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COMPETITION IN REVIEW 2025

AND PERSPECTIVES FOR 2026

COMPETITION AND EUROPEAN LAW TEAM

INTRODUCTION

Competition law is changing: in a substantive way by incorporating others policy goals or concerns such as national security, economic resilience, and technological sovereignty, and in a procedural way by using new investigative tools that challenge the traditional framework. This has immediate repercussions on compliance and demands adaptability, out-of-the-box thinking and structure to deal with these new challenges.

In the antitrust area, the year 2025 confirmed growing attention to labour and digital markets. While enforcement is strong in several European countries, with the Portuguese Competition Authority standing out as one of the most active authorities in this area, in 2025 the European Commission adopted its first decision on no-poach practices in the *Delivery Hero/Glovo* case, which also highlights the risks arising from holding minority shareholdings in competing companies and the exchange of sensitive information in this context.

In the field of abuse of dominance, high scrutiny of technology companies continues, with Google being fined €2.95 billion by the Commission in the *Ad Tech* case and the innovative judgment of the EU Court of Justice in the *Android Auto/Enel X* case. In Portugal, 2025 was also an active year in terms of abuse of dominance, with the AdC having adopted a settlement decision in the Madeira banana market and issued a statement of objections against the main online property listings portal, which will likely see developments in 2026.

With regard to private enforcement, in recent years a number of collective actions have been initiated in Portugal for damages arising from competition law infringements, involving extremely high compensation amounts, benefiting from a very favourable legal regime. This year rulings of particular interest were issued on quantification of damages, legal standing and admissibility of funding of collective actions, with developments on these and other issues, such as access to evidence, anticipated in 2026.

A new record was set in merger control, with a total of 98 final decisions adopted by the AdC, 92 of which were clearances. Three relevant non-applicability decisions were adopted which nevertheless demonstrate the broad application of notification criteria by the AdC (particularly the market share criteria). The year was also marked by litigation in merger control, with the confirmation by the Competition Court of a Phase II clearance decision in a complex case (*Live Nation/R&B*Arena Atlântico*) and a rare annulment of another (*Midsid/Dois Lados*).

We anticipate significant challenges in 2026, with more intensive use of artificial intelligence by competition authorities being expected, especially in the investigation of antitrust cases. The AdC intends to optimise *ex-officio* detection of infringements, updating the digital tools already in use, aiming to intensify the use of artificial intelligence to detect anti-competitive behaviour.

The following articles focus on these various topics – and also on others of great interest, such as State aid or the control of foreign subsidies – and have been prepared by our European and Competition Law Team, which is available for any questions you may have.

RESTRICTIVE AGREEMENTS AND CONCERTED PRACTICES

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Introduction

2025 was a significant year in the context of restrictive competition practices, marked by decisions, investigations and public interventions by the Portuguese Competition Authority (AdC) that illustrate an increasingly wide-ranging approach to the notion of restriction of competition.

With the adoption of several final condemnatory decisions and statements of objections, the AdC reinforced its commitment to sanction anti-competitive conduct in various sectors of activity and targeting different types of practices (including price fixing, collusion in public procurement and practices in the context of labour markets).[1]

Price fixing in the tourism sector and in the provision of consulting services in the fields of architecture and engineering

In April 2025, the AdC adopted a statement of objections against an association of companies in the tourism sector for fixing minimum prices to be charged by its members and other service providers. According to the AdC, the agreement was reached through the recommendation of prices contained in fee schedules published by the association in question, as well as the setting of minimum price increase percentages to be applied in the sector.

In July of the same year, the AdC imposed a fine of 580 000 euros on an association of consulting service providers for having drawn up and adopted fee schedules setting minimum prices to be charged in Portugal in the national market for the provision of consulting services in the fields of architecture and engineering, as well as related environmental, economic and management consulting services.

The AdC stressed that business associations must refrain from any intervention that limits the commercial autonomy of their members, particularly with regard to price fixing, and reaffirmed that such behaviour constitutes serious restrictions on competition, likely to directly harm consumers and the efficient functioning of markets.

It is likely that these proceedings were initiated following the monitoring that the AdC has been carrying out on business associations, with a view to greater scrutiny of their functioning and internal rules, through sectoral inquiries. This has certainly contributed to the AdC opening several investigations into business associations in recent years.

