INTERNATIONAL BAR ASSOCIATION

iFA INTERNATIONAL FRANCHISE ASSOCIATION

News from Around the World

IBA/IFA26
JOINT CONFERENCE

INTRODUCTION

Kendal Tyre
nixonpeabody.com

Iain Irvine
iirvine@vardons.com.au

John Sotos
jsotos@sotos.ca

Hunter Qiu
hunterqui@zhonglun.com

Vanessa Pareja Lerner
diascarneiro.com.br

Alessandra Sonnati
Alessandra.sonnati@fvalaw.it

AUSTRALIA

Franchising Code Changes – Delayed commencement

Competition and Consumer (Industry Codes—Franchising) Regulations 2024.

- New Franchising Code of Conduct commenced (generally) 1 April 2025.
- Transitional provisions delayed commencement of certain changes to 1 November 2025
  - Aligns with end of 4 month annual update period for most AU franchisors (30 June year end)
  - Foreign franchisors required to consider timing.

  - <u>Specific Purpose Funds</u>
    - Previously regulated marketing and other cooperative funds.
    - Scope of “other cooperative funds” was unclear.
    - Now clear the Code covers all funds controlled/administered by/for the franchisor for any purpose (eg Information Technology).
    - Requirements for specific purpose funds include annual financial reporting (and auditing).
    - New Code amended the required content of annual financial statements.

Franchising Code Changes – Delayed commencement (cont.)

- New section 41 – Return on Investment
- All franchise agreements must provide the franchisee with a reasonable opportunity to make a return, during the term of the agreement, on any investment required by the franchisor.
  - Express provision required?
  - Investment "required by" the franchisor
    - Should be considered in the context of franchise sales/transfers.
    - Purchase price for a transfer is not determined by the franchisor – Should price be taken into account?
    - ACCC released guidance (13 October 2025) on new Code provisions.
    - Suggests a franchisor should consider all relevant circumstances when approving transfers (including remaining term of the agreement, purchase price and other financial commitments of the transferee).
    - Franchisors should also be conscious of their obligation not to unreasonably withhold consent to transfers.
    - In practice – the obligation may be able to be addressed by extending the remaining term on transfer if necessary.

Franchising Code Changes – Delayed commencement (cont.)

- New section 43 – Compensation
- All franchise agreements must include provision for compensation for early termination because the franchisor:
  - withdraws from the Australian market;
  - rationalises its networks in Australia; or
  - changes its distribution models in Australia.
- Limited application in practice. Not applicable to termination for default.
- Reform resulted from automotive dealership disputes regarding non-renewal and change from franchise to agency networks.
- Code does not require inclusion of termination rights in these circumstances. Some franchisors have included the same.

Franchising Code Changes – Delayed commencement (cont.)

- New section 43 – Compensation (cont.)
- Required clauses are detailed - Must specify how compensation is determined with specific reference to:
  - lost profit from direct and indirect revenue;
  - unamortised capital expenditure requested by the franchisor;
  - loss of opportunity in selling established goodwill; and
  - costs of winding up the franchised business.
- Further, the clause must provide for the franchisor must buy back/compensate the franchisee for:
  - Stock/inventory specified by the franchisor; and
  - Essential specialty equipment, branded product or merchandise specified by the franchisor which cannot be repurposed for a similar business.
- New Code prohibits provisions purporting to exclude compensation on termination (other than for franchisee breach).

Franchise Disclosure Register

- Further new version of the Code commenced 21 October 2025.
- Transferred administration of the Franchise Disclosure Register from Cth Treasury to the ACCC.

Franchise Disclosure Register

- Recent FDR enforcement reports (ACCC):
  - 4 August 2025 –
    - Penalty Notice (AU$15,650) issued to a Harvey Norman (Furniture & Homewares Retailer) franchisor for allegedly failing to include mandatory information on the Franchise Disclosure Register.
  - FDR content must include details of:
    - Costs payable by the franchisee to start operating the franchised business.
    - Payments to be made to the franchisor or an associate of the franchisor.
    - Payments to third parties.
  - Determination of Treasury which prescribes these requirements indicates the franchisor can provide "upper and lower limits of potential payments, a description of potential payments or both)".
  - Differing approaches by franchisors. Some have omitted quantitative information and merely described the types of costs/payments – Not recommended

Franchise Disclosure Register (cont.)

