade, it may order that the patents exercised

for the relevant offence be revoked. However, this sanction has never previously been declared.

Law stated - 22 October 2025

ECONOMICS AND APPLICATION OF COMPETITION LAW

Economics

- 32** | What role has competition economics played in the application of competition law in cases involving IP rights?

Economics has so far played a limited role in the application of competition law to specific cases by the Japan Fair Trade Commission. IP-related cases are no exception to this.

Law stated - 22 October 2025

RECENT CASES AND SANCTIONS

Recent cases

- 33** | Have there been any recent high-profile cases dealing with the intersection of competition law and IP rights?

On 16 September 2008, the Japan Fair Trade Commission (JFTC) held that Microsoft Corporation had engaged in unfair trade practices (dealing on restrictive terms) by entering into agreements with PC manufacturers to license Windows OS. Such agreements included a non-assertion of patents (NAP) clause, which prevented licensees from asserting patent infringement claims against Microsoft Corporation and other PC manufacturers. Microsoft did not challenge the decision and it became final and binding.

The May 2014 decision of the Intellectual Property High Court in the *Samsung v Apple Japan* litigation was one development that we believe led to the JFTC introducing amendments to its Guidelines for the Use of Intellectual Property under the Anti-Monopoly Act (2007, last amended in 2016), although the court rendered its decision on grounds other than competition law. On 23 June 2025, the Tokyo District Court rendered the first decision in Japan that grants an injunction based on a fair, reasonable and non-discriminatory-encumbered standard essential patent, finding that the defendant was an unwilling licensee because the defendant did not propose any royalty terms based on the formula laid down by the *Samsung v Apple Japan* case. This decision does not specifically refer to any competition law perspective, either (the case is pending at the Intellectual Property High Court on appeal).

The JFTC's investigation concerning patents that are essential for the use of the Blu-ray Disc standard, which closed on 18 November 2016, followed the framework set by the *Samsung v Apple Japan* decision. In this case, One-Blue, a patent pool that manages patents that are essential for the use of the Blu-ray Disc standard, sent a notice to some customers of a potential licensee informing them that One-Blue licensors had the right to seek an injunction for infringement of its patent rights to advance licence

negotiations. The JFTC found that such notice, which is incorrect, falls under unfair trade practices (interference with a competitor's transactions). The investigation was closed without any orders issued because the JFTC concluded that there was no need to issue a cease-and-desist order as the relevant violation had already ceased to exist and other circumstances did not otherwise warrant a cease-and-desist order.

Recycled ink toner cartridges is one of the topics highly litigated in Japan. In a case decided by the Tokyo District Court on 22 July 2020, the plaintiff laser printer manufacturer claimed infringement of its patents regarding an electronic component of an ink toner cartridge that disables the printer's function of displaying the remaining amount of ink once the cartridge is refilled by restricting the rewriting of memory. Recycled ink toner cartridge manufacturers sold refilled cartridges with a replaced electronic component (which allows for the rewriting of memory) allegedly implementing those patents to make sure that such function of the printer would work with their refilled cartridges. The Tokyo District Court dismissed the claim as an abuse of right, holding that the plaintiff's measures constituted unfair trade practices because recycled ink toner cartridge manufacturers were forced to sell refilled cartridges that could not utilise such function of the printer – which as a consequence made such cartridges substantially less attractive to consumers. However, the Intellectual Property High Court reversed this decision on 29 March 2022, holding that the printing function still worked with the refilled cartridges and the plaintiff's electric component and there were ways to replace the electronic component at issue without implementing the plaintiff's patents; thus, the exclusionary effect of the plaintiff's measures was minimal, and coupled with certain elements that could reasonably explain the plaintiff's motive not being solely exclusionary, there was no abuse of right.

In another case decided on 30 September 2021, which also concerns a dispute between a laser printer manufacturer and manufacturers of recycled ink toner cartridges, the Tokyo District Court held that the design change that the defendant laser printer manufacturer implemented to its printers to make the plaintiff's printer cartridges inoperable with the defendant's laser printer could not be justified as it lacked necessity and the changes were not reasonable. The Court concluded that the change constituted tie-in sales under the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (No. 54 of 1947), given that users that purchased the new printers would have no choice but to buy the defendant's cartridges, and ordered damages to be compensated under the general tort provisions of the Civil Code.

On 12 September 2024, regarding another dispute between a printer manufacturer and a recycled ink toner cartridge manufacturer, the Osaka High Court held that the act of introducing a measure to disable a reset of the remaining ink level count (thereby making their printers' functions of notifying lack of ink and automatically stopping new printing when the ink runs out unworkable with recycled ink toner cartridges) does not constitute unfair trade practice (tie-in sales) or unfair trade practice (interference with a competitor's transactions), because, although such notification function was of some importance in terms of usability of recycled ink toner cartridges, the recycled ink toner cartridge manufacturer could have chosen to manufacture recycled ink toner cartridges with such notification function as some other manufacturers were doing.

Law stated - 22 October 2025

Remedies and sanctions

34 | What competition remedies or sanctions have been imposed in the IP context?

On 16 September 2008, the JFTC held that Microsoft Corporation had engaged in unfair trade practices (dealing on restrictive terms) by entering into agreements with PC manufacturers to license Windows OS, where such agreements included a NAP clause. In this case, the JFTC ordered Microsoft not to use the NAP clause when dealing with PC manufacturers as a part of the cease-and-desist order.

Law stated - 22 October 2025

UPDATE AND TRENDS

Key developments

35 | Are there any emerging trends or hot topics in the law of IP and antitrust policy? Have changes occurred recently or are changes expected in the near future that will have an impact on the application of competition law to IP rights?

The Act on Promotion of Competition for Specified Smartphone Software (the Mobile Software Competition Act) will come into full effect in December 2025. This Act imposes certain obligations on software or service providers designated by the Japan Fair Trade Commission (JFTC) that provide basic operating systems, app stores, browsers or search engines. So far, Apple Inc, iTunes Kabushiki Kaisha and Google LLC are designated as those providers subject to the regulations. The Act stipulates prohibited acts of such designated providers, including, among others:

- using certain confidential or proprietary data of individual app providers or other website operators collected through the designated provider's operating system, app store or browser for the purpose of providing its own products or services competing with those of individual app providers;
- treating individual app providers unfairly in connection with their use of the designated provider's operating system or app store; and
- excluding from the designated provider's app store applications or payment methods provided by individual app providers.

The Act also provides for certain affirmative obligations of the designated providers relating to the disclosure of terms and conditions for the collection and use of data collected through their operating systems, app stores or browsers, transfer of such data, default settings and changes of such settings by users, and changes in the specifications or terms of use for their operating systems, app stores or browsers, as well as certain reporting obligations.

Pursuant to the Act, the JFTC has published its Mobile Software Competition Act Guidelines, which confirms that the approach to IP-related issues under the Anti-Monopoly Act will be applied to the Mobile Software Competition Act. We need to keep an eye on how the JFTC enforces this new Act.



Law stated - 22 October 2025



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INTELLECTUAL PROPERTY

Intellectual property law

- 1 | Under what statutes, regulations or case law are intellectual property rights granted? Are there restrictions on how IP rights may be enforced, licensed or otherwise transferred? Do the rights exceed the minimum required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

Under Portuguese law, IP rights are statutory rights that are granted under the following legislation:

- [the Industrial Property Code](#);
- [the Code of Copyright and Related Rights](#);
- [Decree Law No. 122/2000](#) (database rights); and
- [Decree Law No. 252/94](#) (computer programs).

The above-mentioned legislation covers patents, trademarks, designs, utility models, logotypes, topographies of semiconductor products, trade secrets, appellations of origin and geographical indications, awards, copyright and related rights, and database rights.

In general terms, and by way of example, industrial property rights confer on their holder the exclusive rights outlined below.

Patents

Patents afford their holders the right to exploit the invention throughout Portugal. A patent also grants its holder the right to prevent any third party, without the holder's consent, from:

- manufacturing, offering, stocking, placing on the market or using a product that is the subject matter of the patent, or importing or possessing it, for any of the purposes mentioned;
- using the process that is the subject matter of the patent or, if the third party knows or should have known that the use of the process is prohibited without the consent of the holder of the patent, offering to use it; or
- offering, stocking, placing on the market and using, importing or possessing for those purposes, products obtained directly by the process that is the subject matter of the patent.

Further, the patent also grants the right to prevent any third party, without the consent of the patent holder, from offering or making available to any person who does not have the right to exploit the patented invention, the means of performing it with respect to an essential element of it, if the third party knows or should have known that such means are suitable and intended for such performance.

Trademarks

Trademarks confer onto their holder the right to prevent third parties that do not have the holder's consent from using in the course of economic activities any identical or similar sign to the trademark used in relation to goods or services that are identical or similar to the goods or services for which the mark is registered, if there is a likelihood of confusion on the part of the public. Under the right mentioned above, the trademark holder may, among other things, prohibit third parties from:

- affixing the sign to the goods or to the packaging of those goods;
- offering the goods;
- putting the goods on the market;
- stocking the goods for the purposes under the sign;
- offering or supplying services thereunder; and
- importing or exporting the goods under the sign.

Designs or models

Designs and models grant their holders the right to use the design and to prevent any third party from using it without the holder's consent. The use covers, in particular, the manufacturing, offering, putting on the market, importing, exporting or use of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

Appellation of origin and geographical indications

Regarding the rules on appellations of origin and geographical indications, the registration confers the right to prevent:

- the use, by third parties, in the designation or appearance of a product, of any means that indicate that the product originated from a geographical location other than its real place of origin;
- use that constitutes an act of unlawful competition, within the meaning of article 10-bis of the Paris Convention for the Protection of Industrial Property, following the Stockholm Revision of 14 July 1967; and
- use by an unauthorised third party.

Copyrights

Copyright protection encompasses rights of a financial and personal nature (moral rights). In the case of the financial content of the rights, the holder is granted an exclusive right to the economic exploitation of the work. In other words, the author has the exclusive right to use and dispose of their work, or to authorise its use by a third party, in whole or in part. Moral rights are recognised in the author and amount to the right to claim the authorship over the work and to ensure its genuineness and integrity.

There are no IP rights that are granted under, or originate from, settled case law.

There are some restrictions on how the IP rights may be enforced, licensed or transferred, depending on the nature of the rights in question or the existence of consumer protection reasons.

In general terms, the rights exceed the minimum required under the TRIPs Agreement.

Law stated - 21 October 2025

Responsible authorities

2 | Which authorities are responsible for granting, administering or enforcing IP rights?

The authorities responsible for granting, administering or enforcing IP rights include:

- the National Industrial Property Office (INPI), which is an administrative authority responsible for the promotion and protection of industrial property rights in Portugal (among other things, the INPI is responsible for granting and, in some cases, declaring the nullity of industrial property rights);
- the Portuguese Inspectorate General of Cultural Activities, which supervises, inspects and monitors copyrights and related rights, and deals with the registration of works and cultural content;
- the Authority for Food and Economic Security, which is responsible for bringing administrative offence proceedings in relation to industrial property rights; and
- the Intellectual Property Court, which is a specialised court with exclusive jurisdiction to decide on cases in which the cause of action relates to:
 - copyright and related rights;
 - industrial property;
 - annulment and nullity actions set out in the Industrial Property Code;
 - appeals against decisions of the INPI that grant or refuse any industrial property rights or relate to their assignment;
 - licensing;
 - cancellation or any actions that otherwise modify or extinguish such rights; and
 - proceedings relating to acts of unlawful competition in industrial property matters.

Law stated - 21 October 2025

Proceedings to enforce IP rights

3 | What types of legal or administrative proceedings are available for enforcing IP rights? To the extent your jurisdiction has both legal and administrative enforcement options for IP rights, briefly describe their interrelationship, if any?

IP rights are principally enforced through legal proceedings, although administrative customs proceedings are also available in relation to IP rights.

Apart from the customary administrative proceedings available before the INPI to examine, grant, cancel and, in some cases, declare the nullity of industrial property rights, there are no administrative enforcement proceedings available before this institute.

Criminal proceedings may also be brought based on the infringement of IP rights, before criminal courts.

Civil enforcement of IP rights takes place before the Intellectual Property Court, which is a specialised court with its seat in Lisbon. There are two types of civil proceedings relating to IP rights that may be filed: preliminary injunctions and main actions. Although preliminary injunctions are functionally dependent on a main action, both types of proceedings can be brought in parallel over the same subject matter and may run separately from each other.

Special inhibitory actions relating to pharmaceutical patents and generic medicines are available under [Law No. 62/2011](#) of 19 December 2011. While this law had originally established a mandatory arbitration system for resolving these disputes, significant changes were introduced by [Decree Law No. 110/2018](#), which maintained the special enforcement system but abandoned the mandatory arbitration system. As such, these disputes are now resolved by the Intellectual Property Court or, upon agreement of the parties, by voluntary arbitration.

There are no specific enforcement options based on the amount at issue.

Administrative proceedings such as customs actions do not preclude the possibility of bringing civil or criminal proceedings.

Law stated - 21 October 2025

Remedies

- 4 | What remedies are available to a party whose IP rights have been infringed? Do these remedies vary depending on whether one utilises judicial or administrative review or enforcement?

Any party whose IP rights have been infringed has civil, criminal and administrative offence remedies available to enforce its rights, as these remedies vary depending on the nature of the proceedings in question.

Regarding civil remedies, these include preliminary and permanent injunctions. In cases of negligent or wilful infringement, damages claims for infringement are also allowed.

The infringement of IP rights may also be criminally punishable with a penalty of imprisonment or the payment of a fine. Criminal proceedings relating to industrial property rights usually depend on the filing of a complaint by the offended party, whereas copyright offences are considered public crimes and are not dependent on the filing of a criminal complaint (except in the case of exclusive infringement of moral rights).

The violation of IP rights may also be punished as an administrative offence.

The seizure or destruction of infringing goods is an available remedy.

Law stated - 21 October 2025

Nexus between competition and IP rights

- 5 | Do any statutes, regulations or case law in your jurisdiction address the interplay between competition law and IP law?

Portuguese law does not contain any specific provision that addresses the interplay between competition law and IP law. However, the Portuguese Competition Authority (PCA) fined the National Association of Pharmacies (ANF) for abusing its dominant position by way of a margin squeeze of a competitor (IMS Health). IMS Health alleged that the price it was being charged for data collected from pharmacies (data owned by ANF and protected by IP rights) was abusive when compared to the price ANF charged its own downstream market study provider.

Generally, in cases where IP rights are relevant to the competitive assessment of conduct or a merger, the PCA will undertake a detailed analysis of how the IP rights could be used by the post-merger entity to impact competition.

Law stated - 21 October 2025

Patent cooperation treaties and other agreements

- 6 | Does your jurisdiction participate in any patent cooperation treaties or other similar agreements?

Yes, Portugal does participate in several patent cooperation treaties and other similar agreements. Examples include:

- the TRIPs Agreement (ratified by Decree No. 82-B/94 of 27 December of the President of the Republic);
- the WIPO Patent Cooperation Treaty (approved, through accession, by Decree No. 29/92 of 25 June 1992);
- the Paris Convention for the Protection of Industrial Property (ratified by Decree No. 22/75 of 22 January 1975);
- the European Patent Convention (ratified by Decree No. 126-A/2007 of 12 December 2007 of the President of the Republic); and
- the Agreement on a Unified Patent Court (ratified by Decree No. 90/2015 of 6 August 2025 of the President of the Republic).

Law stated - 21 October 2025

Remedies for deceptive practices

7 | With respect to trademarks, do competition or consumer protection laws provide remedies for deceptive practices?