Alleged collusion in the hospital sector

In July 2025, the AdC resumed its investigation and concluded the inquiry with the adoption of a new statement of objections in case PRC/2019/2, involving five private hospitals and a business association, for alleged collusion on strategies and negotiating positions in the context of negotiations with ADSE, at least between 2016 and 2019.

According to the AdC, the companies concerned agreed on prices and commercial conditions and coordinated the suspension or threat of termination of agreements, with the aim of exerting pressure to resolve outstanding issues relating to invoicing. This is the second statement of objections adopted in this case, which began in March 2019 and culminated in a final condemnatory decision in June

[1] Given the independent relevance of processes involving labour markets, these are addressed in a separate article in this edition.

2022, which was subsequently annulled in April 2024 by a ruling of the Competition, Regulation and Supervision Tribunal (TCRS).

In fact, in parallel with the administrative proceedings, the defendants filed an interlocutory appeal with the TCRS regarding the treatment and classification of confidential information relating to electronic correspondence seized by the AdC.

TCRS decision, which dismissed the appellants' claim, was appealed to the Lisbon Court of Appeal (TRL). The latter concluded that the seizure of electronic mail messages based solely on authorisation from the Public Prosecutor's Office (MP) was not valid, arguing that prior authorisation from the criminal investigating judge was necessary, and ordered that this evidence be declared null and void. In compliance with this decision, in April 2024, the TCRS ruled that the emails seized with the authorisation of the MP should be removed from the case file, returning it to the investigation phase.

TRL's position on this matter is in line with developments in constitutional case-law and the Supreme Court of Justice regarding the admissibility and limits of email seizure in proceedings for competition law infringements.[2]

It was in this context that the AdC reopened the investigation and, based on the remaining evidence available, concluded the investigation with the adoption of a new note of illegality in July 2025, with developments in the case expected in the course of 2026. Following the decision adopted by the AdC in this case, *Ius Omnibus*, a non-profit consumer protection association, filed a class action lawsuit against the companies targeted in this case for compensation for alleged damages that may have been caused to consumers in this context.

Investigation of conduct in public procurement

The AdC carried out several searches in the context of investigations based on suspicions of collusion in public procurement.

One of the investigations under consideration involves inter-institutional cooperation between the AdC, the Judicial Police and the Central Department of Investigation and Penal Action, given the existence of parallel investigations, both subject to judicial secrecy.

Conduct in the field of diagnostic imaging and nuclear medicine services

This investigation arose in the context of a leniency application that also gave rise to another administrative offence proceeding involving a group of companies active in the diagnostic and nuclear medicine sector.

According to the AdC, three types of conduct were preliminarily identified that could potentially raise competition concerns: *(i)* possible collusion regarding personal protective equipment; *(ii)* possible collusion in the context of negotiations with ADSE (a Portuguese public health scheme); and *(iii)* possible collusion in the context of negotiations with the National Health Service (SNS).

With regard to the conduct identified in *(i)* and *(ii)*, the AdC did not find evidence that would allow it to uphold a final condemnatory decision.

[2] See notes on the evolution of case-law on the seizure of electronic mail by the AdC in "Competition in review 2024 and perspectives for 2025".

With regard to the conduct identified in *(iii)*, the AdC found evidence that apparently indicated the existence of the following behaviours:

- Sharing of sensitive information on service provision costs, assumptions made in price formation, operational details associated with the activity of the undertakings concerned, as well as on the proportion of examinations they perform within the SNS;

- Agreement on the minimum price for the provision of various types of diagnostic nuclear medicine examinations, which the undertakings concerned would present – and allegedly did present – as a concerted negotiating proposal to the Central Administration of the Health System (ACSS) for consideration in the context of the provision of services to the SNS; and

- Agreement on the negotiation strategy to be adopted with the ACSS regarding the renegotiation of the conditions associated with the agreement with the SNS, including the possibility of a general withdrawal from this agreement if the prices for the provision of diagnostic nuclear medicine examinations were not increased.

However, the case was dismissed by the AdC due to the expiry of the limitation period for the procedure (in addition to the lack of sufficient evidence regarding the conduct referred to in *(i)* and *(ii)*).