- Recent enforcement reports (ACCC):
  - 30 March 2026 –
    - Penalty Notice (AU$19,800) issued to a Luxottica Franchising Australia (Eyewear – OPSM and Laubman & Pank) franchisor for failure to update the FDR within the required period.
    - Updating is required by 14th day of the 5th month following end of financial year.

Other updates

- Proposed Unfair Trading Practices laws:
  - Amendment to Australian Consumer Law
    - Unfair trading practices (eg manipulating/confusing consumers online)
    - Drip pricing – Addresses hidden transaction-based charges.
    - Subscription contracts – New disclosure requirements.
  - Proposed commencement - 27 July 2027.
- Privacy Act amendments
  - From 10 December 2026 privacy policies must include information regarding use of automated decision-making technologies if those decisions may have significant consequences for individuals.

BRAZIL

Brazilian Data Protection for Foreign Franchise Counsel

What changes – What to do about it

A foreign franchise network closes its Brazilian entry today.

Four documents in this package are already non-compliant in Brazil.

Master Franchise Agreement	Data-Sharing Addendum	Cross-Border SCCs	Global Privacy Notice	DPO Designation (HQ)	Incident Response Protocol
✓	2	1	!	3	4

FOUR RECURRING COMPLIANCE GAPS

1. **Cross-Border SCCs**

   Using GDPR clauses instead of Brazilian SCCs.
   Deadline expired on Aug 12, 2025.

2. **Data-Sharing Addendum**

   Structured around GDPR logic.
   May miss obligations specific to the LGPD.

3. **DPO Designation (HQ)**

   Not registered with the ANPD.
   Not listed on the Brazilian website.
   Must be in Portuguese and clearly disclose statutory information.

4. **Incident Response Protocol**

   Based on the GDPR 72-hour rule.
   Brazil requires notification within 3 business days, using a formal filing.

The risk lies in execution, not in the statute

What a credible Brazilian compliance program actually includes

Records of Processing *LGPD Art. 37*	! **Privacy Notice (transparency)** *LGPD Art. 9*	**Legal-Basis Map + LIA** *LGPD Art. 7 + 11*	**Data-Subject Rights Channel (15 days)** *LGPD Art. 18 + 19*	**DPIA / RIPD for high risk** *LGPD Art. 38*
3 **DPO Designation, Registration, Publication** *LGPD Art. 41 + Res. 18*	**Information-Security Policy + measures** *LGPD Art. 46–49*	4 **Incident Response + Notification** *Res. 15/2024*	1 **Cross-Border Transfer Architecture** *Res. 19/2024 + Res. 32/2026*	2 **Data-Sharing / Processor Agreements** *LGPD Art. 39 + Res. 19*

The four issues appear across four of these documents. The Privacy Notice (flagged with a warning) also needs an LGPD-specific rewrite, not just a translation. The remaining documents each come with their own local requirements.

ADDTITIONAL LAYER Digital Services: the ECA Digital applies where minors are likely to access the service. We'll come back to this later.

FINDING 1 | CROSS-BORDER DATA TRANSFERS

GDPR Standard Contractual Clauses are not enough under Brazilian law.

1 **Aug 12, 2025**

DEADLINE HAS ALREADY PASSED

OBLIGATIONS UNDER RESOLUTION CD/ANPD No. 19/2024

1	**A valid legal basis remains required.** Both elements must be present: a valid LGPD legal basis for the processing; and an appropriate transfer mechanism. The absence of either may result in non-compliance.
2	**Brazilian SCCs must be used as issued.** Annex II language must be incorporated without modification. Edited or generic clauses do not meet the regulatory standard and may require ANPD approval.
3	**Importer must assess the destination country.** A documented assessment of the local data protection regime is required, including how government access requests are handled.
4	**Transparency to data subjects is mandatory.** Individuals must be informed of the transfer, its purpose, destination, and safeguards.
5	**Each transfer must be defensible.** The controller should be able to demonstrate the full compliance chain(mapping, legal basis, and transfer mechanism) if requested by the ANPD.