The Industrial Property Code defines unfair competition as any act of competition contrary to the rules and honest practices in any branch of economic activity. Such practices include acts that can create confusion with the products and services of the competitors. General civil remedies are available, as are specific IP remedies (such as the prohibition on registering trademarks if it is recognised that unfair competition may occur).

Under consumer protection laws, [Decree-Law No. 57/2008](#) of 26 March 2008 provides for civil liability if the consumer is harmed by a misleading commercial practice. It also provides for the right to seek an injunction for any person with a legitimate interest in opposing unfair commercial practices. These specific proceedings are provided for in [Law No. 24/96](#) of 31 July 1996.

The Advertising Code ([Decree Law No. 330/90](#) of 23 October 1990) also provides for precautionary measures regarding unlawful comparative advertising in relation to trademarks.

In theory, competition law could also provide remedies for deceptive practices in cases where they have a restrictive effect on competition. However, we are not aware of such a case being brought in Portugal under the competition laws.

Law stated - 21 October 2025

Technological protection measures and digital rights management

8 | With respect to copyright protection, is WIPO protection of technological protection measures (TPMs) and digital rights management (DRM) enforced in your jurisdiction? Do statutes, regulation or case law limit the ability of manufacturers to incorporate TPM or DRM protection limiting the platforms on which content can be played? Has TPM or DRM protection been challenged under the competition laws?

Yes, these measures are enforced in Portugal.

The Code of Copyright and Related Rights places limitations on the protection of technological measures. These include a prohibition on applying such measures to works in the public domain, new editions of them and works published by public entities or under public funding.

Further, the TPMs will not constitute an obstacle against the normal exercise of several free-use actions listed in the Code of Copyright and Related Rights.

TRM or DRM protection has not been challenged under the competition rules.

Law stated - 21 October 2025

Industry standards

9 |

What consideration has been given in statutes, regulation or case law to the impact of the adoption of proprietary technologies in industry standards?

No specific consideration has been given in national statutes, regulations or case law to the impact of the adoption of proprietary technologies in industry standards.

Law stated - 21 October 2025

COMPETITION

Competition legislation

10 | What statutes set out competition law?

[Law No. 19/2012](#) of 8 May 2012 (the Competition Act) is the main piece of competition legislation in Portugal. The Competition Act contains provisions that relate to both restrictive agreements (ie, cartels, vertical restraints and other types of agreements between competitors) and provisions regarding merger control (ie, merger control thresholds). The Competition Act also incorporates the cartel leniency regime (which was previously set out in separate legislation).

The Competition Act further sets out the general rules regarding the Portuguese Competition Authority's (PCA) investigatory powers and the procedural steps of an antitrust or merger control investigation.

Other domestic legislation is also applicable on a subsidiary basis. The [Administrative Procedural Code](#) applies in certain cases to the PCA's investigations and the Procedural Code for Administrative Courts applies to the judicial review of the PCA's decisions. The [Misdemeanours Act](#) is applicable in instances where the PCA adopts a fine and where there is a judicial review of such fines.

Other relevant guidance of note that may be relevant in the IP context include the [PCA's Guidelines](#) regarding the economic analysis undertaken for horizontal mergers and the [PCA's Guidelines on Mergers Remedies](#).

Law stated - 21 October 2025

IP rights in competition legislation

11 | Do the competition laws make specific mention of any IP rights?

No specific reference is made to IP rights in the Competition Act and the PCA has not adopted any specific guidelines or any other type of working document regarding the application of competition law to IP rights.

Law stated - 21 October 2025

Review and investigation of competitive effects from exercise of IP rights

- 12** | Which authorities may review or investigate the competitive effect of conduct related to exercise of IP rights?

The PCA is the principal authority that reviews the competitive effect of conduct related to the exercise of IP rights. If the PCA adopts a decision that relates to a market that is subject to sector-specific regulation (eg, telecoms or energy), it must seek a non-binding opinion from that regulator. To that extent, other economic regulators may, in theory, influence any PCA decision (be it in the context of antitrust proceedings, a market study or a merger) that refers to the competitive effects of conduct related to the IP rights.

Law stated - 21 October 2025

Competition-related remedies for private parties

- 13** | Can a private party recover for competition-related damages caused by the exercise, licensing or transfer of IP rights?

A private party can recover for competition-related damages caused by the exercise, licensing or transfer of IP rights, provided it demonstrates that it suffered harm as a result of the unlawful exercise of IP rights.

Law stated - 21 October 2025

Competition guidelines

- 14** | Have the competition authorities, or any other authority, issued guidelines or other statements regarding the overlap of competition law and IP?

No.

Law stated - 21 October 2025

Exemptions from competition law

- 15** | Are there aspects or uses of IP rights that are specifically exempt from the application of competition law?

No.

Law stated - 21 October 2025

Copyright exhaustion

- 16** | Does your jurisdiction have a doctrine of, or akin to, 'copyright exhaustion' (EU) or 'first sale' (US)? If so, how does that doctrine interact with competition laws?

Yes, Portuguese law provides for copyright exhaustion. From a competition law standpoint, the general rules that prohibit the extension of IP rights beyond their temporal scope would apply, as would rules that prohibit certain limitations on the resale of goods after an initial sale (eg, resale price maintenance or other unjustifiable restrictions on sales outside the scope of limited exemptions provided by law).

Law stated - 21 October 2025

Import control

- 17** | To what extent can an IP rights holder prevent 'grey-market' or unauthorised importation or distribution of its products?

Under Portuguese law, an IP rights holder may prevent any third parties from importing and distributing its products inside the European Economic Area without its consent.

Law stated - 21 October 2025

Jurisdictional interaction between competition laws and IP rights

- 18** | Are there authorities with exclusive jurisdiction over IP-related or competition-related matters? For example, are there circumstances in which a competition claim might be transferred to an IP court to satisfy subject matter jurisdiction? Are there circumstances where the resolution of an IP dispute will be handled by a court of general jurisdiction?

The Intellectual Property Court has jurisdiction over matters concerning, among other things, proceedings relating to industrial property rights, copyright and related rights, and to actions concerning unfair competition.

The Competition, Regulation and Supervision Court is responsible for matters relating to the appeal, review and enforcement of decisions of the PCA, and of administrative entities with regulatory and supervisory functions.

There are no circumstances where a competition claim can be transferred to an IP court.

Appeals against decisions of the Intellectual Property Court are handled by a court of general jurisdiction.

Law stated - 21 October 2025

MERGER REVIEW

Powers of competition authority

I

- 19** | Does the competition authority have the same authority with respect to reviewing mergers involving IP rights as it does with respect to any other merger?

The Portuguese Competition Authority (PCA) has the same authority with respect to reviewing mergers involving IP rights as it does in any other type of merger.

Law stated - 21 October 2025

Analysis of the competitive impact of a merger involving IP rights

- 20** | Does the competition authority's analysis of the competitive impact of a merger involving IP rights differ from a traditional analysis in which IP rights are not involved? If so, how?

The PCA will adapt its analysis of a merger to the markets in question and the competitive dynamics of those markets. Accordingly, in cases where IP rights are relevant to the competitive assessment of a merger, the PCA will undertake a detailed analysis of how the IP rights could be used by the post-merger entity to impact competition.

For example, in paragraph 2.6.24 of the PCA's Guidelines regarding the economic analysis undertaken for horizontal mergers, it is noted that:

IP rights and trade secrets can also give rise to barriers to entry or expansion if they allow an undertaking to protect its market power regarding a certain product or production process. An undertaking may, for example, develop a strategic deployment of its IP rights, preventing or hampering the supply of products by competitors.

Law stated - 21 October 2025

Challenge of a merger

- 21** | In what circumstances might the competition authority challenge a merger involving the transfer or concentration of IP rights? Does this differ from the circumstances in which the competition authority might challenge a merger in which IP rights were not a focus?

The PCA will challenge a merger that involves the transfer or concentration of IP rights as it would challenge any other merger that gives rise to a significant impediment of effective competition in all or part of the domestic market – namely, through the creation or reinforcement of a dominant position (article 41(5) of the Competition Act).

Law stated - 21 October 2025

Remedies to address the competitive effects of mergers involving IP

I

22 | What remedies are available to address competitive effects generated by a merger when those effects revolve around the transfer of IP rights?

The PCA's Guidelines on Merger Remedies (the Remedies Guidelines) make specific reference to IP rights as a potential remedy in mergers that give rise to a significant impediment of effective competition in all or part of the domestic market.

In general, the PCA's approach to remedies that involve IP rights will follow that of the European Commission. As such, the three general principles that any remedy must meet to be acceptable are as follows:

- The remedy must be effective. To assess whether this is the case, the following considerations are taken into account:
 - the necessity of the remedy;
 - the ability of the remedy to address the competition concern at issue;
 - the ability to monitor the remedy; and
 - the necessary duration of the remedy. In accordance with EU practice, only remedies that guarantee a high degree of certainty for each of these factors will be considered by the PCA.
- The remedy must be efficient. To meet this criterion, the remedy must be the most cost-effective means by which to address the identified concern.
- The remedy must be proportionate. The remedy must adequately address the identified concern in a proportionate manner (ie, not go beyond what is necessary to remedy the issues at stake).

The principal way that an IP right can act as a remedy is through the disposal of an IP right or a package of IP rights upon which the PCA's concerns are based (ie, where the IP rights allow for post-merger foreclosure by the merged entity or through the licensing of IP rights to a third party or competitor to ensure that competition is maintained post-merger). In this respect, the Remedies Guidelines state that, for a remedy to be effective in these circumstances, the divested or licensed IP rights must be sufficient in themselves or as a package to allow for market entry or to reinforce the market position of competitors (paragraph 76).

Examples referred to by the Remedies Guidelines include the transfer or the licensing of technology or of a trademark – whichever is the most proportionate in the case at hand. Such licensing has taken place in the past as part of a broader package of remedies required for the clearance of a merger.

It should be noted, however, that the Remedies Guidelines clearly state that the PCA prefers a 'straightforward' sale of a business rather than the transfer or sale of IP rights to address its concerns. The Remedies Guidelines refer to the European Commission's guidance on remedies in this respect.

Law stated - 21 October 2025

SPECIFIC COMPETITION LAW VIOLATIONS

Conspiracy

- 23** | Can the exercise, licensing or transfer of IP rights create price-fixing or conspiracy liability?

In principle, the exercise, licensing or transfer of IP rights could create price-fixing or conspiracy liability under Portuguese competition law. However, we are not aware of a case of this kind having been brought in the past.

Law stated - 21 October 2025

Scrutiny of settlement agreements

- 24** | How would a settlement agreement terminating an IP infringement dispute be scrutinised from a competition perspective? What are the key factors informing such an analysis?

We are not aware of any case under domestic law where a settlement agreement of this type has been analysed from a competition law perspective. We would expect the Portuguese Competition Authority (PCA) or a national court to scrutinise settlement agreements terminating an IP infringement in accordance with the general practice of the European Commission and the EU courts. Accordingly, a settlement agreement that, for example, prevents the entry of generic competition following the expiry of a patent would carry a material risk of being unlawful and be analysed according to the principles set out by the Court of Justice of the European Union in its *Lundbeck* judgment.

Law stated - 21 October 2025

Reverse payment patent settlements

- 25** | How have the competition laws been applied to reverse payment patent settlements in your jurisdiction?

We are not aware of any case under domestic law where a reverse payment patent settlement has been analysed from a competition law perspective. We would expect that the PCA or a national court (or both) would review such a case in accordance with the general principles under EU law.

Law stated - 21 October 2025

(Resale) price maintenance

- 26** | Can the exercise, licensing, or transfer of IP rights create liability under (resale) price maintenance statutes or case law?

In principle, the exercise, licensing or transfer of IP rights could create liability under the rules prohibiting resale price maintenance (RPM) under Portuguese competition law. RPM liability under Portuguese law is treated in the same manner as under EU law. We are not aware, however, of a case of this kind having been brought in the past.

Law stated - 21 October 2025

Exclusive dealing, tying and leveraging

- 27** | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to exclusive dealing, tying and leveraging?

In principle, the exercise, licensing or transfer of IP rights could create liability under the rules regarding exclusive dealing, tying and leveraging under Portuguese competition law. Under Portuguese law, such practices would be treated in the same manner as under EU law. We are not aware, however, of any case relating to such practices as they concern IP rights being brought in the past.

Law stated - 21 October 2025

Abuse of dominance

- 28** | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to monopolisation or abuse of dominance?

The exercise, licensing or transfer of IP rights can create liability under Portuguese competition law. An example of this was the [case](#) brought against the National Association of Pharmacies (ANF) by the PCA in 2015. In that case, the PCA accused the ANF of abusing its dominant position in the markets for pharmaceutical sales data and market studies by way of a margin squeeze.

The case was based on a complaint brought by IMS Health that alleged that the price it was being charged for data collected from pharmacies was abusive when compared to the price ANF charged its own downstream market study provider. The access to upstream data (protected by IP rights owned by ANF) related to pharmacy sales was one of the key elements considered by the PCA as forming part of the ANF's abuse of dominance in this case, despite the fact that the licences in question were non-exclusive.

Law stated - 21 October 2025

Refusal to deal and essential facilities

- 29** | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to refusal to deal and refusal to grant access to essential facilities?

In principle, the exercise, licensing or transfer of IP rights could create liability under the rules relating to the refusal to deal and refusal to grant access to essential facilities under Portuguese competition law. Such liability under Portuguese law is treated in the same manner as under EU law. We are not aware, however, of a case of this kind having yet been brought.

Law stated - 21 October 2025

REMEDIES

Remedies for violations of competition law involving IP

30 | What sanctions or remedies can the competition authorities or courts impose for violations of competition law involving IP?

The general rules on sanctions apply for violations of competition law involving IP are as follows:

- The Portuguese Competition Authority (PCA) can impose a fine of up to 10 per cent of the company's local turnover in the preceding financial year. The PCA can also impose behavioural or structural measures to end the prohibited practices or their effects. For example, it can require the company found to have infringed the law to sell its assets to remedy the infringement or to adapt its commercial behaviour and contracts for the same purpose – this could, in theory, include compulsory licensing or divestitures of IP rights. We are not aware, however, of any such remedies being imposed in the past.
- The board members and any individuals responsible for the management or supervision of the areas of the business involved in any infringement can be sanctioned with a fine of up to 10 per cent of the individual's annual salary. In these cases, the PCA must show that the individual in question knew or ought to have known of the illegality of the conduct at issue and did not take any measures to bring it to an end.
- As a matter of law, any agreement or practice that is found to have breached Portuguese competition law is null and void.

Law stated - 21 October 2025

Competition law remedies specific to IP

31 | Do special remedies exist under your competition laws that are specific to IP matters?

No.

Law stated - 21 October 2025

ECONOMICS AND APPLICATION OF COMPETITION LAW

Economics

- 32** | What role has competition economics played in the application of competition law in cases involving IP rights?

The competitive effects of IP rights have not been subject to a great deal of analysis in Portugal. However, we expect that competition economics will play a role in any future cases of this type, given that the Portuguese Competition Authority (PCA) has a dedicated team of economists and competition economics has been used by the PCA in other cases. The same is true of any future private litigation of this type – competition economics has been used in, for example, competition class actions. Accordingly, we expect competition economics to play a role in any private litigation of competition law cases involving IP rights.

Law stated - 21 October 2025

RECENT CASES AND SANCTIONS

Recent cases

- 33** | Have there been any recent high-profile cases dealing with the intersection of competition law and IP rights?

No.

Law stated - 21 October 2025

Remedies and sanctions

- 34** | What competition remedies or sanctions have been imposed in the IP context?