The past year and outlook for 2026

The year 2025 showed that the AdC was focused on implementing the priorities set for that year, having been active in investigating potential anti-competitive conduct in the public procurement sector and in the context of business associations (in addition to labour market practices and abuses of dominant position, addressed in separate articles in this publication).

It was also interesting to note that the AdC showed openness to voluntarily closing administrative offence proceedings (which happened in a case of alleged collusion and also in a case investigating alleged abuse of a dominant position in the pharmaceutical sector).

The AdC's priorities for 2026 in the area of anti-competitive practices are based on the investigation of cartels and other horizontal practices affecting public procurement, labour markets and the liberal professions. Focus will also be placed on investigating vertical restrictions and decisions by associations of undertakings.

The AdC also intends to optimise the *ex officio* detection of infringements by updating the digital tools already in use and resorting to artificial intelligence. Of particular note is the optimisation of the ScreenIT platform, which will enable the detection of potentially anti-competitive patterns based on data from the BASE.GOV portal, using machine learning and artificial intelligence tools.

Cooperation with the Judicial Police, under a protocol signed with the AdC, is also highlighted, as well as the encouragement of the use of leniency and the reporting portal.

In public statements, the AdC had already stated that it was also cooperating with its Spanish counterpart to exchange experiences in this area of public procurement.

Therefore, it seems likely that the AdC will open new investigations, given the focus that the authority had in 2025 on pursuing its priorities.

A number of developments are also anticipated in cases that are still under investigation (as is the case, at least, with the air transport case) and in the preliminary

investigation phase (as is the case with the alleged price fixing in the tourism sector and collusion in the hospital sector).

Regular training and compliance in competition law in companies will be relevant to mitigate the risks of anti-competitive practices. We also consider it a priority for business associations to closely scrutinise their internal rules and practices to ensure that their activities are carried out in line with competition law, taking into account, among other things, the recommendations contained in the guide developed by the AdC.

ABUSE OF DOMINANT POSITION

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Introduction

Following the trends observed in 2024, abuse of dominance continued to be a central focus of competition authorities' enforcement activities in 2025.

Among the most significant developments were the innovative approach to interoperability obligations of the Court of Justice of the European Union (CJEU) and the 2.95 billion euros fine by the European Commission (EC) against Google for manipulating advertising technology markets. National competition authorities also played a vital role, with the Portuguese Competition Authority (PCA) addressing abusive conduct across diverse sectors.

As we enter 2026, the ongoing investigations launched last year are expected to deliver further clarity on the boundaries of permissible conduct. For dominant undertakings, understanding the lessons of 2025 and anticipating the direction of enforcement in 2026 will be crucial to ensure compliance with this increasingly sophisticated regulatory landscape.

Decisions from the Court of Justice

On 25 February 2025, the CJEU upheld the understanding of the Italian Competition Authority in its fine of 102 084 443.91 euros against Google in the Android Auto/Enel X case.

The CJEU rejected Google's appeal and confirmed that it abused its dominant position by refusing to allow Enel X Italia's JuicePass app – which enables users to locate, book and use electric vehicle charging stations – to be interoperable with the Android Auto digital platform, despite Enel X's request in September 2018.

The CJEU confirmed that proving illegal refusal to grant interoperability does not always require applying the strict indispensability test established in the *Bronner* case.[3] Instead, it distinguished between:

- Passive refusals – where a dominant firm denies access to infrastructure developed solely for its own needs (subject to the strict *Bronner* test requiring indispensability);

- Active refusals in open platforms – where infrastructure has been developed with a view to enabling third-party use, assessed under a more flexible standard that does not require proving indispensability.

The CJEU ruled that refusing interoperability can constitute abuse of dominance even if the platform is not indispensable, provided it makes the app more attractive to consumers and was developed to enable third-party access. Where infrastructure is designed for third-party use, freedom of contract, property rights and investment incentives do not justify limiting abuse analysis to cases of indispensability.

Additionally, the CJEU clarified objective justifications for refusal. A dominant undertaking may refuse interoperability only where it would compromise platform integrity or security, or is technically impossible. Otherwise, the dominant firm must develop an interoperability template within a reasonable period for appropriate financial consideration. The Court also confirmed that continued competitor activity despite lack of interoperability does not preclude anticompetitive effects, as the assessment must focus on whether the conduct was capable of hindering competition.