Five of fourteen obligations shown here. Full list in the ANPD Resolution.

WHAT TO DO? **Execute Brazilian SCCs with each foreign recipient. This includes the master franchisee when re-exporting data to headquarters. Replace existing clauses: do not supplement them.**

LGPD is similar to GDPR, but not identical

2

Roles ≠ labels

OPERATIONAL REALITY PREVAILS OVER THE CONTRACT

OBLIGATIONS UNDER LGPD ART. 39 + RES. 19/2024

1	**Roles follow actual decision-making.** The ANPD looks at who determines the purposes of processing, not how the contract labels the parties. Misclassifying a co-controller as a processor will not withstand scrutiny.
2	**Processor obligations go beyond GDPR Art. 28.** LGPD Art. 39 imposes additional duties, including written instructions, security, demonstrability, and breach support. These are not always covered by GDPR-based clauses.
3	**Mutual assistance for the 15-day response window.** Each party must commit to supporting the other in meeting data subject request deadlines across the network.
4	**24-hour internal escalation is essential. The 3-business-day ANPD deadline is only workable if incidents are escalated within 24 hours of awareness.**
5	**Onward transfers require safeguards and purpose limitation.** Any subsequent recipient must be contractually bound. Processing must remain consistent with the original purpose.

Five of ten contractual duties highlighted here. See the LGPD and ANPD Resolution for the complete set.

WHAT TO DO? **Rework the data-sharing agreement under LGPD Art. 39Ensure that role allocation reflects the operational reality of the franchise network and not a GDPR template.**

A DPO at headquarters may not qualify as a DPO under Brazilian law

3 **Effective performance**

NOT MERE FORMAL DESIGNATION

OBLIGATIONS UNDER RESOLUTION CD/ANPD No. 18/2024

1	**The role must operate in practice.** Naming a DPO is not sufficient. The role must function effectively within the organization.
2	**Adequate structure and resources.** Time, team, and budget must be allocated in proportion to the volume and risk of processing activities.
3	**Technical autonomy and direct access to senior management.** The DPO must act without undue interference and have direct access to decision-makers.
4	**Public listing and active communication channel.** Identity and contact details must be clearly published on the Brazilian website. A functioning channel must be available for data subjects and the ANPD.
5	**Integration into decision-making.** The DPO participates in incidents, RoPA, DPIAs, contracts, and data transfers.

Five of thirteen obligations highlighted here. See the ANPD Resolution for the complete set.

WHAT TO DO? **Appoint a DPO capable of operating in Portuguese. Document responsibilities, structure, and autonomy. Publish contact details on all Brazilian customer-facing channels.**

The GDPR 72-hour playbook does not align with Brazilian requirements

4

3 business days

From awareness. Formal filing required.

OBLIGATIONS UNDER RESOLUTION CD/ANPD No. 15/2024

1	**Structured risk assessment is required.** The duty to notify is triggered by an objective assessment against defined criteria, not by discretion or retrospective judgment.
2	**Deadline runs from awareness.** The clock starts when the controller becomes aware of the incident, not when the impact is confirmed or the investigation is completed.
3	**Minimum content is prescribed.** Notifications must follow the regulatory format, including nature of the incident, data categories, affected individuals, mitigation measures, and residual risk.
4	**All incidents must be documented.** This includes incidents that are not notified, along with the rationale for non-notification.
5	**Demonstrability before the ANPD.** The controller must be able to evidence the assessment, timeline, and response.

Five of fourteen obligations highlighted here. See the ANPD Resolution for the complete set.

WHAT TO DO? **Implement a 24-hour internal escalation obligation. Franchisees must notify the franchisor promptly to enable timely reporting within the Brazilian deadline.**

Telekall
The first, and, to date, only fine against a private company

Telekall Infoservice | Process No. 00261.000489/2022-62 | Decided July 2023

WHAT TRIGGERED THE SANCTION

The company was selling lists of WhatsApp contacts to electoral campaigns during the 2020 municipal elections in Ubatuba (SP).Personal data was processed without a valid legal basis.

Three infractions:

- Art. 7 LGPD. Processing without a legal basis;
- Art. 41 LGPD. Failure to appoint a DPO;
- Art. 5 Resolution 1/2021. Failure to respond to the ANPD.