The Portuguese Competition Authority imposed a fine of €10.3 million on the National Association of Pharmacies (ANF) for abusing its dominant position by way of a margin squeeze of a competitor (IMS Health). IMS Health alleged that the price it was being charged for data collected from pharmacies (data owned by ANF) was abusive when compared to the price ANF charged its own downstream market study provider. The fine was reduced by the Court of Appeal to €815,000 for reasons unrelated to the main conduct at issue.

Law stated - 21 October 2025

UPDATE AND TRENDS

Key developments

- 35** |

Are there any emerging trends or hot topics in the law of IP and antitrust policy? Have changes occurred recently or are changes expected in the near future that will have an impact on the application of competition law to IP rights?

The year 2023 saw the entry into force of the Agreement on a Unified Patent Court, on 1 June. Portugal is one of the 17 EU member states to have ratified the agreement, which has triggered the EU regulations establishing the unitary patent system.

On 19 June 2023, Decree-Law No. 47/2023 was enacted. Such legislation finally transposed into the Portuguese legislative framework Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. Key changes in the national legislation include, among others, the creation of a liability system for online content sharing service providers, which are now directly liable for the unlawful uploads in their platforms, by the users, of copyrighted materials.

One of the Portuguese Competition Authority's (PCA) stated priorities is the enforcement of competition law in the digital sector. Due to the nature of this sector, future enforcement by the PCA may include cases where IP rights are part of or are central to the theories of harm upon which it bases its decisions.

Law stated - 21 October 2025



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INTELLECTUAL PROPERTY

Intellectual property law

- 1 | Under what statutes, regulations or case law are intellectual property rights granted? Are there restrictions on how IP rights may be enforced, licensed or otherwise transferred? Do the rights exceed the minimum required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

Intellectual property rights in Taiwan are granted under the following statutes:

- the Patent Act;
- the Copyright Act;
- the Trademark Act;
- the Trade Secrets Act;
- the Integrated Circuit Layout Protection Act; and
- the Plant Variety and Plant Seed Act.

In addition, the Fair Trade Act (FTA) has provisions regulating the exercise of IP rights to protect consumer interests and fair market competition.

As a member of the World Trade Organization (WTO), Taiwan enacted these statutes to protect IP rights exceeding the minimum requirements of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Patents protect creations of invention, utility model and design corresponding to nature and science. Copyrights protect works with minimum originality and creativity in literary, scientific, artistic and other intellectual domains. Trademarks protect signs or combinations with distinctiveness that sufficiently refer to a designated source of products or services. Trade secrets protect technical and commercial confidential information with economic value if protected by reasonable measures. Rights in integrated circuit layouts and rights of plant varieties and seeds are for specific innovations in each of these fields.

Some IP rights will be granted through application, approval and registration by the central competent authorities — namely, the Taiwan Intellectual Property Office (TIPO) for patents, trademarks and integrated circuit layout rights and the Taiwan Ministry of Agriculture for plant variety rights. Other IP rights are granted when creations are completed in accordance with their specific statutory requirements (eg, copyrights and trade secrets).

There are no special restrictions imposed on enforcement, assignment and licensing of IP rights. Assignments and licensing of IP rights are based on the freedom of contract. However, if an assignment or licence is not registered with the relevant authority (TIPO for registered patents and trademark rights and Ministry of Agriculture for registered variety rights), the assignee and licensee cannot utilise the assignment or licence agreement as a valid defence against any third party that has no actual knowledge of the agreement.

Law stated - 30 October 2024

Responsible authorities

2 | Which authorities are responsible for granting, administering or enforcing IP rights?

TIPO is the central competent authority for matters in relation to IP rights. It oversees the examination of applications, as well as the granting, administration and registration of patents and trademarks. TIPO arranges the development, policies, regulations, system improvements, registration and most IP rights-related matters.

The Ministry of Agriculture is responsible for central-level agricultural affairs, including the examination of applications, approval and registration of rights of plant varieties and plant seeds.

The Fair Trade Commission (FTC) oversees and investigates all market activities, and develops policies and regulations to minimise restricted or unfair competition. The FTC operates under the FTA, according to which IP rights owners are prohibited from unduly enforcing them.

Law stated - 30 October 2024

Proceedings to enforce IP rights

3 | What types of legal or administrative proceedings are available for enforcing IP rights? To the extent your jurisdiction has both legal and administrative enforcement options for IP rights, briefly describe their interrelationship, if any?

Taiwan's Intellectual Property Court was established in 2008 as a specialised court to hear all cases relevant to the IP rights prescribed in the Patent Act, the Trademark Act, the Copyright Act, the Optical Disk Act, the Trade Secrets Act, the Integrated Circuit Layout Protection Act, the Plant Variety and Plant Seed Act and the FTA. In 2021, the Court was restructured as the Intellectual Property and Commercial Court (IP Court) to adjudicate major business disputes as well.

The IP Court is in charge of the three prongs of IP litigation — namely, administrative, civil and criminal proceedings. For administrative litigation in IP matters, the IP Court is the court of first instance and the Supreme Administrative Court is the court of second and final instance. For civil litigation in IP matters, the IP Court is the court of first (exclusive — except where the parties have agreed to choose other district courts on the ordinary court system as the first-instance court over the disputes between the parties) and second (exclusive) instances and the Supreme Court is the court of third and final instance. For criminal litigation, the district courts (in the ordinary court system) hear the first instance with the exception of criminal trade secret litigation, where the IP Court is the court of first instance. For all criminal litigation involving IP matters, the IP Court is the court of second instance and the Supreme Court is the court of third and final instance.

Given the fact that IP cases involve various technical issues, most IP Court judges have experience and backgrounds related to IP matters. The IP Court also has examination officers who provide technical analysis for reference in trials and assist the judges with investigating evidence and adjudicating technical issues.

The IP Court judges determine the validity of IP rights in civil infringement proceedings, but the effect of such decisions only binds the parties in the same civil matter rather than the public.

Law stated - 30 October 2024

Remedies

- 4 | What remedies are available to a party whose IP rights have been infringed? Do these remedies vary depending on whether one utilises judicial or administrative review or enforcement?

In Taiwan, owners of IP rights may enforce their rights only by filing a civil lawsuit or by filing a criminal complaint (when trademarks, copyrights and trade secrets are in place). Administrative proceedings are not available to an IP rights owner for the purpose of protecting its infringed IP rights.

The infringed party can file a civil lawsuit seeking permanent injunctive relief that prevents the accused party from continuing its infringing activities. Injunctive relief can also prohibit the defendant from conducting any likely infringing activities. The plaintiff may also request compensatory damages for loss resulting from the alleged infringing activities.

The defendant may challenge the validity of the IP rights that are used by the plaintiff in filing the infringement lawsuit. The defendant may also file an invalidation action with TIPO to invalidate the patents or trademarks that are used by the plaintiff in the infringement proceedings.

Law stated - 30 October 2024

Nexus between competition and IP rights

- 5 | Do any statutes, regulations or case law in your jurisdiction address the interplay between competition law and IP law?

Under article 22 of the FTA, a business entity is prohibited from using the same or similar trade dress, or outer appearance, that is well known as that of another business if such use will confuse consumers. 'Trade dress' may be the name of a company, a business name or a trademark, as well as containers, packages and appearance features of products.

Article 45 of the FTA makes the entire provisions of the same Act inapplicable to all activities carried out by IP rights owners for the purpose of enforcing their rights, so long as the IP rights owners enforce their rights in a duly manner. Accordingly, a party being accused of infringing another's IP rights cannot allege that the IP rights owner violates competition law by requesting proper remedies available to IP rights owners under the IP laws. IP rights owners will be considered to be breaching competition law, however, if they misuse their IP rights and substantially harm market competition.

Law stated - 30 October 2024

Patent cooperation treaties and other agreements

6 | Does your jurisdiction participate in any patent cooperation treaties or other similar agreements?

Taiwan currently participates in the following international IP organisations:

- the Asia-Pacific Economic Cooperation, which Taiwan joined as an official member in 1991 under the name of 'Chinese Taipei'; and
- the WTO, which Taiwan joined as an official member state in 2002 under the name of 'the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu'.

Taiwan is neither a member of WIPO, nor has it acceded to any of the international treaties administered by WIPO. As a member state of the WTO, however, Taiwan was obligated to sign and follow the provisions of the TRIPs Agreement. As such, Taiwan has incorporated and harmonised the regulations of the TRIPs Agreement with its domestic laws and regulations, making Taiwan's IP law substantially similar to many international IP conventions, such as the Paris Convention, the Berne Convention and the Rome Convention. Accordingly, Taiwan law imposes no special restrictions that may put obstacles in the way of foreign IP rights owners trying to enforce their IP rights in Taiwan.

Law stated - 30 October 2024

Remedies for deceptive practices

7 | With respect to trademarks, do competition or consumer protection laws provide remedies for deceptive practices?

Under article 22 of the FTA, a business entity is prohibited from using the same or similar trade dress or outer appearance that is well known to consumers if this will cause confusion. Article 22 of the FTA applies to trade dress or outer appearance, including a company title, business name or trademark, as well as containers, packages and appearance features of products. Owners of a trade dress may ask courts to issue an order that permanently prevents an unlawful user of the trade dress from continuing activities related to its usage. The owner may also request compensation if they have suffered damages due to said use of the trade dress.

Taiwan's Consumer Protection Act does not directly address issues in relation to deceptive practices. Nonetheless, article 22 of the Act imposes responsibilities on a business enterprise to ensure that all statements by the enterprise during the advertising of their products or services are accurate. As such, consumer protection law will step in when business enterprises misrepresent to consumers that their products and services are made or provided by sources that have been approved by the owner of a particular trademark when in fact that is not the case.

Law stated - 30 October 2024

Technological protection measures and digital rights management

- 8 | With respect to copyright protection, is WIPO protection of technological protection measures (TPMs) and digital rights management (DRM) enforced in your jurisdiction? Do statutes, regulation or case law limit the ability of manufacturers to incorporate TPM or DRM protection limiting the platforms on which content can be played? Has TPM or DRM protection been challenged under the competition laws?

Under Taiwan's Copyright Act, no one should remove or alter the DRM made by a copyright owner for a copyrighted work, unless the removal or alteration is necessary for the proper use of the work. In addition, the Act forbids anyone from distributing works whose DRM has been unduly removed or altered, if they are aware of the undue removal or alteration.

The Act also prohibits the circumventing of TPMs employed by the owner of a copyrighted work. The Act further prohibits the manufacturing, importing or making available to the public of any kind of equipment that may be used to circumvent TPMs.

These provisions have been enforced in Taiwan and there are several reported court cases where defendants were found guilty of violating them.

In a 2020 ruling, the IP Court held that a copyright owner did not violate any competition law provisions simply because they employed TPMs that prevented others from copying the owner's copyrighted computer programs. The copyright owner's TPMs, the IP Court explained, did not hinder any ordinary use of said programmes. Accordingly, Taiwan competition law does not prohibit IP rights owners from taking TPMs, as long as such TPMs do not obstruct ordinary uses of the works.

Law stated - 30 October 2024

Industry standards

- 9 | What consideration has been given in statutes, regulation or case law to the impact of the adoption of proprietary technologies in industry standards?

In Taiwan, there are no statutes or regulations that explicitly address competition law issues in relation to industry standards.

In a 2017 ruling, the FTC imposed a fine of NT\$23.4 billion (approximately US\$773 million) on Qualcomm for its licensing practices that allegedly abused its dominance over the related market. The FTC found that Qualcomm was in violation of Taiwan's competition law by adopting a 'no licence, no chip' licensing strategy that was supported by Qualcomm's patents in relation to industry standards. Qualcomm subsequently reached a settlement with the FTC in this matter. The *Qualcomm* case might be one of the rare occasions where the FTC looked into competition law issues in relation to industry standards.

Law stated - 30 October 2024

COMPETITION

Competition legislation

10 | What statutes set out competition law?

The Fair Trade Act (FTA) is the primary legislation that sets forth provisions regulating restrictive competition, unfair competition, multilevel distribution and other anticompetitive business activities.

Law stated - 30 October 2024

IP rights in competition legislation

11 | Do the competition laws make specific mention of any IP rights?

Article 45 of the FTA makes the entire provisions of the same Act inapplicable to activities carried out by IP rights owners in enforcing their rights, so long as the owners duly enforce their rights. Accordingly, a party being accused of infringing another's IP rights cannot allege that the owner of the IP rights violates competition law by requesting proper remedies available to IP rights owners under IP law. At the same time, however, IP rights owners will be breaching competition law if they misuse their IP rights and substantially harm market competition.

In addition, Taiwan's Fair Trade Commission (FTC) has promulgated the [Guidelines on Technology Licensing Arrangements](#), setting forth codes of conduct for entities in technological industries who want to license their technologies to others.

To prevent IP rights owners from abusing their IP rights, the FTC has also promulgated the [Guidelines on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement on Copyright, Trademark, and Patent Rights](#). In accordance with the Guidelines, when an IP rights owner wishes to send a cease-and-desist letter to any party that has not infringed the owner's IP rights, the IP rights owner must attach to said letter either a court ruling that confirms the infringement or an examination report by a qualified institute with proper expertise that confirms the infringement.

Law stated - 30 October 2024

Review and investigation of competitive effects from exercise of IP rights

12 | Which authorities may review or investigate the competitive effect of conduct related to exercise of IP rights?

The FTC is the sole regulator with authority over matters concerning the FTA. The FTA grants the FTC investigative power to look into members of any particular markets and to take proper responses if the FTC finds any undue restrictions of market competition. An IP rights owner that unduly enforce its IP rights would be subject to investigations by the FTC.

The FTC has promulgated the Guidelines on Technology Licensing Arrangements, setting forth the code of conduct for entities in technological industries that wish to license their technologies to others. For instance, a provision in a licence agreement under which a licensee must not challenge the validity of the licensed IP rights may be found void and unenforceable from the perspective of the Guidelines.

Law stated - 30 October 2024

Competition-related remedies for private parties

- 13** | Can a private party recover for competition-related damages caused by the exercise, licensing or transfer of IP rights?

Article 45 of the FTA makes the entire provisions of the same Act inapplicable to activities carried out by IP rights owners in enforcing their rights, so long as the owners duly enforce their rights. If an IP rights owner duly enforces its IP rights, remedies will not be available under competition law for competition-related damages caused by the exercise of the IP rights.

However, if an IP rights owner enforces its IP rights in an undue manner and causes harm to market competition, damages are available to parties that suffer competition-related damages by the exercise (including licensing) of the IP rights.

Reported court cases suggest that if an IP rights owner obtains a preliminary injunction against an alleged infringing party basing on the alleged IP right infringement but eventually a court ruling, final and conclusive, found that the IP rights owner does not have a viable claim for the alleged infringement, the IP rights owner shall be held liable for the damages suffered by the alleged infringing party. In this situation, the IP rights owner might be held liable by the courts for compensating the alleged infringing part's loss and expenses arising out of the IP rights owner's undue enforcement of the IP rights, including a reasonable amount of attorney fees.

Law stated - 30 October 2024

Competition guidelines

- 14** | Have the competition authorities, or any other authority, issued guidelines or other statements regarding the overlap of competition law and IP?

The FTC has promulgated the Guidelines on Technology Licensing Arrangements, setting forth the code of conduct for entities in technological industries that want to license their technologies to others. For instance, a provision in a licence agreement under which a licensee must not challenge the validity of the licensed IP rights may be found void and unenforceable from the perspective of the Guidelines.

Moreover, the Guidelines prohibit the existence of provisions in a licence agreement:

- precluding the licensee from conducting further research about the licensed technologies;

- under which the licensee is forced to obtain a licence for technologies or products they do not need; or
- under which the licensee cannot determine by itself the price for reselling the products or services that use the licensed technologies, so long as those provisions result in effects that harm or restrict market competition.