[3] Judgment of the CJEU in *Oscar Bronner GmbH & Co. KG v Mediaprint*, Case C-7/97.

Decisions from the European Commission

In September 2025, the EC issued a decision **fining Google 2.95 billion euros for breaching EU antitrust rules by distorting competition in the advertising technology industry (adtech).** The EC found that Google abused its dominant position by favouring its own online display advertising technology services to the detriment of competing providers of advertising technology services, advertisers and online publishers.

The EC found that, between at least 2014 and 2025, Google abused such dominant positions in breach of Article 102 of the Treaty on the Functioning of the European Union (TFEU) by:

- Favouring its own ad exchange AdX in the ad selection process run by its dominant publisher ad server DFP by, for example, informing AdX in advance of the value of the best bid from competitors which it had to beat to win the auction;

- Favouring its ad exchange AdX in the way its ad buying tools Google Ads and DV360 place bids on ad exchanges. For example, Google Ads was avoiding competing ad exchanges and mainly placing bids on AdX, thus making it the most attractive ad exchange.

The EC concluded that those practices aimed at intentionally giving AdX a competitive advantage and may have foreclosed ad exchanges competing with AdX.

The EC has ordered Google to bring these self-preferencing practices to an end and to implement measures to cease its inherent conflicts of interest along the adtech supply chain.

In addition, in 2025, the EC opened **formal antitrust investigations into two major companies – Red Bull and Google – for alleged abuse of dominant market positions in breach of EU competition rules.**

The EC suspects Red Bull is developing an EEA-wide strategy to eliminate competition from energy drinks larger than 250 ml in the off-trade channel (supermarkets and petrol stations), with its closest rival as the primary target.

The investigation is focused on the Netherlands, where Red Bull holds a dominant position in the wholesale supply of branded energy drinks. Two alleged practices are under scrutiny: first, offering incentives to retailers to delist or reduce the visibility of competing larger-format drinks; second, exploiting its role as category manager[4] at off-trade customers so that competing energy drinks sold in sizes exceeding 250 ml are delisted or disadvantaged.

This marks the EC's first formal investigation into potential abuse of a category management position.

The EC is also investigating whether Google has leveraged content from web publishers and YouTube to develop its AI capabilities without fair compensation or meaningful consent, potentially distorting the emerging AI market.

Two practices raise concern: first, Google allegedly uses publishers' content to power AI Overviews and AI Mode – features that generate AI summaries on search results pages – without compensating publishers or allowing them to opt out without losing crucial access to Google Search traffic. Second, YouTube content creators must grant Google permission to use their videos for AI training purposes without remuneration or the ability to refuse, whilst rival AI developers are simultaneously barred from accessing the same content.

[4] Under category management arrangements, shops, such as supermarkets, entrust the marketing of a category of products, such as energy drinks, to a specific supplier (the "category captain" or "category manager").

If proven, these practices may breach Article 102 TFEU and Article 54 of the EEA Agreement by imposing unfair terms on content creators and granting Google privileged access to training data, thereby placing competing AI model developers at a significant disadvantage.

Decisions from the Portuguese Competition Authority

In 2025, under a settlement procedure, the PCA adopted a decision imposing a fine of **30 000** euros to GESBA – Empresa de Gestão do Setor da Banana, Lda. for **abuse of dominance in the market for the collection, distribution and commercialisation of Madeira bananas**.

In the Autonomous Region of Madeira, GESBA is the entity responsible for the reception, qualification, packaging and preparation for distribution and supply of bananas, as well as the "recognised entity" for the distribution of European and complementary regional aid to producers.

According to the PCA, GESBA abused its dominant position in the Madeira banana market by requiring Madeira banana producers to sign exclusivity declarations whereby they undertook to deliver the entirety of their production to GESBA as a condition for the advance payment of European production aid, further undertaking not to deliver or sell any production to another entity or producer organisation.

In May 2025, the PCA initiated an investigation into Bial – Portela & CA, S.A., Bialport – Produtos Farmacêuticos S.A. and Bial Holding, S.A., after receiving an anonymous complaint regarding an alleged abuse of dominant position.