WHAT THE ANPD APPLIED

BRL 14,400

Two fines of BRL 7,200 each for violations of Arts. 7 and Art. 5, plus warning for Art. 41.

The 2% statutory cap was applied at maximum level, based on the gross revenue of a microenterprise.

Company size is not a shield. The cap applies at every scale.

The headline numbers are low. They do not reflect actual risk

9

DECISIONS ISSUED

Since the first ANPD sanction in July 2023

8 of 9

AGAINST PUBLIC SECTOR ENTITIES

Public bodies are exempt from administrative fines under LGPD Art. 52, paragraph 3

1

MONETARY FINE TO DATE

Telekall case. Microenterprise. Maximum 2% applied

WHAT'S CHANGING

The initial enforcement phase ended in 2024

The ANPD’s 2026–2027 enforcement plan focuses on cross-border data transfers, biometrics, AI systems, and processing involving children.Enforcement is becoming proactive, no longer driven primarily by complaints.The authority gained full enforcement autonomy in September 2025.

A second framework applies, with its own duties and enforcement

WHAT IT IS

Digital ECA

Law No. 15,211/2025 | Decree No. 12,880/2026

Brazil's statute for children and adolescents (under 18), in force since 2026. Applies to digital services that are likely to be accessed by minors.

Scope in practice
This captures most consumer-facing franchise operations. Whether the service is intended for minors is not determinative.

Key distinction
Age assurance and age verification are distinct obligations

WHAT THE STATUTE ACTUALLY REQUIRES

- Age assurance and age verification where content may be inappropriate or unlawful for minors;
- Restrictions on profiling and behavioral advertising involving minors;
- Transparency obligations tailored to both parents and minors;
- Content moderation duties, including for generative AI systems;
- Accessible reporting and complaint channels for minors and their guardians;
- Risk assessments for services with significant exposure to minors.

These obligations are cumulative. They do not replace LGPD requirements.

Different authorities, different proceedings
A single breach can trigger all of them

A violation under the ECA includes any breach of a minor's rights in a digital service,such as data leaks, profiling, inappropriate or unlawful content, lack of age controls, or failures in content moderation.

ANPD

ADMINISTRATIVE

Data protection enforcement under the LGPD and ECA framework

MJSP

ADMINISTRATIVE

Content classification and harm prevention measures

Procon and Senacon

CONSUMER

Deceptive practices, abusive terms, and advertising

Public Prosecutor's Office

CIVIL AND CRIMINAL

Collective redress and potential criminal liability

CIVIL ACTIONS

Individual and collective claims may also be brought by consumers and associations.

CLOSING| WHAT TO DO THIS QUARTER

Brazilian data protection law is not a local version of the GDPR

1

Replace SCCs

Use Brazilian SCCs for each leg of the international data flow. Replace inherited GDPR clauses.

2

Rewrite the data-sharing addendum

Allocate roles under LGPD Art. 39 based on operational reality, not contractual labels.

3

Register and publish the DPO

Complete ANPD registration and ensure prominent disclosure on the Brazilian website.

4

Rebuild the incident response playbook

Align with the 3-business-day deadline, formal reporting requirements, and 24-hour internal escalation.Include periodic testing.

Vanessa Pareja Lerner| Partner, Dias Carneiro Advogados
vpa@diascarneiro.com.br

CANADA

RECENT CANADIAN CASE LAW - Resales

2355305 Ontario Inc. v. Savannah Wells Holdings Inc., 2025 ONCA 505

Key Facts:

- Franchisee purchased a "Wild Wings" franchise from an existing franchisee
- Franchisor required the Purchaser to sign a new franchise agreement directly with the franchisor
- Franchisor claimed it was exempt from disclosure obligations under s. 5(7)(a) of the *Arthur Wishart Act (Franchise Disclosure), 2000* — the resale exemption
  - The resale exemption applies where a franchise grant is not effected by or through the franchisor
- Franchisee rescinded for non-disclosure
- Franchisor argued its role in the transaction was passive, therefore qualifying for the no disclosure document exception
- Court found recission and awarded damages and costs on the substantial indemnity scale – allegations of fraud not made out