To prevent IP rights owners from abusing their IP rights, the FTC has also promulgated Guidelines on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement on Copyright, Trademark, and Patent Rights. In accordance with the Guidelines, when an IP rights owner wishes to send a cease-and-desist letter to a party that did not infringe the owner's IP rights, they must attach to the letter either a court ruling that confirms the IP right infringement or an examination report by a qualified institute with proper expertise that confirms the IP right infringement.

Law stated - 30 October 2024

Exemptions from competition law

- 15** | Are there aspects or uses of IP rights that are specifically exempt from the application of competition law?

Article 45 of the FTA makes the entire provisions of the same Act to inapplicable activities carried out by IP rights owners in enforcing their rights, so long as the owners duly enforce their rights. Accordingly, a party being accused of infringing another's IP rights cannot allege that the owner of the IP rights violates competition law by requesting proper remedies available to IP rights owners under IP law. In other words, IP rights owners will be considered to be breaching competition law if they misuse their IP rights and substantially harm market competition.

Law stated - 30 October 2024

Copyright exhaustion

- 16** | Does your jurisdiction have a doctrine of, or akin to, 'copyright exhaustion' (EU) or 'first sale' (US)? If so, how does that doctrine interact with competition laws?

Taiwan's copyright law adopts the domestic exhaustion doctrine that applies only to copyrighted works or their copies that have been purchased lawfully in the territory of Taiwan. Article 59(1) of the Copyright Act stipulates that whoever has obtained ownership of the original copyrighted work or a lawful copy of the same 'within the territory of Taiwan' may distribute the work or that lawful copy without further obtaining approval or licence from the copyright owner.

Since the Copyright Act adopts the domestic exhaustion doctrine, it prohibits parallel or grey-market importation in principle. According to article 87 of the Copyright Act, importing the original copy or any duplications of a work legally reproduced abroad without the authorisation of the copyright owner is deemed an infringement of copyright. Exemption

is available only under the circumstances prescribed in article 87(1) of the Copyright Act, where a person imports a work or copies of it for their own personal use.

With respect to the relationship between parallel imports and competition law, the FTC has announced an explanation on the issue of whether the parallel imports of genuine goods violate the FTA. The FTC states that:

- since parallel-imported genuine goods are unauthorised genuine products rather than necessarily inferior or fake products, the parallel import of genuine products does not constitute counterfeiting and does not violate article 22 of the FTA;
- the determination as to whether the parallel import of genuine goods violates article 21 of the FTA depends on whether the importer intends to mislead the consumer public as to the source of the goods; and
- when a company imports goods whose original overseas manufacturer has already authorised another domestic agent or manufacturer to import or produce, the authorised importer or manufacturer may have already invested heavily in marketing to make the goods well known to consumers. In such cases, if the unauthorised importing company takes actions such as presenting the product contents, source, importer name and address in a manner to mislead consumers into believing the goods are those imported by the authorised importer or manufacturer, these actions amount to 'free-riding' and are considered deceptive or obviously unfair acts under article 25 of the FTA.

Law stated - 30 October 2024

Import control

- 17** | To what extent can an IP rights holder prevent 'grey-market' or unauthorised importation or distribution of its products?

Taiwan patent law and trademark law both adopt the international exhaustion doctrine, while copyright law adopts the domestic exhaustion doctrine. Parallel importation of patented products into Taiwan is permissible as long as the importer has lawfully acquired the products.

Comparatively, parallel importation of copyrighted works without proper consent or licence by the copyright owner results in liability for copyright infringement.

Simple grey-market importation of products with the accurate trademarks is not prohibited under Taiwan trademark law. However, if the parallel importer misleads consumers as to the source of the goods or into believing the goods are imported by an authorised agent, such activities would constitute a violation of the FTA.

Law stated - 30 October 2024

Jurisdictional interaction between competition laws and IP rights

- 18** |

Are there authorities with exclusive jurisdiction over IP-related or competition-related matters? For example, are there circumstances in which a competition claim might be transferred to an IP court to satisfy subject matter jurisdiction? Are there circumstances where the resolution of an IP dispute will be handled by a court of general jurisdiction?

Taiwan's Intellectual Property Court was established in 2008 as a specialised court to hear all cases on intellectual property rights, as prescribed in the Patent Act, the Trademark Act, the Copyright Act, the Optical Disk Act, the Trade Secrets Act, the Integrated Circuit Layout Protection Act, the Plant Variety and Plant Seed Act and the FTA. In 2021, the Court was restructured as the Intellectual Property and Commercial Court (IP Court) to adjudicate major business disputes as well.

The IP Court is in charge of three prongs of IP litigation: administrative, civil and criminal. For administrative litigation in relation to IP matters, the IP Court is the court of first instance, and the Supreme Administrative Court is the court of second instance as the final trial. An administrative lawsuit involving competition matters would be heard exclusively by the IP Court if the matter also involves IP law issues. By contrast, an administrative lawsuit involving competition law would be heard by the Taiwan High Court at first instance in the event that the subject matter does not involve any IP law issues.

For civil litigation in relation to IP matters, the IP Court is the court of first (and exclusive, except where the parties have agreed to choose other district courts on the ordinary court system as the first-instance court over the disputes between the parties) and second (exclusive) instances, and the Supreme Court is the court of third, final instance. As to a civil lawsuit in which the subject matter involves IP law issues, the IP Court has non-exclusive jurisdiction over first instance proceedings and enjoys exclusive jurisdiction over second instance proceedings.

Law stated - 30 October 2024

MERGER REVIEW

Powers of competition authority

19 | Does the competition authority have the same authority with respect to reviewing mergers involving IP rights as it does with respect to any other merger?

The Taiwan Fair Trade Commission (FTC), the competent authority for competition in the country, has authority in reviewing and regulating all types of mergers, irrespective of whether they involve IP rights.

Law stated - 30 October 2024

Analysis of the competitive impact of a merger involving IP rights

20 | Does the competition authority's analysis of the competitive impact of a merger involving IP rights differ from a traditional analysis in which IP rights are not involved? If so, how?

Regardless of whether IP rights are involved, the FTC follows the [Fair Trade Commission Disposal Directions \(Guidelines\) on Handling Merger Filings](#) to assess the competitive impacts a merger might have on relevant markets.

Law stated - 30 October 2024

Challenge of a merger

- 21** | In what circumstances might the competition authority challenge a merger involving the transfer or concentration of IP rights? Does this differ from the circumstances in which the competition authority might challenge a merger in which IP rights were not a focus?

Circumstances in which the FTC might challenge a merger involving the transfer or concentration of IP rights are generally the same as those where IP rights are not a focus. The FTC may consider the factors outlined below, as well as others that affect market competition, and assess the probable impact of a merger on market competition. If the FTC determines that the disadvantages arising from competition restraint outweigh the overall economic benefit of the merger, it will prohibit the merger.

The factors considered in horizontal mergers are:

- market share;
- unilateral or coordinated effects;
- barriers to entry; and
- countervailing power.

The factors considered in vertical mergers are:

- the possibility for other competitors to choose trading counterparts;
- barriers to entry;
- the possibility for the merging parties to abuse their market power;
- the possibility of raising competitor costs; and
- the possibility of concerted actions after the merger.

The factors considered in conglomerate mergers are:

- the possibility of future regulatory change and its effect on the merging parties' cross-industry operations;
- the possibility of technological improvement and its effect on the merging parties' cross-industry operations; and
- the merging parties' original blueprint for cross-industry operations.

Law stated - 30 October 2024

Remedies to address the competitive effects of mergers involving IP

- 22** | What remedies are available to address competitive effects generated by a merger when those effects revolve around the transfer of IP rights?

The FTC may impose conditions or undertakings such as mandatory licences of IP rights on the merging parties to ensure that the overall economic benefit of the merger outweighs the disadvantages resulting from competition restraint.

For example, the *Gong Jie Zi* case (Decision No. 102002) in 2013 involved the formation of a patent pool where the merging parties voluntarily made a commitment to fair, reasonable and non-discriminatory licensing. The FTC, nonetheless, imposed further measures on the merging parties to address competitive effects caused by the merger, by requiring them:

- not to impose a restriction on the licensee regarding the use of the licensed patents, the choice of trading counterparts and the price of the products;
- not to restrict the licensee from arguing the validity of the patents and whether the patents must be standard essential patents;
- not to restrict the licensee from acquiring competing technology during or after the licensing period; and
- to provide information on the content, scope and expiry date of the patents upon the licensee's request.

Law stated - 30 October 2024

SPECIFIC COMPETITION LAW VIOLATIONS

Conspiracy

- 23** | Can the exercise, licensing or transfer of IP rights create price-fixing or conspiracy liability?

Article 45 of the Fair Trade Act (FTA) exempts a proper exercise of intellectual property rights from any liabilities arising out of the FTA. Articles 14 and 15 of the FTA provide the analytical framework for establishing whether an agreement constitutes a concerted action; those provisions apply to all cases regardless of whether IP rights are involved. Hence, if the licensing or transfer of IP rights involves joint activities by competing enterprises that reach agreements on prices, technologies, products, facilities, trading counterparts or business areas with respect to goods or services, or any other behaviour that restricts the other's business activities and impacts market competition, such licensing or transfer will constitute a concerted action and must not be carried out unless the enterprises acquire prior approval from the Taiwan Fair Trade Commission (FTC).

In addition, pursuant to articles 19 and 20 of the FTA, restrictions on the licensee's business activities, such as resale prices or tie-in sales (or tie-in licensing), without proper justifications constitute an impediment to fair competition and are therefore prohibited.

Law stated - 30 October 2024

Scrutiny of settlement agreements

- 24** | How would a settlement agreement terminating an IP infringement dispute be scrutinised from a competition perspective? What are the key factors informing such an analysis?

Generally, no laws and regulations specifically govern a settlement agreement terminating an IP infringement dispute. Instead, the scrutiny of such an agreement goes back to the FTA and the FTC Disposal Directions (Guidelines) on Technology Licensing Arrangements (the Guidelines). The FTA applies to all types of goods and services, while the Guidelines apply merely to licensing arrangements related to technologies.

Although a licence agreement may sufficiently protect IP rights, the following provisions may violate competition law under the Guidelines:

- a provision that prohibits a licensee from conducting research on and development of the licensed technologies, and from using any other technologies that may compete with the licensed technologies;
- a provision that requires a licensee to pay a licence fee for any technology that the licensee does not need; and
- a provision that prohibits a licensee from challenging the validity of the licensed technology.

Law stated - 30 October 2024

Reverse payment patent settlements

- 25** | How have the competition laws been applied to reverse payment patent settlements in your jurisdiction?

A reverse payment patent settlement is common in pharmaceutical patent infringement litigation. Therefore, the amendment to the Pharmaceutical Affairs Act in 2018 requires that parties to a reverse payment settlement agreement notify the central competent health authority and the FTC within 20 days of entering into the settlement agreement.

Unlike in other countries, no litigation over the validity of a reverse payment settlement in competition law has come to the fore in Taiwan. As a result, it is uncertain which settlement arrangements may violate the FTA or the Guidelines. That is to say, we are still waiting for further clarification from the FTC on whether a reverse payment settlement agreement is allowed to include restrictions on the licensee's ability to challenge the validity of the licensed technologies.

Law stated - 30 October 2024

(Resale) price maintenance

26 | Can the exercise, licensing, or transfer of IP rights create liability under (resale) price maintenance statutes or case law?

A reverse payment patent settlement is common in pharmaceutical patent infringement litigation. Therefore, the amendment to the Pharmaceutical Affairs Act in 2018 requires that parties to a reverse payment settlement agreement notify the central competent health authority and the FTC within 20 days of entering into the settlement agreement.

Unlike in other countries, no litigation over the validity of a reverse payment settlement in competition law has come to the fore in Taiwan. As a result, it is uncertain which settlement arrangements may violate the FTA or the FTC Disposal Directions on Technology Licensing Arrangements. That is to say, we are still waiting for further clarification from the FTC on whether a reverse payment settlement agreement is allowed to include restrictions on the licensee's ability to challenge the validity of the licensed technologies.

Law stated - 30 October 2024

Exclusive dealing, tying and leveraging

27 | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to exclusive dealing, tying and leveraging?

Under Taiwan's competition law, not all exclusive dealing, tying and leveraging are per se illegal. These types of conduct are subject to the rule of reason and their legality would be determined on a case-by-case basis. The determining factor would be whether any such conduct results in any impeding effects on market competition.

Specifically, under the FTC Disposal Directions on Technology Licensing Arrangements, a licensor is prohibited from compelling a licensee to obtain a licence for any technologies that the licensee does not need.

Law stated - 30 October 2024

Abuse of dominance

28 | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to monopolisation or abuse of dominance?

The general rules for monopolisation are set out in articles 7 to 9 of the FTA. In addition, similar regulations for IP-related conduct can be found in the FTC Disposal Directions on Technology Licensing Arrangements.

The leading case in the Taiwan competition law community is the dispute over joint patent licensing agreements among Philips, Sony and Taiyo Yuden (the licensors) and the licensees, in which the licensors collaboratively determined the Orange Book Standard (the standard for CD-R duplicating media) and prepared a standard contract that set out terms prohibiting licensees from obtaining critical information and challenging the validity of patents, and refused to re-negotiate royalties even after a change of circumstances.

Among others, the issues involved the abuse of dominance and resale price maintenance. After 20 years of litigation, the court held against these licence practices by finding that the licensors adopted unlawful resale price maintenance.

Law stated - 30 October 2024

Refusal to deal and essential facilities

- 29** | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to refusal to deal and refusal to grant access to essential facilities?

Taiwan's competition law does not explicitly address issues pertaining to refusal to deal and the essential facilities doctrine. These types of conduct or business activities, however, may trigger competition law issues whenever abuse of dominance of market power comes into the picture.

The *Qualcomm* case is a good example. The FTC in a 2017 ruling imposed a fine of NT\$23.4 billion (approximately US\$773 million) on Qualcomm for its licensing practice that allegedly abused dominance over the related market. The FTC found that Qualcomm was in violation of Taiwan's competition law by adopting a 'no licence, no chip' licensing strategy that was supported by Qualcomm's patents with respect to industry standards. According to the FTC's findings, Qualcomm dominated the baseband processor market for CDMA, WCDMA, LTE and other standards, and refused to license the patented technologies to competitors in the same market unless the competitors agreed to a set of restrictive terms.

Qualcomm disagreed with the FTC's ruling and brought the matter to Taiwan's Intellectual Property Court, subsequently reaching a settlement with the FTC.

Law stated - 30 October 2024

REMEDIES

Remedies for violations of competition law involving IP

- 30** | What sanctions or remedies can the competition authorities or courts impose for violations of competition law involving IP?

When violations of competition law are discovered by the Fair Trade Commission (FTC), it may impose a fine of NT\$10,000 to NT\$50 million, as well as an order that compels the violators to cease the alleged violations. The FTC may also order the violators to file progress reports that specify the activities or arrangements they have undertaken to correct the alleged violations. These provisions apply to all matters, irrespective of whether IP issues are present or not.

Victims of a competition law violation may file a civil lawsuit seeking damages against the violator for proper compensation. In addition, Taiwan's Intellectual Property Office may render a compulsory order that compels a patentee to enter into a licence agreement with others as long as the FTC or the courts with proper jurisdiction find that the patentee is in violation of competition law provisions.

Law stated - 30 October 2024

Competition law remedies specific to IP

- 31** | Do special remedies exist under your competition laws that are specific to IP matters?

No.

Law stated - 30 October 2024

ECONOMICS AND APPLICATION OF COMPETITION LAW

Economics

- 32** | What role has competition economics played in the application of competition law in cases involving IP rights?