RECENT CANADIAN CASE LAW - Termination

First of Five Inc. v. Recipe Unlimited Corp et al, 2025 ONSC 93

Key Facts:

- Franchisee had contractual right renew and provided timely notice
- Thereafter, franchisor issued multiple notices of default and invoked a "three strikes" termination
- Injunction application denied for breach of good faith

RECENT CANADIAN CASE LAW - Injunctions

F45 Training Canada Limited v. 2685802 Ontario Limited, 2025 ONSC 7357

Key Facts:

- Franchisee operated a gym, and on the expiry of the F45 agreement entered into a franchise agreement with a competing gym at the same location and encouraged members to transition prior to expiry
- Injunction application for breach of the non-compete and non-solicit clauses failed
- Scope of the restrictive covenants ambiguous
  - Inconsistent definitions and reliance on references to the Manual
  - Internal inconsistences and undefined terms are fatal

RECENT CANADIAN CASE LAW – International Arbitration

Aroma Franchise Company, Inc. et al v. Aroma Espresso Bar Canada Inc. et al, 2026 ONSC 768

Key Takeaways:

- Courts rarely intervene in international arbitral awards
- Duty of good faith applies to exercise of termination rights
- Not every procedural flaw justifies setting aside an award
- Challenges to reasoning cannot be used to reargue the merits
- Court of Appeal confirmed reinstatement of award
  - Bias threshold is high

RECENT CANADIAN CASE LAW – Common Employer

Cervantes v. Pizza Nova Take Out Ltd., 2026 ONSC 713

Key Facts:

- Class action against Pizza Nova
- Franchisor required standardized contract driver agreements through its operations manual
- Plaintiff alleged system-wide misclassification of drivers under the ESA
- Claimed all franchisees were common employers and part of a conspiracy
- Franchisees are independent businesses, not linked to each other
- "Common employer" theory rejected as between franchisees

RECENT LEGISLATIVE UPDATES

Saskatchewan

The Franchise Disclosure Act, SS 2024, c 13:

- Seventh Canadian province with franchise legislation (in force June 30, 2026)
- Imposes duty of fair dealing and mandatory disclosure obligations
- Franchisees have strong rights
  - 60 day rescission for deficient disclosure
  - 2 year rescission if no disclosure
  - Misrepresentation claims and right to associate
- Regulations clarify earnings projections, officer definition, and audit standards
- Key distinctions
  - Definition of "franchise" requires actual exercise of control or assistance
  - Two-year recission period introduces legal risk

RECENT LEGISLATIVE UPDATES

Canada

Competition Act Amendments:

- Amendments now capture non-competitor agreements such as leases
- Exclusivity clauses reviewable if they prevent or lessen competition
- Increased exposure for dominant businesses, as only anti-competitive intent or effect must be shown
- Must have a genuine pro-competitive rationale, such as enabling entry or supporting investment
- Must be narrowly tailored in duration, geographic area, and product scope
    - Broad, indefinite, or blanket exclusivity clauses carry significant enforcement risk and penalties

RECENT LEGISLATIVE UPDATES

Canada

Surveillance Pricing:

- Surveillance pricing involves sellers setting different prices for different consumers shopping for the same product at the same time
- Pricing is driven by user data (location, behavior, device) to maximize willingness to pay
- Potential *Competition Act* sections to address the issue:
  - S. 74.05 - Sale above advertised price
  - S. 54 - Double ticketing
- Issue: Existing provisions were not designed for **individualized, real-time pricing**

RECENT LEGISLATIVE UPDATES

Manitoba

Bill 49, The Business Practices Amendment Act – Personalized Pricing:

- Prohibits personalized algorithmic pricing using consumer data
- Unfair to price identical goods based on purchase history, income, credit, health, or location
- Applies to both in-store and online retailers
- Enforcement by consumer protection office with significant penalties
- Part of broader affordability agenda responding to emerging data-driven pricing
- This Bill would make Manitoba the first province in Canada to ban this practice

RECENT LEGISLATIVE UPDATES

Manitoba

Property Controls for Grocery Stores and Supermarkets Act:

- First in Canada to regulate grocery store property controls (in force June 2025)
- Targets restrictive covenants and exclusivity clauses limiting competition
- Broad scope includes indirect restrictions
- New controls void automatically
    - Existing controls required strict registration or became void
- Registered controls still subject to challenge and possible discharge
- Complements Competition Act changes weakening commercial exclusivity

RECENT LEGISLATIVE UPDATES

British Columbia

Business Practices and Consumer Protection Act:

- Major overhaul of consumer protection law
  - Fully in force August 1, 2026
- Prohibited terms now void
  - No review suppression, class action waivers, or mandatory arbitration
- Expanded consumer remedies
  - Access to Civil Resolution Tribunal
- New rules for subscription contracts
  - Cancellation rights, renewal notice, limits on unilateral changes
- Enhanced disclosure requirements with cancellation rights for non-compliance
- Direct sales restrictions for certain home products and related financing

CHINA

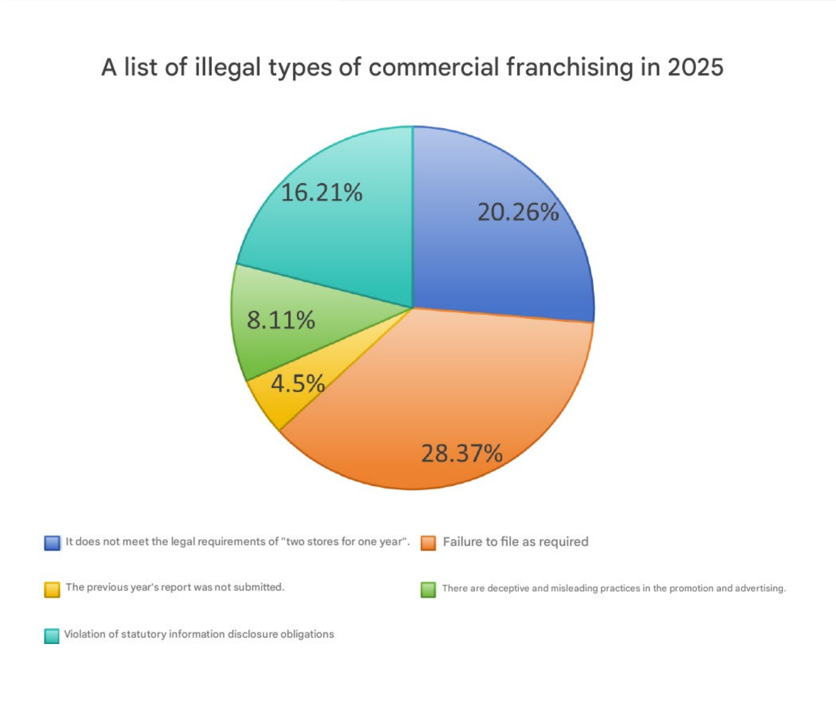
China Franchise Legal Framework & 2025 Enforcement Highlights

Key regulations

- General rules: Administrative Regulations on Commercial Franchise Operations
- Detailed online report to the government: Administrative Measures for the Filing of Commercial Franchise Operations (2023 Revision)
- Detailed disclosure to franchisee: Administrative Measures on Information Disclosure of Commercial Disclosure of Commercial Franchise (2012 Revision)

2025 enforcement trends

- Enforcement focused in large cities, i.e., Beijing, Shanghai, Hangzhou
- Most common violations: franchisor qualification; late filing; disclosure failures
- Record penalty: up to USD 1.7 million (forfeiture + fine)



Franchisor Qualification

Rule & 2025 enforcement

- Qualification: two stores and one year
- Penalty: confiscate the illegal income and a fine ranging from USD 14,000 to 70,000
- Cases reflecting severe punishment in 2025: failure to meet the franchisor qualification requirement → total penalties of USD 1.3 million

How to determine the franhcisor qualification?

- **Two Stores:** substantive review based on ownership and operational control
- **One Year**: from when the business resource was obtained

Filing & Disclosure Obligation

Cases

- Franchisor's trademark was cancelled → continued to sign contracts with 7 franchisees → Guangxi Nanning AMR Penalty Decision [2025] No. 306)
- Unregistered trademark→ Beijing AMR Penalty Decision [2025] No. 14

Ongoing review of core assets

- Filing Invalid: the loss of core operating resources (e.g., trademarks)
- Disclosure Standard: truthfulness and consistency
- Ongoing requirement to ensure accuracy of filing & disclosure: continuous monitoring of core business assets (i.e., core IP)

Calculation of “Illegal Gains”

Calculation

- All fees received under franchising
- Examples: licensing fee, consulting fee, training fee, equipment/materials fees, etc.