Article 45 of the Fair Trade Act (FTA) stipulates that proper conduct in exercising IP rights must not be considered a violation of the FTA. This article is a concrete nexus between IP rights and competition law. There are two issues closely related to competition economics. One is the licensing of standard essential patents (SEPs), and the other is the evaluation of the compensation of damage and reasonable royalties for IP licences. For the former, Taiwan follows the 'fair, reasonable, and non-discriminatory' principle to decide on matters pertaining to SEP licences. Taiwan's courts can take the 'market power of both parties' and 'market share of the product at issue' into consideration to evaluate the reasonable royalty.

Law stated - 30 October 2024

RECENT CASES AND SANCTIONS

Recent cases

- 33** | Have there been any recent high-profile cases dealing with the intersection of competition law and IP rights?

In 2021, Taiwan's Supreme Court rendered a civil ruling addressing whether a patentee may permissibly issue a cease-and-desist letter to an infringing party. Pursuant to article 116 of Taiwan's Patent Act, when exercising a utility model patent, the patentee must not issue a cease-and-desist letter without presenting a technical evaluation report that has been properly prepared in accordance with the requirements set forth by relevant laws and regulations. According to the Supreme Court's ruling, if the patentee fails to satisfy the above requirement, sending a cease-and-desist letter may trigger competition law issues if said activity impacts market orders and competition.

In a 2017 ruling, Taiwan's Fair Trade Commission (FTC) imposed a fine of NT\$23.4 billion (approximately US\$773 million) on Qualcomm for a licensing practice that allegedly abused its dominance over the related market. The FTC found that Qualcomm was in violation of Taiwan's competition law by adopting a 'no licence, no chip' licensing strategy that was supported by Qualcomm's patents in relation to industry standards. Qualcomm subsequently reached a settlement with the FTC. This case might be one of the rare occasions where the FTC looked into competition law issues in the context of industry standards.

Law stated - 30 October 2024

Remedies and sanctions

34 | What competition remedies or sanctions have been imposed in the IP context?

Pursuant to article 45 of the Fair Trade Act (FTA), no provision of the FTA applies to any 'proper exercises of IP rights' under provisions of the Copyright Act, Trademark Act, Patent Act or other IP laws of Taiwan. It is an unfair competition offence if the IP rights holder improperly exercises their IP rights in ways that disrupt the trading order or are obviously unfair or unethical. The IP rights holder would face administrative penalties by the FTC, as well as claims for compensation by victims.

For example, issuing warning letters accusing any party of infringing on a utility model patent without presenting a technical evaluation report on the utility model patent is inconsistent with article 116 of the Patent Act and cannot be considered a 'proper exercise of one's IP rights' under article 45 of the FTA. Issuing such an unsupported letter would be subject to the FTC's investigation and penalties.

Pursuant to article 22 of the FTA, no enterprise may use a trademark similar to that of another, which is well known to the public and could cause confusion; or sell, transport, export or import goods bearing such representation.

Law stated - 30 October 2024

UPDATE AND TRENDS

Key developments

35 | Are there any emerging trends or hot topics in the law of IP and antitrust policy? Have changes occurred recently or are changes expected in the near future that will have an impact on the application of competition law to IP rights?

The Taiwan Fair Trade Commission (FTC) published its White Paper on Competition Policy in the Digital Economy (the White Paper) on 20 December 2022. The White Paper primarily advises on the FTC's policy position and future directions for 14 competition law issues with respect to the digital economy. The guidance provides information on:

- defining the relevant market for the digital economy;

- measuring and analysing the market power for the digital economy;
- self-preferences of platform operators;
- tie-in sales;
- predatory pricing or low-price inducements;
- differential pricing;
- most-favoured customer clauses;
- restrictions on resale price;
- restrictions on the channels of online sales;
- data privacy and market competition;
- bargaining of news media;
- killer mergers and acquisitions;
- algorithms; and
- online false advertisements.

Recently, in Taiwan as well as elsewhere around the world, many platforms have been accused of benefiting from content provided by the media without making reasonable financial contributions to the media in return. After comprehensively considering experiences in other jurisdictions, the FTC in the White Paper indicates that it would like to build a fair mechanism for the news media to license their content to platform operators.

An ongoing debate surrounds whether a design patent holder may request a court order permanently prohibiting manufacturers of vehicle parts from selling vehicle parts to vehicle owners for the purposes of maintenance or repair. A bill has been proposed to include in the Patent Act an exemption that frees vehicle parts manufacturers from infringement claims by design patent holders as long as those vehicle parts are offered to customers for purposes of maintenance or repair. Opponents argue that adding such provision to patent law will allow vehicle parts not authorised by the design patent owner to enter the market but those vehicle parts might not meet the necessary safety and quality requirements.

Law stated - 30 October 2024



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INTELLECTUAL PROPERTY

Intellectual property law

- 1 | Under what statutes, regulations or case law are intellectual property rights granted? Are there restrictions on how IP rights may be enforced, licensed or otherwise transferred? Do the rights exceed the minimum required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

Turkish IP rights are governed by the following statutes:

- Law No. 6769 on Industrial Property (the Industrial Property Law);
- Law No. 5846 on Intellectual and Artistic Works;
- Law No. 5147 on the Protection of Integrated Circuit Topographies; and
- Law No. 5042 on the Protection of Plant Breeders' Rights for New Plant Varieties.

Within this scope, statutory and non-statutory IP rights can be summarised as patents, trademarks, copyrights and related rights, utility models, designs, geographical indications and traditional product names, integrated circuit topographies, new plant varieties, biotechnological inventions, trade names and company names, domain names, trade secrets and know-how. In accordance with the relevant regulations, IP owners are entitled to exploit the subject of their rights exclusively, to prevent illegal use by third parties and confer the right to use them by licensing them to third parties.

However, in line with article 148 of the Industrial Property Law, geographical indications and traditional product name rights cannot be the subject of licence, transfer and similar legal transactions. Moreover, legal transactions regarding IP rights must be done in writing and the validity of transfer agreements depends on them being notarised.

IP rights in Türkiye exceed the minimum required by the TRIPs Agreement. In literature, they are referred to as 'TRIPs plus'.

Law stated - 13 November 2025

Responsible authorities

- 2 | Which authorities are responsible for granting, administering or enforcing IP rights?

The institutions that grant, administer, enforce and protect IP rights by either functioning as IP rights registers or being exclusively authorised to enforce IP rights are as follows:

- The Turkish Patent and Trademark Office carries out the registration procedures related to patent, utility model, trademark, design, geographical indication and integrated circuit topographies applications. It is affiliated to the Ministry of Industry and Technology;
- The Directorate General for Copyright of Ministry of Culture and Tourism follows international developments on copyright, works to develop national legislation, deals with necessary measures and practices against infringements of IP rights,

and engages in public awareness activities. In addition, registration, banderol and certificate procedures for intellectual and artistic works are also carried out in this directorate;

- The Directorate General for Plant Production of Ministry of Agriculture and Forestry handles all registration procedures for new plant varieties;
- The Intellectual and Industrial Property Rights Coordination Board was established to create short-, medium- and long-term strategies for intellectual and industrial property rights, to improve coordination and cooperation among relevant institutions, and to ensure effectiveness in practices;
- The General Directorate of Security, as a police organisation, carries out the actions specified in law by acting ex officio or upon complaints made regarding copyright and industrial rights infringements in Türkiye. The Directorate is affiliated with the Ministry of Interior; and
- The General Directorate of Customs of Ministry of Commerce carries out the procedures stipulated by law, with the authority to act ex officio or upon application for IP rights infringements with the Turkish customs.

Law stated - 13 November 2025

Proceedings to enforce IP rights

- 3 | What types of legal or administrative proceedings are available for enforcing IP rights? To the extent your jurisdiction has both legal and administrative enforcement options for IP rights, briefly describe their interrelationship, if any?

On 1 January 2019, mediation for commercial disputes concerning receivables and compensation claims became mandatory in Türkiye. In this context, article 4(1)(a) of the Turkish Commercial Law considers all disputes arising from IP legislation as commercial disputes, regardless of the title of the parties (ie, whether they are merchants or not) and the amount in dispute. Consequently, the IP rights holder must complete the applicable mandatory mediation proceedings before filing a lawsuit regarding a commercial payment claim.

Alternatively, the parties can take the IP dispute to arbitration as well. Under Turkish law, disputes arising from contracts regarding IP rights or infringement of these rights can be submitted for arbitration; however, it is difficult to say the same for registered IP rights, as disputes concerning the validity, cancellation or ownership of registered IP rights are considered matters of public order and therefore fall within the exclusive jurisdiction of state courts.

For disputes that are not subject to arbitration and are outside the scope of mandatory mediation, two specialised courts are available for cases stipulated in article 156 of the Industrial Property Law:

- through the Civil Court of Intellectual and Industrial Rights, an IP rights holder can file a lawsuit mainly for the infringement actions to be stopped and to be compensated; and

- through the Criminal Court of Intellectual and Industrial Rights, criminal prosecutions and actions are handled, all of which commence with the IP rights holder initiating a raid action following a criminal complaint with the public prosecutors. It is important to note that criminal actions are not available to patent and industrial design owners.

The amount subject to dispute is also irrelevant to the court. Hence, there are no separate enforcement options based on the amount in dispute.

In addition to these legal proceedings, auxiliary actions can be taken to the administrative court, which are recommended to be combined with civil and criminal action. In this context:

- oppositions against trademarks, patents and industrial designs can be filed before the Turkish Patent and Trademark Office; and
- the recording of IP rights with customs is one of the administrative proceedings that would lead to the confiscation of counterfeit or pirated goods by customs officers. Following the recording of the rights, the customs authorities detain the suspected products and inform the IP rights holder. However, the detainment of goods is temporary, and the IP rights holder has to initiate legal proceedings (civil or criminal) to have the counterfeit or infringing goods permanently confiscated and subsequently destroyed.

As to the interrelationship between legal and administrative enforcement options for IP rights, parties are not precluded from arguing in one venue when choosing one enforcement option first. On the contrary, it is recommended to combine an administrative enforcement option with a civil or criminal action for an effective action plan.

Law stated - 13 November 2025

Remedies

- 4** | What remedies are available to a party whose IP rights have been infringed? Do these remedies vary depending on whether one utilises judicial or administrative review or enforcement?

In accordance with article 149 of the Industrial Property Law, a party whose IP rights have been infringed may ask the court to:

- determine the infringement;
- stop the infringing acts;
- rule on compensation for material and moral damages;
- confiscate or destroy the infringing products as well as the equipment and machinery used to produce the products; and
- publicise its decision.

In addition, preliminary injunctions are available before or during the substantive proceedings in line with article 159 of the Industrial Property Law. In this regard, the claimants must prove that (1) they are the rights holders, (2) their rights are being infringed

or it is highly likely that the rights will be infringed, and (3) they may suffer irreparable harm or damages.

There are no criminal remedies for design and patent infringements, but for trademark and copyright infringements, criminal remedies, including imprisonment and fines, are available.

Law stated - 13 November 2025

Nexus between competition and IP rights

5 | Do any statutes, regulations or case law in your jurisdiction address the interplay between competition law and IP law?

Article 129 of the Industrial Property Law governs the interplay between competition law and IP law. If the patentee carries out activities distorting, hindering or limiting the competition while the patent is used, a compulsory licence shall be requested from the Turkish Competition Authority.

Other than this provision, there is no law that regulates the interaction between competition law and IP law. Nevertheless, secondary legislation addresses the interaction between competition law and IP law, as follows:

- Block Exemption Communiqué No. 2008/2 on Technology Transfer Agreements and the Guidelines on the Application of articles 4 and 5 of Law No. 4054 on the Protection of Competition to Technology Transfer Agreements state that both bodies of law have the same basic objective of promoting consumer welfare and an efficient allocation of resources. While IP rights promote dynamic competition by encouraging undertakings to invest in developing new or improved products and processes, competition law puts pressure on undertakings to innovate. Therefore, they both aim to promote innovation and ensure a competitive benefit thereof.
- Block Exemption Communiqué No. 2002/2 on Vertical Agreements and the Guidelines on Vertical Agreements contain an exemption for vertical agreements that include the exercise of intellectual rights where (1) provisions concerning intellectual rights are directly related to the use, sale or resale of the relevant goods and services, and (2) the conditions set out in the Communiqué are met.
- Block Exemption Communiqué No. 2025/2 on Specialisation Agreements extends the exemption to licensing or IP transfer agreements that are directly related to, or necessary for, the functioning of the exempted specialisation agreements.
- Block Exemption Communiqué No. 2016/5 on Research and Development Agreements provides an exemption for R&D agreements that include provisions regarding the assignment or licensing of IP rights to conduct joint R&D, paid-for R&D or joint exploitation (as long as those provisions are not the primary object of such agreements).

Law stated - 13 November 2025

Patent cooperation treaties and other agreements

- 6** | Does your jurisdiction participate in any patent cooperation treaties or other similar agreements?

Türkiye is a signatory of, or party to, various international and bilateral agreements, conventions and treaties, such as the TRIPs Agreement, the WIPO Patent Cooperation Treaty, the WIPO Copyright Treaty, the Paris Convention for the Protection of Industrial Property, the Strasbourg Agreement Concerning the International Patent Classification, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks, the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, the Berne Convention for the Protection of Literary and Artistic Works, the Hague Agreement Concerning the International Registration of Industrial Designs and the European Patent Convention.

Law stated - 13 November 2025

Remedies for deceptive practices

- 7** | With respect to trademarks, do competition or consumer protection laws provide remedies for deceptive practices?

The Turkish Commercial Code considers untruthful, misleading and deceptive commercial acts as 'unfair competition' and provides various remedies for the parties that are subjected to such acts. However, there are no remedies in competition or consumer protection laws for deceptive practices regarding trademarks. However, Turkish consumer protection legislation offers remedies against deceptive advertising.

Law stated - 13 November 2025

Technological protection measures and digital rights management

- 8** | With respect to copyright protection, is WIPO protection of technological protection measures (TPMs) and digital rights management (DRM) enforced in your jurisdiction? Do statutes, regulation or case law limit the ability of manufacturers to incorporate TPM or DRM protection limiting the platforms on which content can be played? Has TPM or DRM protection been challenged under the competition laws?

No Turkish legislation specifically protects technological protection measures and digital rights management. However, the Intellectual and Artistic Works Law offers a broad definition of the technological measures that rights owners can use to protect their artistic rights.

Law stated - 13 November 2025

Industry standards

- 9 | What consideration has been given in statutes, regulation or case law to the impact of the adoption of proprietary technologies in industry standards?

As per article 129 of the Industrial Property Law, a compulsory licence may be given if there is public interest. As per article 132 of the same law, public interest may arise upon the wide adoption of proprietary technologies due to public health and national security.

However, the Guidelines on Horizontal Cooperation Agreements contains explanations regarding access to industry standard patents on fair, reasonable and non-discriminatory (FRAND) terms. According to paragraph 258, FRAND commitments are designed to ensure that any essential technology under IP rights protection incorporated in a standard is accessible to the users of that standard on a FRAND basis. In particular, these commitments can prevent IP rights holders from making the implementation of a standard difficult by refusing to license or by requesting unfair or unreasonable (excessive) fees or discriminatory fees after the industry has been locked into a standard.

Law stated - 13 November 2025

COMPETITION

Competition legislation

- 10 | What statutes set out competition law?

The main legal source of competition law in Türkiye is Law No. 4054 on the Protection of Competition (the Competition Law), akin to EU law. The Competition Law aims to ensure the protection of competition in the market and to prevent anticompetitive actions such as preventing, distorting or restricting competition in markets for goods and services and the abuse of dominance, etc. In addition, some regulations, communiqués and guidelines further regulate this field.

Law stated - 13 November 2025

IP rights in competition legislation

- 11 | Do the competition laws make specific mention of any IP rights?