Deduction

- Reasonable costs actually incurred
- Strictly evidence-based(contract; PO; invoice, Fapiao)

Takeaways for Franchisors

Dynamically verify the franchisor qualification with supporting documents

- Require items: Company-Owned Stores, operating period, and the underlying business resources (trademark registration)
- Corporate chart for affiliates if applicable

Ongoing review of filing and disclosure

- Ongoing review of required disclosed information

Optimize the financial accounting structure

- Align equipment/materials fees charged to franchisees with third-party purchase contracts & invoices
- Maintain rigorous evidence chain to deduct actual reasonable costs

Starbucks 2025 JV Deal

Joint Venture (Boyu Capital 60% / Starbucks 40%)

Starbucks will retain a 40% interest in the joint venture and will continue to own and license the Starbucks brand and intellectual property to the JV.

Boyu will acquire its interest based on a cash-free, debt-free enterprise value of approximately $4 billion.

ITALY

RECENT ITALIAN CASE LAW

Abuse of Economic Dependence

Italian Supreme Court (Corte di Cassazione), Judgment No. 15023, 4 June 2025

- Article 9, Law No. 192/1998

- Key elements:
  - ✓Imbalance of rights and obligations
  - ✓Lack of viable market alternatives

- Economic dependence must pre-exist the contract

Joint Liability in Outsourcing Chains Applied to Franchising

Turin Court of Appeal, judgments dated 24 February 2025 (Nos. 87 and 99), 6 March 2025 (No. 90), and 13 March 2025 (No. 98)

- Article 29(2), Legislative Decree 276/2003 (joint and several liability in works/services contracts)

- Key issue:
  - ✓ Functional integration vs. legal independence

- Extension of Article 29(2) to franchisors in complex supply chains

RECENT DEVELOPMENTS IN TRADEMARK LAW

Trademark Protection and Public Order

Spanish Patent and Trademark Office (OEPM), Decision of 26 February 2026

- Case: "*La Mafia se sienta a la mesa*" – decision of the OEPM, in proceeding initiated by the Italian Republic
- Key principle:
  - ✓Trademarks must comply with public order and morality
- Declaration of nullity

RECENT DEVELOPMENTS IN ITALIAN AND EU COMPETITION LAW

The AGCM on resale price maintenance (RPM) and on marketplace ban

Italian Competition Authority (AGCM), Case I/876 – Morellato

- Article 101 TFEU and Regulation (EU) 2022/720 ("VBER")

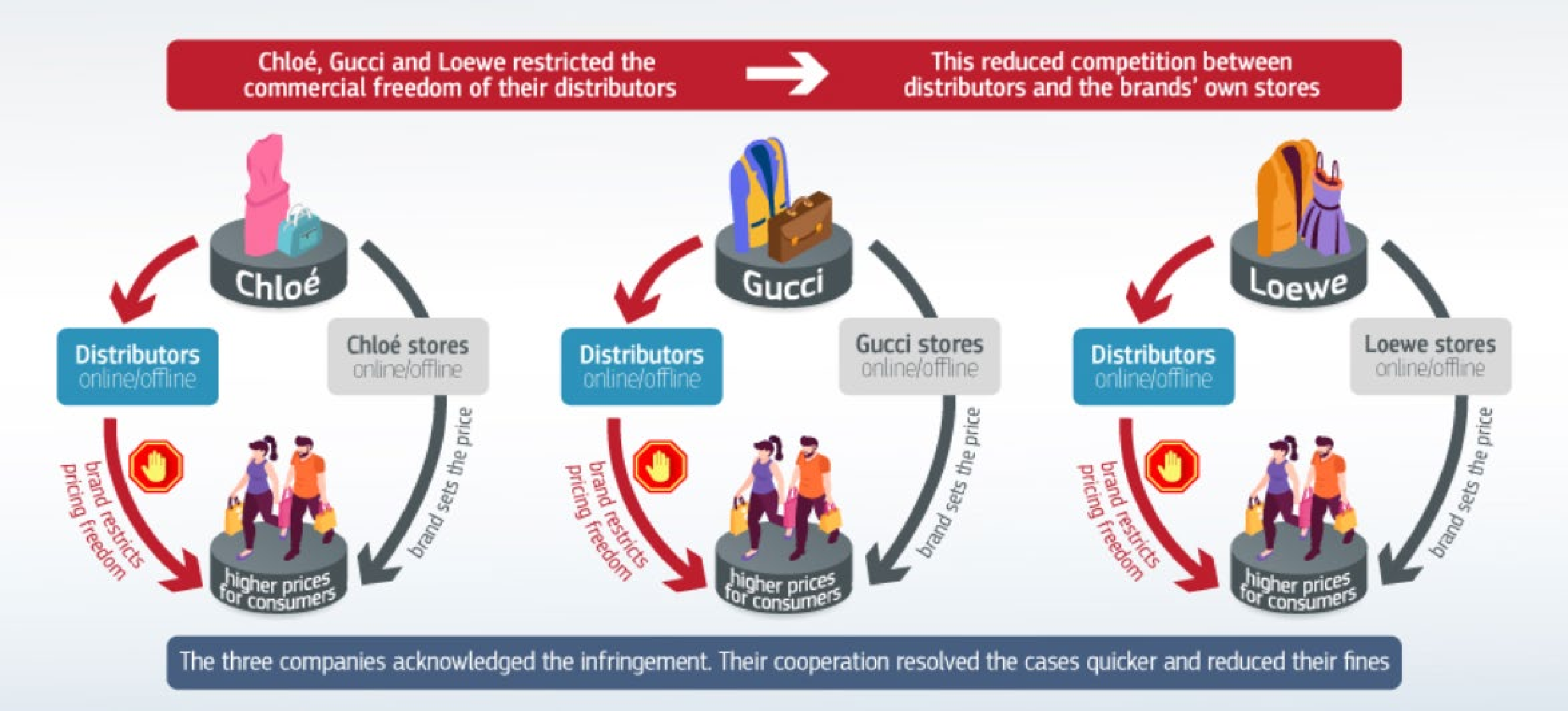
- Infringements identified:
  - ✓Price fixing:
    - imposed maximum discounts for retailers/ issued "internet policy" pricing guidance
  - ✓Online Marketplace Ban:
    - prohibited distributors from selling on third-party platforms (e.g. Amazon, eBay), while Morellato itself used same or similar marketplaces (Amazon, Yoox, Zalando)

The AGCM on resale price maintenance (RPM) and on marketplace ban

- Infringements identified:
  - ✓Monitoring & Enforcement System:
    - used specific software ("Competitoor") to track distributors' behavior
    - imposed sanctions: warnings, order blocks, termination threats
- AGCM findings:
  - ✓RPM constitutes a hardcore restriction
  - ✓Prohibition on the use of third-party platforms was applied in a discriminatory manner to use third party platform applied in a discriminatory manner
- Outcome: Violation of Article 101(1) TFEU

The European Commission on Resale Price Maintenance (RPM)

European Commission decisions AT.40840, AT.40880 and AT.4088



Source: https://ec.europa.eu/commission/presscorner/detail/da/ip_25_2361

The European Commission on Resale Price Maintenance (RPM)

- Legal framework: Article 101 TFEU and Vertical Block Exemption Regulation (EU) 2022/720

- Infringements identified:
  - ✓Price fixing and discount restrictions:
    - Imposed recommended retail prices
    - Set maximum discount levels
    - Controlled timing of sales periods
    - In some cases, banned discounts entirely

The European Commission on Resale Price Maintenance (RPM)

- Infringements identified:
  - ✓Monitoring & Enforcement:
    - continuous monitoring of retailers' prices
    - direct intervention when deviations occurred
    - retailers aligned with pricing policies

- European Commission findings:
  - ✓Reduction of intra-brand competition
  - ✓Higher consumer prices

- Outcome: practices qualified as agreements/concerted practices under Article 101(1) TFEU

Questions?