There is no specific provision that relates to IP rights in the Competition Law. That said, Block Exemption Communiqué No. 2008/2 on Technology Transfer Agreements (the Communiqué) regulates the compatibility of IP rights licence agreements with the Competition Law. The Communiqué provides that provisions contained in technology transfer agreements that restrict competition under article 4 of the Competition Law are granted exemption when they are accepted to satisfy the requirements under article 5 of the Competition Law.

In determining whether technology transfer agreements that are restrictive of competition satisfy the requirements of the exemption, the power held by the parties to such agreements within the relevant product and technology market must be taken into account. In other words, the existence of substitutable technologies and substitutable products at the disposal of the competitors of the parties is relevant and important.

In the assessment of technology transfer agreements, paying attention to whether the agreement is between competitors or not is also important. It is less likely for technology transfer agreements between non-competitors to affect competition adversely than those that are between competitors. Therefore, rules to be applied to technology transfer agreements between competitors and between non-competitors, and especially factors such as market share thresholds and limitations that would exclude the agreement from the coverage of block exemption, need to be differentiated.

Where the market shares of the undertakings that are party to technology transfer agreements exceed the market share thresholds set forth under the Communiqué, a detailed examination needs to be made so that it can be determined whether the said agreements are caught by article 4 of the Competition Law and whether they satisfy the requirements of exemption under article 5. In making this assessment, all of the legal and economic factors related to the agreements, particularly the structure of the relevant technology and product market, must be taken into account.

The Communiqué aims to protect competition within the market and provide legal certainty to undertakings. To that end, the Communiqué establishes the general conditions of block exemption for technology transfer agreements and enumerates the provisions that would prevent the said agreements from qualifying for the block exemption. In addition to these, rather than the approach whereby an agreement is excluded from the scope of the block exemption as a whole in relation to certain obligations, it would be appropriate to adopt the practice whereby the only relevant obligations are disqualified from block exemption and thus the agreements containing these continue to qualify for the block exemption. Whereas the existence of issues such as market share thresholds, obligations that leave the agreement out of the scope of the block exemption and obligations that are unable to qualify for block exemption is generally sufficient to protect competition within the market, the exemption will be withdrawn where it is established that an agreement or networks of agreements that qualified for exemption under this Communiqué still do not satisfy the requirements under article 5 of the Competition Law.

Although the Communiqué covers only those technology transfer agreements between a licensor and a licensee, the provisions of these agreements not constituting the main purpose of the agreements — that is, directly relating to the implementation of the technology concerned by the agreement — shall also be covered by the exemption. This Communiqué shall also apply where technology transfer agreements cover issues related to more than one level of trade such as the obligations the licensee must impose on resellers, for example, in relation to setting up of a certain distribution system. However, in such a case, such obligations need to be in conformity with the relevant regulations. This Communiqué shall not apply to supply and distribution agreements between the licensee and their buyers.

Among the other agreements to which the Communiqué shall not apply are also the licence agreements made through a pooling of technologies to grant licences to third parties as a

package. Licence agreements drawn up for the purpose of having an undertaking carry out research and development activities shall not be dealt with under this Communiqué either.

Law stated - 13 November 2025

Review and investigation of competitive effects from exercise of IP rights

- 12** | Which authorities may review or investigate the competitive effect of conduct related to exercise of IP rights?

When the competitive effect of conduct related to the exercise of IP rights falls within the scope of the Competition Law, the Turkish Competition Authority (TCA) may review or investigate the relevant conduct.

Law stated - 13 November 2025

Competition-related remedies for private parties

- 13** | Can a private party recover for competition-related damages caused by the exercise, licensing or transfer of IP rights?

Yes. Any party that prevents, distorts or restricts competition via practices, decisions, contracts or agreements contrary to the Competition Law, or abuses its dominant position in a particular market for goods or services may be obliged to compensate the injured party for any damages suffered. If the damage has resulted from the behaviour of more than one person, they are responsible for the damage jointly.

In this regard, it is not important whether the person claiming compensation for the damage is a private party or not; anyone can recover the damage; whether the damage is caused by the exercise, licensing or transfer of IP rights does not matter either, as long as it causes competition-related damages. Those that suffer as a result of the prevention, distortion or restriction of competition may claim as a damage from the civil court the difference between the cost they paid and the cost they would have paid if competition had not been limited. Competing undertakings affected by the limitation of competition may request that all of their damages be compensated by the undertaking or undertakings that limit competition. In determining the damage, all profits expected to be gained by the injured undertakings are calculated by taking into account the balance sheets of the previous years as well. If the damage arises from an agreement or decision or gross negligence of the parties, the judge may, upon the request of the injured, award compensation threefold of the material damage incurred or of the profits gained or likely to be gained by those that caused the damage.

Law stated - 13 November 2025

Competition guidelines

- 14** |

Have the competition authorities, or any other authority, issued guidelines or other statements regarding the overlap of competition law and IP?

Guidelines on the Application of articles 4 and 5 of Law No. 4054 on the Protection of Competition to Technology Transfer Agreements issued by the TCA contain statements regarding the overlap between competition law and IP law. Indeed, paragraph 5 states that legal regulations related to IP granting exclusive rights of exploitation to rights holders do not imply that IP rights are immune from the application of competition law. Articles 4, 5 and 6 of the Competition Law are also applicable to agreements whereby the holder of an IP right licenses another undertaking to exploit its IP rights. However, the grant of exclusive right to rights holders does not imply that there is an absolute conflict between IP rights and competition rules. Indeed, both bodies of law have the same basic objective of promoting consumer welfare and an efficient allocation of resources. As is known, innovation constitutes an essential and dynamic component of an open and competitive market economy. Within this scope, while IP rights promote dynamic competition by encouraging undertakings to invest in developing new or improved products and processes, competition protected by competition law puts pressure on undertakings to innovate. Therefore, the common objective of IP rights and competition is to promote innovation and ensure a competitive exploitation thereof.

Law stated - 13 November 2025

Exemptions from competition law

15 | Are there aspects or uses of IP rights that are specifically exempt from the application of competition law?

There are no aspects or uses of IP rights that are specifically exempt from the application of competition law.

Law stated - 13 November 2025

Copyright exhaustion

16 | Does your jurisdiction have a doctrine of, or akin to, 'copyright exhaustion' (EU) or 'first sale' (US)? If so, how does that doctrine interact with competition laws?

Yes, 'copyright exhaustion' is also applicable in Türkiye. In that sense, the enforceability of the copyrights in a product is exhausted after the first sale or other means of transfer of ownership. The exhaustion of rights allows for free movement across borders all over the world, thus facilitating competition. Moreover, the principle of exhaustion prevents copyright holders from taking control of, or influencing, the distribution and creating a monopoly. Within this context, the copyright owner cannot control prices depending on the country in which the copyrighted product is sold.

Law stated - 13 November 2025

Import control

- 17** | To what extent can an IP rights holder prevent 'grey-market' or unauthorised importation or distribution of its products?

The principle of exhaustion of rights plays an important role in this matter. With the amendments made to the Industrial Property Law in 2017, Türkiye adopted the principle of 'international exhaustion', meaning that the rights of the IP holder are exhausted once the products are offered to the market anywhere in the world, and the world is regarded as a single market or 'one country'. Therefore, the IP holder (1) can no longer claim any right to control against a third party that offers these products to the market again, and (2) cannot prevent grey-market or parallel import.

Articles 4(d) and 6(a) of the Competition Law prohibit behaviour that prevents competitors from entering the market and restricts their activities. In this context, as the prevention of parallel importation is regarded to bear these effects, it is also evaluated to be within the scope of the Competition Law. Once an IP owner or authorised seller places a product on the market, a third party's parallel import of that product cannot be restricted, even by the exclusive distributor, unless the third party changes or impairs the product.

Law stated - 13 November 2025

Jurisdictional interaction between competition laws and IP rights

- 18** | Are there authorities with exclusive jurisdiction over IP-related or competition-related matters? For example, are there circumstances in which a competition claim might be transferred to an IP court to satisfy subject matter jurisdiction? Are there circumstances where the resolution of an IP dispute will be handled by a court of general jurisdiction?

Claims and damages arising from competition law are not exclusively overseen by a certain authority, and these claims could be asserted within a civil lawsuit filed accordingly with the commercial courts in general. However, IP claims are overseen by the Civil Court of Intellectual and Industrial Rights and the Criminal Court of Intellectual and Industrial Rights. These courts have the duty and power to decide upon IP-related matters. If a claim is filed with the wrong authority, this would not be transferred to the relevant authority but rather would be rejected, and the claimant would have to file its claim once again within the correct jurisdiction. While all IP-related disputes are overseen by exclusive courts, courts with general jurisdiction would step in in cities where a special court is not established.

Law stated - 13 November 2025

MERGER REVIEW

Powers of competition authority

- 19** | Does the competition authority have the same authority with respect to reviewing mergers involving IP rights as it does with respect to any other merger?

Yes, the Turkish Competition Authority (TCA) has the same authority with respect to reviewing mergers involving IP rights as it does with respect to any other merger.

Law stated - 13 November 2025

Analysis of the competitive impact of a merger involving IP rights

- 20** | Does the competition authority's analysis of the competitive impact of a merger involving IP rights differ from a traditional analysis in which IP rights are not involved? If so, how?

Under the Competition Law, the same general merger control analysis is applicable for transactions involving IP rights. However, the TCA may claim an innovation-based theory of harm while analysing a merger involving IP rights.

Law stated - 13 November 2025

Challenge of a merger

- 21** | In what circumstances might the competition authority challenge a merger involving the transfer or concentration of IP rights? Does this differ from the circumstances in which the competition authority might challenge a merger in which IP rights were not a focus?

For transactions exceeding the turnover thresholds set forth under Communiqué No. 2010/4 Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board, as part of the notification phase of the merger control procedure, the TCA gives a special focus to transactions in which one of the transaction parties has more than 25 per cent market share and another one of the transaction parties holds important IP rights for that market. On 4 May 2022, the TCA amended the relevant legislation, stating that transactions regarding the acquisition of technology undertakings operating in the Turkish geographical market or having R&D activities or providing services to users in Türkiye shall be subject to notification to the TCA regardless of the turnover thresholds of the acquired undertaking. The turnover of the acquiring undertaking must still exceed the relevant thresholds stipulated for regular mergers and acquisitions. In this regard, 'technology entities' are defined as undertakings or related assets operating in the fields of digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agrochemicals and health technology.

Regardless of whether the transaction is relating to IP rights or not, the merger control test in Türkiye considers not only whether the merger would create or strengthen a dominant position perspective, but also whether the merger would significantly impede competition in the relevant markets.

In the *Sanofi* decision (24-31/722-305, 25 July 2024), the TCA considered the acquisition of trademark and licence rights relating to 15 products of Sanofi Group companies by Avixa under Article 7 of the Competition Law as part of a merger transaction requiring authorisation. The TCA found that the transaction resulted in both horizontal and vertical

overlaps; however, it concluded that these overlaps did not give rise to competitive concerns and therefore cleared the transaction.

In the *Logo Yazılım* decision(24-24/577-243, 4 June 2024), the TCA assessed the acquisition of KoçSistem's IP rights relating to e-transformation software by Logo Yazılım under article 7 of the Competition Law as part of a merger transaction requiring authorisation. The TCA found that the transaction resulted in both horizontal and vertical overlaps; however, it also concluded here that these overlaps did not give rise to competitive concerns and therefore cleared the transaction.

Law stated - 13 November 2025

Remedies to address the competitive effects of mergers involving IP

22 | What remedies are available to address competitive effects generated by a merger when those effects revolve around the transfer of IP rights?

Proposed remedies aimed at eliminating competition problems created by a concentration transaction may be structural or behavioural. Proposed structural remedies generally involve the divestiture of a certain business, while proposed behavioural remedies involve the arrangement of the future market behaviours of the parties. The main purpose of the proposed remedies is to protect the competitive structure that existed in the market prior to the transaction. Therefore, because they quickly bring about a sustainable result (in terms of eliminating competition problems and not requiring supervision after being implemented), structural remedies — particularly those causing structural changes in the market such as the divestiture of a business — more properly fit the purpose expected from proposed remedies. However, proposed behavioural remedies such as ensuring access to important infrastructure and raw materials in a non-discriminatory manner are also likely to solve competition problems caused by a transaction.

As regards divestiture packages, the parties shall be asked to waive all of the rights relating to the intangible assets included in the divestiture package. For instance, granting a limited-time IP licence falls short of eliminating the anticompetitive effects of the transaction because sometimes the licensee is not able to compete effectively with the parties following the expiry of the licence period. Further, due to the fact that a licence — because it requires an ongoing relationship between the two parties — allows the licensor to affect the behaviours of the licensee in the market and conflict arises between the licensee and the licensor with regard to the scope and conditions of the licence, proposed remedies involving the granting of a licence concerning the intangible assets at issue (instead of divesting those assets) are not considered as suitable remedies, save for exceptional cases.

In exceptional cases where competitive problems arise from a market position based on the superiority of owning a certain technology or IP right, the divestiture of the said technology or IP right may be considered a suitable remedy.

As regards the access remedies, remedies foreseeing the granting of access to key infrastructure, network, technologies such as patent, know-how or other IP rights and essential inputs may be accepted as an appropriate remedy in some cases to facilitate market entry by competitors.

In addition, the use of certain IP rights may lead to the foreclosure of competitors that depend on those technologies as an essential input in downstream markets. For instance, this may be the case where competition problems about the transaction arise as the parties withhold information necessary for the interoperability of different equipment. Similarly, in certain sectors where undertakings must cooperate by licensing patents to each other, the possibility of the parties to introduce licensing behaviour with different terms than those in the past may lead to competition problems. This type of competition problem may be eliminated by a commitment to grant licences on the same basis and reasonable conditions after the transaction. In those cases, the proposed remedies should give non-exclusive access to the licence or confidential information for the IP right in question to the third parties concerned. Moreover, the remedy must clearly determine the conditions under which the licence is given and the licence charge or fee not to impede the effective implementation of such remedy. An alternative may be granting royalty-free licences.

In the *Synopsys* decision (25-09/202-103, 6 March 2025), the TCA assessed Synopsys's acquisition of sole control of Ansys under article 7 of the Competition Law. The case concerned complex IP issues in the electronic design automation (EDA) and simulation and analysis (S&A) software markets, with particular emphasis on 'design intellectual property', defined as pre-designed and reusable building blocks of chip design critical for the development of complex chips and systems on chips.

The TCA examined conglomerate effects, noting that Synopsys's EDA tools and Ansys's semiconductor-related S&A software were widely used in multi-stage chip design flows, where interoperability between different suppliers' tools was essential. The TCA evaluated whether the merged entity could offer integrated solutions while limiting the interoperability of competing products, and whether bundling or tying practices could foreclose rivals. The TCA found that customers can easily combine IP products from different providers and integrate them into their designs as needed, since chip design does not require the use of specific IP and interoperability and adherence to industry standards allow flexibility. Accordingly, the TCA concluded that the merged entity would not have the ability or incentive to hinder or restrict the activities of its rivals in the S&A and/or EDA software markets through a bundling or tying strategy leveraging its position in the design IP segment.

Further, the TCA found that the activities of the transaction parties overlap horizontally in the EDA market's sub-segments, in terms of offering similar products in the EDA field, as well as in the S&A market's sub-segments — namely, the optical and photonics software markets. Ultimately, the transaction was cleared subject to structural remedies submitted by the parties to the EU Commission. Synopsys committed to divest its Optical Solutions Group business unit to Keysight Technologies and to implement additional measures concerning RTL power consumption analysis. With these commitments, the TCA approved the transaction on the grounds that effective competition would not be significantly impeded, and the horizontal overlap between the parties' activities in the optical and photonic software markets would be eliminated in both the global and Turkish markets.

Law stated - 13 November 2025

SPECIFIC COMPETITION LAW VIOLATIONS

Conspiracy

23 | Can the exercise, licensing or transfer of IP rights create price-fixing or conspiracy liability?

Yes, under the Competition Law, obtaining, granting or transferring IP rights is regulated under the general provisions of anticompetitive agreements (ie, article 4 of the Competition Law), provided that they do not satisfy the block or individual exemption conditions. According to article 4 of the Competition Law, agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings that have as their object, effect or likely effect the direct or indirect prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited. Such cases are, in particular, as follows:

- fixing the purchase or sale price of goods or services, elements such as cost and profit that form the price, and any terms of purchase or sale;
- partitioning markets for goods or services, and sharing or controlling all kinds of market resources or elements;
- controlling the amount of supply or demand in relation to goods or services, or determining them outside the market;
- complicating and restricting the activities of competing undertakings, or excluding firms operating in the market by boycotts or other behaviour, or preventing potential new entrants to the market;
- except exclusive dealing, applying different terms to persons with equal status for equal rights, obligations and acts; and
- contrary to the nature of the agreement or commercial usages, obliging to purchase other goods or services together with a good or service, or tying a good or service demanded by purchasers acting as intermediary undertakings to the condition of displaying another good or service by the purchaser, or putting forward terms as to the resupply of a good or service supplied.

Law stated - 13 November 2025

Scrutiny of settlement agreements

24 | How would a settlement agreement terminating an IP infringement dispute be scrutinised from a competition perspective? What are the key factors informing such an analysis?

Settlement agreements are considered within the scope of the Block Exemption Communiqué No. 2008/2 on Technology Transfer Agreements (the Communiqué).

Licensing may serve as a means of settling disputes or avoiding that one party exercises its IP rights to prevent another party from exploiting its own technology rights. Licensing, including cross-licensing, in the context of settlement agreements is generally not as restrictive of competition since it allows the parties to exploit their technologies after the

agreement is concluded. However, some of the terms and conditions of such agreements may be caught by article 4 of the Competition Law. Licensing in the context of settlement agreements is treated in the same way as other licence agreements. Therefore, in the case where there are technically substituted technologies, to what extent those technologies are in a one-way or two-way blocking position should be analysed. If a blocking position exists, the parties will not be considered competitors.

The block exemption applies as long as the agreement does not include the hardcore competition restrictions listed in article 6 of the Communiqué. The hardcore competition restrictions listed in article 6(2) of the Communiqué will apply to cases where the parties clearly know that there is not a blocking position between their technologies and, as a result, they are competitors. In such cases, settlement is a means to restrict the competition present at the time of the conclusion of the agreement.

Settlement agreements whereby the parties cross-license each other's technologies and impose restrictions on the use of such technologies, including restrictions on licensing to third parties, may be caught by article 4 of the Competition Law. Where the parties have a significant degree of market power and the agreement imposes restrictions that go beyond what is required to unblock, the agreement is likely to be caught by article 4 of the Competition Law even if a mutual blocking position exists.

Where under the agreement the parties are entitled to use each other's technology and the agreement extends to future developments, it is necessary to assess the impact of the agreement on the parties' incentive to innovate. In cases where the parties have a significant degree of market power, the agreement may be caught by article 4 of the Competition Law where the agreement prevents the parties from gaining a competitive lead over each other. Agreements that eliminate or substantially reduce the possibilities of one party to gain a competitive lead over the other reduce the incentive to innovate and thus adversely affect an essential part of the competitive process. The achievement of the objective of the agreement — namely, to ensure that the parties can continue to exploit their own technology without being blocked by the other party — does not require that the parties agree to share future innovations. However, the parties are unlikely to be prevented from gaining a competitive lead over each other where the purpose of the licence is to allow the parties to develop their respective technologies and where the licence does not lead them to use the same technological solutions. Such agreements merely create freedom of movement by preventing future infringement claims by the other party.

The TCA has issued a number of decisions that clarify its position on settlement agreements. In the *Modanisa* decision (21-57/789-389, 25 November 2021), the TCA clarified how it scrutinises the granting of individual exemptions to a settlement agreement, addressing concerns regarding wide non-brand bidding restrictions and specifically negative matching obligations. In addition, in its investigation against undertakings operating in the online marketplaces in the automotive sector (*Arabam Com* decision (23-32/630-212, 20 July 2023), *LetGo* decision (23-32/629-211, 20 July 2023) and *Araba Sepeti* decision (23-31/589-199, 13 July 2023)) and investigation against Obilet (-*Obilet* decision (23-27/521-177, 15 June 2023)), the TCA evaluated 'negative matching' obligations and advertisements bans between the relevant undertakings. Lastly, upon ETS Tur's negative clearance and individual exemption application, the TCA examined ETS Tur's agreements within the scope of the restrictions regarding commercial and advertisement usage of intellectual property rights (*ETS Tur* decision (23-61/1189-424, 28 December

2023)). Therefore, it would be suitable to state that the TCA has framed the scope of trademark protection considering competition-restricting effects.

Law stated - 13 November 2025

Reverse payment patent settlements

25 | How have the competition laws been applied to reverse payment patent settlements in your jurisdiction?

In Türkiye, there is no reverse payment patent settlement agreement subjected to the TCA's scrutiny because such scrutiny would delay the entry of a potential competitor into the market.

Law stated - 13 November 2025

(Resale) price maintenance

26 | Can the exercise, licensing, or transfer of IP rights create liability under (resale) price maintenance statutes or case law?

Yes. Resale price maintenance is considered to be a hardcore restriction of competition and accordingly prohibited under the Competition Law. Specifically, according to article 6(3)/a of Block Exemption Communiqué No. 2008/2 on Technology Transfer Agreements, restriction of a party's right to determine its sales prices is defined as a 'hardcore restriction'. However, according to the same Communiqué, it is possible to determine a maximum selling price or recommend a selling price, provided that it does not turn into a fixed or minimum selling price as a result of pressure or incentive of any of the parties.

Law stated - 13 November 2025

Exclusive dealing, tying and leveraging

27 | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to exclusive dealing, tying and leveraging?

Yes. In its *Microsoft* decision (24-53/1166-502, 12 December 2024), the TCA examined allegations concerning tying practices under the theory of leveraging. Two main claims were raised: (1) Microsoft tied its cloud-based Dynamics 365 ERP system to its Azure cloud computing services, thereby forcing customers wishing to purchase the on-premise Dynamics 365 product to also purchase Azure; and (2) Microsoft compelled undertakings using its on-premise ERP systems to procure the necessary infrastructure components (eg, servers and databases) from Microsoft as well.

The TCA considered, in particular, whether the alleged conduct could foreclose competition in the tied product market. It was observed that undertakings using cloud-based ERP

systems could freely purchase unrelated cloud services (eg, storage or data sharing solutions) from alternative providers, and that Microsoft customers were not required to purchase non-ERP related Azure products. Moreover, third-party cloud providers remained interoperable with Microsoft's Dynamics 365, and Microsoft's relatively limited market share in ERP software further reduced the likelihood of any exclusionary effects. In addition, the TCA considered that Microsoft's configuration of its on-premise ERP system on top of other Microsoft infrastructure products is a practice also implemented by other undertakings in the sector and is reasonable due to the functioning of ERP systems; therefore, the TCA could not conclude that Microsoft forced its customers to purchase two separate products together within this framework. Taking these factors into account, the TCA held that the allegations did not establish an abuse of dominance.

The TCA also reviewed in its *Logo Yazılım* decision (11-26/497-154, 28 April 2011) the abuse of dominance with respect to tying and bundling practices, in which the licensing of IP rights was tied to the licensing of other IP rights, and applied the general provisions set forth under article 6 of the Competition Law.

Law stated - 13 November 2025

Abuse of dominance

28 | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to monopolisation or abuse of dominance?

Yes. In its *Tetra Pak* decision (24-32/758-319, 1 August 2024), the TCA found that the Tetra Pak/Tetra Laval economic entity abused its dominant position in the markets for the production and sale of aseptic liquid food carton filling machines and aseptic liquid food cartons by using its trademark rights and pending trademark applications in a manner that facilitated a de facto tying practice.

The TCA evaluated that the customers purchasing aseptic liquid food carton packaging machines (the tying product) from the dominant undertaking (Tetrapak Türkiye) were also required to purchase aseptic liquid food carton packages (the tied product) from the same undertaking. Further, the TCA found that Tetrapak's 3D trademark applications were filed with the aim of hindering competitors' activities, as various versions of the prism-shaped packaging — including with or without caps, with or without straw holes, and with or without verbal elements — were attempted to be registered in a way that would exclude competitors entirely from using the shape. Considering the foregoing, the TCA concluded that Tetra Pak's trademark portfolio and certain contractual provisions were employed to strengthen the effects of the tying, thereby restricting competition and amounting to an abuse of dominance. As a result, the TCA imposed an administrative fine on Tetra Pak/Tetra Laval. In addition to the fine, Tetra Pak was required to renounce its trademark and design rights and withdraw its pending 3D trademark applications.

In its *Storytel* decision (23-55/1076-380, 30 November 2023), the TCA examined the allegation that Storytel breached the Competition Law by entering into long-term exclusivity agreements with publishers/rights holders, thereby preventing rival undertakings from entering and expanding in the audiobook market. The case was closed following the acceptance of commitments submitted by Storytel. However, this case highlights the TCA's

approach to IP licensing practices that create foreclosure risks, particularly in digital content markets where exclusivity arrangements combined with financial incentives can hinder competitors' access to essential content and reduce consumer choice.

In its *Philips* decision (19-46/790-344, 26 December 2019), the TCA deemed that standard-essential patents held by Philips grant monopolistic power to Philips, and Philips's practices led to abuse of dominance under article 6 of the Competition Law.

The TCA also ruled in its *Bilsa* decision (07-26/238-77, 21 March 2007) that Bilsa abused its dominant position by disrupting the competition in the market for school software. In this earlier case, the TCA found that Bilsa took advantage of the technological and commercial benefits of encryption and did not let customers change service providers by refusing to provide encryption keys that would decode the data the schools stored within the software. This way, the schools that were not satisfied and wanted to change computer programs were unable to choose the products of another company as they could not risk losing their data pool. In this regard, the TCA found the encryption defences by Bilsa not to be essential to protect its IP rights; rather, it found that the encryption prevented schools from terminating their contracts by hindering their ability to access their data after the agreement was terminated.

Law stated - 13 November 2025

Refusal to deal and essential facilities

29 | Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to refusal to deal and refusal to grant access to essential facilities?

The essential facility doctrine is accepted by the TCA; therefore, a simple refusal to license by a dominant undertaking does not automatically result in a violation of article 6 of the Competition Law. The Guidelines on the Assessment of Abusive Conduct by Undertakings with Dominant Position elaborate on refusal to supply as a form of abuse, stating in paragraph 43 that three cumulative conditions are sought by the TCA in the evaluation of such a claim:

- the refusal should relate to a product or service that is indispensable to be able to compete in a downstream market;
- the refusal should be likely to lead to the elimination of effective competition in the downstream market; and
- the refusal should be likely to lead to consumer harm.

Where the TCA deems an IP right an essential facility and finds an infringement by way of refusal to deal, mandatory licensing might be a possible remedy.

Law stated - 13 November 2025

REMEDIES

Remedies for violations of competition law involving IP

30 | What sanctions or remedies can the competition authorities or courts impose for violations of competition law involving IP?

Article 16(3) of the Competition Law provides that undertakings that commit behaviours prohibited under articles 4, 6 and 7 of the Competition Law will receive an administrative fine, to be determined by the Turkish Competition Authority (TCA), of up to 10 per cent of the annual gross revenues of the said undertakings, associations of undertakings or members of such associations generated by the end of the financial year preceding the decision, or generated by the end of the financial year closest to the date of the decision if it is not possible to calculate it,.

Article 16(4) of the Competition Law provides that managers or employees of undertakings or associations of undertakings that are found to have had a decisive influence on the violation may be subject to fines up to 5 per cent of the fine given to the undertakings or associations of undertakings pursuant to article 16(3).

On 27 December 2024, the TCA announced significant amendments to the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuse of Dominant Position (the Regulation on Fines), introducing key changes aimed at enhancing flexibility and enforcement. The amendments abolish the previous definitions of 'cartel violations' and 'other violations', which determined base fine rates of 2 to 4 per cent and 0.5 to 3 per cent, respectively. This removal grants the TCA broader discretion in setting fines. Additionally, the fine calculation for the duration of the violation has been revised. Instead of the fixed increases of 50 per cent for breaches lasting one to five years and 100 per cent for breaches exceeding five years, fines will now increase incrementally by 20 per cent for each year of infringement (eg, 20 per cent for one to three years, 40 per cent for two to three years). The regulation also removed fixed limits for reductions based on mitigating circumstances, leaving the extent of reductions entirely to the TCA's discretion. Furthermore, a new clause broadens the scope for aggravating circumstances if parties continue the infringement after being notified of the investigation, no longer limiting this to cartel violations. Following the amendments to the Regulation on Fines, Guidelines on Fines were published on 10 February 2025 that clarify the implementation of the regulation.

However, as per article 129 of the Industrial Property Law, a compulsory licence may be granted by the TCA if the patent holder engages in anticompetitive practices during the use of the patent. Additionally, if the TCA determines that there is an infringement of article 4, 6 or 7 of the Competition Law, then it shall notify in its final decision the behaviours that the relevant undertakings or associations of undertakings must carry out (or refrain from carrying out) to re-establish competition, and any structural remedies in the form of undertakings transferring certain businesses, partnership shares, IP rights or assets. Behavioural and structural remedies must be proportionate to the infringement and necessary to bring the infringement effectively to an end. Structural remedies such as divestitures shall only apply where previous behavioural remedies imposed have been ineffective. If the final decision finds that behavioural remedies have been unsuccessful, relevant undertakings or associations of undertakings shall be given at least six months to comply with the structural remedy.

Moving back to damages, the civil courts may also order compensation for damages incurred as a result of the violation.

Law stated - 13 November 2025

Competition law remedies specific to IP

- 31** | Do special remedies exist under your competition laws that are specific to IP matters?

Under the Competition Law, there are no special remedies that directly address IP-related considerations, except article 129 of the Industrial Property Law, which governs compulsory licence.

Law stated - 13 November 2025

ECONOMICS AND APPLICATION OF COMPETITION LAW

Economics

- 32** | What role has competition economics played in the application of competition law in cases involving IP rights?

There is no specific case law involving IP rights where competition economics played a role. However, in the *Philips* decision (19-46/790-344, 26 December 2019), the complainant Vestel submitted a reasonable royalty valuation report to the Turkish Competition Authority.

Law stated - 13 November 2025

RECENT CASES AND SANCTIONS

Recent cases

- 33** | Have there been any recent high-profile cases dealing with the intersection of competition law and IP rights?

Philips

In the Turkish Competition Authority's (TCA) *Philips* decision (19-46/790-344, 26 December 2019), the TCA assessed Philips's standard-essential patents and its licensing practice. The TCA found that the standard-essential patents granted Philips market dominance, and Philips's conduct in licensing the patents was exclusionary and discriminatory; hence, Philips was abusing its dominant position. The TCA thus found that Philips was engaged in anticompetitive practices by not acting in accordance with fair, reasonable and non-discriminatory (FRAND) principles; the TCA consequently fined Philips 0.75 per cent of its turnover generated in the financial year preceding the date of the decision. However, this decision was annulled by the Ankara 7th Administrative Court on 3 June 2021, with the Ankara Regional Administrative Court 8th Administrative Law Chamber upholding the

decision on 29 April 2022. Thereupon, the TCA and Vestel (the complainant in the case) appealed the decision to the Council of State. In its decision (E 2022/2966, K 2022/4240), the 13th Chamber of the Council of State partially quashed the decision of the Regional Court and remanded the case. The Council of State held that the decision of the first instance court had been lawful in terms of the application to an independent third party, the transparency principle and the reversal of the burden of proof; however, the Council of State found that:

- because of its dominant position in the market, Philips had a special responsibility with regard to competition law to license its standard-essential patents under FRAND terms; and
- the agreement between Philips and Vestel preventing Vestel from challenging the validity of Philips's patent had been signed after Philips had intimidated Vestel through a court order.

In light of these considerations, the Council of State held that the non-challenge and termination clause in the agreement between Philips and Vestel constituted an abuse of market dominance and the TCA had therefore not violated the law when it imposed an administrative fine on Philips.

On remand, the Ankara Regional Administrative Court 8th Administrative Chamber followed the Council of State's decision, thereby annulling the Ankara 11th Administrative Court decision (E 2020/1525, K 2021/1121) and rejecting the case (decision E 2023/192, K 2023/267). Philips has not appealed to the decision, making the judgment final.

Modanisa

In the *Modanisa* case, the TCA analysed an individual exemption for a settlement agreement related to IP rights. The case involved a settlement agreement between online retailers Modanisa Elektroniik Ma'azac İ'k ve Ticaret A.Ş. (Modanisa) and EST Marjinal Medikal Tanıtım ve İletişim Sanayi ve Ticaret Ltd. Şti (Sefamerve) pertaining specifically to the use and recognition of trademarked keywords and derivatives to prevent confusion in online advertisements and announcements. Under the settlement agreement, Sefamerve would be adding the word 'Modanisa', which is the registered trademark of Sefamerve, and the phrases 'sefa merve' and 'sefa' as negative keywords in mobile applications or desktop platforms, all internet channels in Türkiye or abroad, search engines and all social media channels; Sefamerve would also not use advertisement targeting for these trademarks and phrases in online advertising environments.

The TCA first evaluated the case in terms of negative clearance and stated that narrow non-brand bidding restrictions may fall within the scope of trademark protection, but wide non-brand bidding agreements and negative matching obligations would exceed the scope of trademark protection provided by IP law. Accordingly, the TCA concluded that a negative clearance cannot be granted on the grounds that the settlement may have a restricting effect on competition.

In the individual exemption assessment, the TCA stated that the agreement between the undertakings not to use each other's registered trademarks in their advertisements would be sufficient to prevent misleading consumers. Restrictive obligations beyond this would not provide any additional benefit to consumers; on the contrary, they may harm consumers

by reducing the visibility of advertisers and competition between undertakings. However, the TCA stated that if the settlement agreement was amended in a way that would eliminate the obligation not to target the keywords 'nisa' and 'sefa', which are not registered as trademarks, as well as the negative matching obligation, it would fulfil all the conditions required for individual exemption under article 5 of the Competition Law and thus could benefit from individual exemption.

Easysnap/Altıparmak

In another decision regarding licence agreements (21-51/715-356, 21 October 2021), the TCA reviewed an exclusive licence agreement between Easysnap Technology SRL (Easysnap) and Altıparmak Gıda Sanayi ve Ticaret A.Ş. (Altıparmak), whereby the former had granted exclusive rights to the latter in Türkiye. The TCA found that the vertical and exclusive licence agreement between the parties could not benefit from the block exemption stipulated under Communiqué No. 2008/2 as the applicable market share threshold of 40 per cent was exceeded. However, the decision set forth that the relevant agreement could benefit from individual exemption.

Vava Cars, Arabam Com, LetGo and Araba Sepeti

The TCA investigated an allegation that various undertakings operating in the online marketplaces in the automotive sector restricted competition through agreements between the parties concerning the 'negative matching' function of the text advertisements displayed in Google search results. The TCA rejected the commitment application by one undertaking (Vava Cars), while the new settlement procedure terminated the investigation into the practices of Arabam Com, LetGo and Araba Sepeti.

The settlement referred above is a procedure introduced into the Turkish antitrust law framework in the middle of 2020 through an amendment to the Competition Law, offering a streamlined process for concluding investigations. Under this scheme, the TCA can initiate the settlement process, either upon request or ex officio, in light of the procedural benefits derived from expediting the investigation process and considering any differences in opinion regarding the existence or extent of the violation. Within this framework, the undertakings under investigation can submit a settlement statement admitting to the violation and its scope, among other relevant issues, enabling the TCA to conclude the investigation for these undertakings and apply a reduction in administrative fines ranging from 10 per cent to 25 per cent. Undertakings that conclude their cases through settlement are precluded from legally appealing the administrative fines and the contents of the settlement text. The intricacies of the settlement procedure are elaborated in the Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position.

The TCA *Arabam Com, LetGo and Araba Sepeti* investigation involved an overall evaluation of negative matching; it also assessed the extent to which the scope of protection provided to the trademarks by IP law can be extended through negative matching agreements.

Vava Cars sent warning (cease-and-desist) letters to several undertakings to stop their use of the 'Vava Cars' brand name in their Google Ads keyword lists, to which the undertakings in question responded that there was no such usage. The undertakings

further communicated that although they did not use each other's brand names in their Google Ads keyword lists, when they did not add others' brand names in their negative keyword lists, Google would suggest ads of one brand to a user searching for another brand with generic keywords in the same sector. Accordingly, the undertakings agreed to put each other's brand names in their negative keyword lists.

The TCA found that the mutual addition of each other's brands to the negative matching function amounted to a breach of competition. This is because requesting non-branded words to be included in the negative keyword list exceeds the limits of the brand right protected under Law No. 6769 on Industrial Property (the Industrial Property Law)

While the decision regarding Vava Cars has not been published yet, the *Arabam Com*, *LetGo* and *Araba Sepeti* decisions are the first to impose a fine as per the TCA's approach set out in the *Modanisa* decision, stating that agreements whereby undertakings mutually include their brands in negative matching in Google search ads will be considered anticompetitive under article 4 of the Competition Law.

Obilet

Another decision evaluating the antitrust implications of advertising bans is the TCA's *Obilet* decision. This decision analyses for the first time an advertisement prohibition in vertical agreements.

Obilet operates in the field of bus and flight ticket price comparison and online ticket sales; it also distributes timetable data to business customers that are its competitors in the ticket sales platform market. One of the allegations against Obilet concerned the broad prohibitions in Obilet's business agreements on using carrier company brand names in search engine/Google Adwords.

In its decision, the TCA considered whether the advertising prohibitions imposed in Obilet's agreements could be evaluated within the scope of the Competition Law or not.

The TCA noted that Obilet made the carrier companies' timetable data available to the ticket sales platforms through its integrated software system that enabled each platform to sell tickets based on the timetable data it accessed. The TCA held that in such cases, advertisement restrictions imposed on carrier company brands are restrictions made within the scope of vertical relationships between Obilet and its customers (bus companies). By contrast, the TCA found that Obilet and its customers are competitors in the ticket sales platform market and, therefore, advertising restrictions on Obilet's own brand names here are restrictions made within the scope of horizontal relationships.

Since the assessment to be made in terms of the protection of the Industrial Property Law and the scope of advertisement (narrow, wide, negative match) varies depending on whether the parties are competitors of each other or parties in a vertical relationship operating at different levels of the market, the TCA evaluated the advertising prohibitions introduced by the agreements in terms of the level at which the parties are active in the market:

- The TCA found that while the Industrial Property Law grants protection to registered trademarks against competitors, there is no trademark protection offered to the rights holder for use of registered marks within a legitimate vertical relationship, which the TCA found was the case here. Considering the data collected from Obilet's

customers on the distribution of their advertising budgets in 2021 and 2022, the TCA determined that while the expenditures on offline advertising covered a very limited portion of Obilet's customers' total advertising budgets (and some customers did not spend in the channels at issue at all), the online advertising activities were mainly carried out by companies accessing timetable data. The TCA found that (1) restrictions, in the context of a vertical relationship, that prohibit the buyer from using an entire online advertising channel, such as search engines, are seen as 'severe restrictions' by the European Commission, and (2) the provision that the provider's trademark cannot be used as a search word in the search engine is also seen as a restriction that indirectly prohibits an entire online advertising channel. This prohibition will arise due to the restriction on the relevant customer's capacity to target customers searching for the carrier's brands, to inform these customers about its offer and to attract them to its online channel or another sales channel. In light of these findings, the TCA concluded that the search engine advertisement ban imposed on undertakings in respect of the brands of the carrier companies may violate article 4 of the Competition Law, at least in terms of effect.

- The TCA determined that the advertising bans on the use of Obilet's brand names imposed on undertakings in the context of ticket sales had different scopes. For example, in one agreement, the advertisement ban was imposed on the Obilet brand name and related signs in all search engines, while in another agreement, the advertisement ban was limited to Google Adwords and covered the Biletall brand name and derivatives, whereas in yet another agreement, there was a ban on advertisements in all search engines for carrier companies and/or the Obilet brand name, words and signs, including 'obilet', 'o bilet', 'obilet.com' and phrases containing these words. Hence, while the first two agreements that target 'only the trademark name', amount to a narrow prohibition of advertisement, the third agreement that included 'phrases containing the trademark name', amounted to a wide prohibition of advertisement. The TCA concluded that narrow prohibitions on using 'only the trademark name' in their ads does not fall within the scope of article 4 of the Competition Law since it is protected under Law No. 6769. By contrast, the wide advertisement ban imposed by Obilet on its competitors to prevent them from using 'phrases containing the trademark name' in their ads may violate article 4 of the Competition Law in terms of its effect.

In order to address these concerns, Obilet first committed to waive the provision in its business agreements regarding wide advertising restrictions. Second, Obilet committed not to include any provision that can be considered as a wide advertising restriction or vertical online advertising ban in the new agreements to be concluded and, furthermore, not to engage in any de facto or contractual practice in this direction. The TCA found these commitments sufficient to eliminate the competitive concerns and thus concluded the investigation.

ETS Tur

The most recent decision evaluating the antitrust implications of advertising bans is the *ETS Tur* decision, in which the TCA examined the restrictions regarding commercial and advertisement usage of intellectual property rights (narrow prohibitions that only include IP rights and registered brand names) provided in the ETS Tur's agreements with travel agents

(ETS Tur is both a supplier and a competitor of the travel agents). The TCA concluded that these restrictions are narrowly designed in accordance with the Industrial Property Law and thus, do not fall within the scope of article 4 of the Competition Law.

Law stated - 13 November 2025

Remedies and sanctions

34 | What competition remedies or sanctions have been imposed in the IP context?

In its *Tetra Pak* decision (24-32/758-319, 1 August 2024), the TCA found that the Tetra Pak/Tetra Laval economic entity abused its dominant position through the registration of 3D aseptic prism shape trademarks and design applications, thereby infringing article 6 of the Competition Law. As a result, the TCA imposed an administrative fine of over 130.88 million Turkish liras on Tetra Pak/Tetra Laval. In addition to the fine, Tetra Pak was required to renounce its trademark and design rights and withdraw its pending 3D trademark applications.

In its *Storytel* decision (23-55/1076-380, 30 November 2023), the TCA examined the allegation that Storytel violated the Competition Law by entering into long-term exclusivity agreements with publishers/rights holders, thereby preventing rival undertakings from entering and expanding the audiobook market. The TCA identified three types of agreements concluded by Storytel: content distribution agreements (CDAs) granting a copyright licence for audiobook distribution, audio licence agreements (ALAs) enabling Storytel to obtain non-exclusive or exclusive licences from publishers/rights holders under Law No. 5846 on Intellectual and Artistic Works, and voice-over agreements with voice actors/narrators for the performance of audiobook recordings. During the investigation, Storytel offered commitments not to include exclusivity clauses in ALAs, CDAs and voice-over agreements, and to remove existing exclusivity provisions from the agreements already in force. The case was closed following the TCA's acceptance of these commitments.

In the TCA's *Philips* decision (19-46/790-344, 26 December 2019), the TCA found that Philips was engaged in anticompetitive practices by not acting in accordance with FRAND principles, and was consequently fined more than 6.69 million Turkish liras per 0.75 per cent of its turnover generated in the financial year preceding the date of the decision.

In the TCA's *Bilsa* decision (07-26/238-77, 21 March 2007), the TCA (1) ordered Bilsa to take the necessary measures to supply the data belonging to schools in an unencoded, correct, understandable, secure and complete manner if a school whose agreement with Bilsa has expired requests the relevant data, and (2) imposed a fine of 246,457.67 Turkish liras per 3 per cent of its turnover generated in 2005.

In the *Arabam Com* decision (23-32/630-212, 20 July 2023), *LetGo* decision (23-32/629-211, 20 July 2023) and *Araba Sepeti* decision (23-31/589-199, 13 July 2023), the TCA imposed fines of more than 2.72 million Turkish liras, 24,467.52 Turkish liras and 191,433.80 Turkish liras respectively to the relevant undertakings.

In the *Obilet* decision (23-27/521-177, 15 June 2023), the investigation concluded with the commitments submitted by Obilet in order to address the relevant competitive concerns,

which includes Obilet's waiver of the provision regarding wide advertising restrictions in its contracts, not inclusion of any provision that can be considered as a wide advertising restriction or vertical online advertising ban in the new agreements to be concluded, and not engaging in any de facto or contractual practice in this direction.

Law stated - 13 November 2025

UPDATE AND TRENDS

Key developments

- 35** | Are there any emerging trends or hot topics in the law of IP and antitrust policy? Have changes occurred recently or are changes expected in the near future that will have an impact on the application of competition law to IP rights?

There may be emerging trends in the intersection of IP and antitrust policy depending on the European Commission's policy developments as the Turkish Competition Authority (TCA) closely follows the activities of the European Commission.

In its *Tetra Pak* decision, the TCA imposed significant fines where trademarks and design rights were strategically used to reinforce dominance in concentrated packaging markets. The *Tetra Pak* decision illustrates that the abusive use of IP rights can constitute a direct violation of article 6 of the Competition Law and may lead not only to heavy penalties, but also to corrective remedies such as the withdrawal or renunciation of IP rights.

With the TCA's *Modanisa* decision, the TCA has also set standards for online advertising mechanisms and demonstrated the interaction between competition law and intellectual property, effectively establishing that negative matching obligations are against competition law as they may constitute customer and market allocation. As per the TCA's recent decisions on *Arabam Com*, *LetGo* and *Araba Sepeti*, there is no doubt that the *Modanisa* decision is the basis for the assessments made in IP-antitrust-related decisions in terms of usage of trademarks for advertisement purposes. Following this landmark decision, practices that have the same effect may, and most probably would, be classified as competition law infringements. Indeed, within the scope of the investigation relating to IP rights where four undertakings operating as online marketplaces in the automotive sector have been investigated with regard to their practices of negative keywords, while the investigation has been finalised for *Arabam Com*, *LetGo* and *Araba Sepeti* through the settlement procedure, the alleged negative keyword practice has been deemed 'naked and hardcore restriction', resulting in the TCA rejecting a commitment application by Vava Cars.

Lastly, pursuant to the *Obilet* decision, the TCA set standards on how to evaluate advertising ban agreement with regards to wide/narrow restrictions and horizontal/vertical relationships. In the case of online advertising ban in a horizontal agreement between competitors, while narrow advertising restrictions are not covered by the Competition Law since they enjoy the protection granted by the Industrial Property Law (as this precedent also applied in the *ETS Tur* decision), the wide advertising restrictions may violate article 4 of the Competition Law in terms of effect. By contrast, in the eyes of the TCA, vertical online advertising bans now appear to be considered vertical restrictions that should be evaluated in terms of their effects.

Law stated - 13 November 2025



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