According to publicly available information, the case concerned alleged conduct that could indicate possible **bundled sales obligations contained in the conditions of sale applied to wholesale distributors.**

Following the proceedings and during the investigation, the pharmaceutical group chose to amend its terms and conditions of sale, removing the clause that raised competition concerns.

In this context, and in view of evidence that did not allow for a sufficient degree of certainty to support the restrictive practice of competition as initially indicated, the PCA considered that there were **no grounds for continuing the administrative offence proceedings**. The **case was closed** on 3 December 2025.

The PCA concluded that the practice hindered effective competition in the market through the imposition of conditions on producers that serve to maintain GESBA's dominant position in the market.

In December 2025, the PCA issued a Statement of Objections against the company holding the dominant **online real estate listings portal** for alleged abuse of dominance in the national market for online real estate listings portals.

In Portugal, the company operates the dominant online real estate listings portal, which estate agencies use to advertise properties. Estate agencies also use customer relationship management (CRM) software to export listings to online portals and manage their property and client portfolios.

According to the PCA, the company abused its dominant position in the online real estate listings market by restricting access to its portal for estate agencies that used the CRM software of a competitor, with the objective of excluding that competitor from the market.

The PCA concluded that the practice lasted between 2022 and 2024 and prevented the entry and expansion of competing CRM software providers in the market.

Perspectives for 2026

The year ahead promises significant developments in abuse of dominance enforcement.

The EC's Guidelines on exclusionary abuses of dominance,[5] initially anticipated for adoption at the end of 2025, are expected to be finalised in 2026. These guidelines will introduce a structured framework for assessing exclusionary conduct under Article 102 TFEU, categorising practices into three distinct groups with different standards of proof and offering enhanced legal certainty for dominant undertakings and competition authorities alike. For more information on the draft Guidelines, please see here.

Key decisions are also anticipated from the EC's ongoing investigations launched in 2025.

Dominant undertakings should anticipate a year of substantial regulatory evolution that will redefine compliance expectations. The anticipated adoption of new guidelines, coupled with decisions in high-profile investigations, will provide essential guidance on the boundaries of permissible conduct whilst underscoring the consequences of anticompetitive behaviour. Companies with significant market power are advised to closely monitor these developments and proactively reassess their commercial practices to ensure alignment with the evolving legal framework.

[5] Draft Guidelines on the application of Article 102 of the TFEU to abusive exclusionary conduct by dominant undertakings.

MERGER CONTROL

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The year 2025 consolidated a trend observed in recent years: an increase in the number of mergers notified to the Portuguese Competition Authority (PCA). Indeed, a new record number of 98 decisions adopted by the PCA was reached. Of this total, 92 were non-opposition decisions, three were so-called "inapplicability decisions" and three were decisions determining the dismissal of the procedure.

Inapplicability Decisions

Inapplicability decisions were adopted in cases Ccent. 76/2025 – *HCapital PartnersPCLPremium Peculi*INSPARK/NATIVE* and Ccent. 62/2025 – *TrilháGrande/Sabersal*, in which the PCA concluded that the notification threshold concerning the turnover of the parties to the transaction was not met, more specifically, because the turnover achieved by all the participating companies in Portugal did not exceed the threshold of 100 million euros required by Article 37(1)(c) of Law No. 19/2012, of 8 May (the Competition Act). In the second case referred above which concerned the acquisition of sole control of the Hilton Porto Gaia hotel, the inapplicability decision resulted from a correction to the turnover figures attributable to the acquirer of control, initially based on incorrect assumptions. In case Ccent. 71/2025 – *TEAK BV*TEAK S.A.*Semani Yorgancilar*Gülfem Perçin/Vórtex*Yorglass*, even though, according to the PCA, the threshold of 100 million euros was exceeded, the (additional) threshold set out in Article 37(1)(c) requiring that the individual turnover of at least two of the undertakings concerned exceeds five million euros in Portugal was not met.

On the other hand, in case Ccent. 70/2025 – *Proximus*AGI*NHF/Doktr*, the PCA did not adopt the decision of inapplicability sought by the notifying parties because it considered, contrary to the views of the notifying parties, that it had jurisdiction to assess the notified concentration. The case concerned the acquisition of joint control over a teleconsultation service provider in Belgium with no activity in Portugal. Of the three acquirers of control, only two – the Belgian telecommunications operator Proximus and AGI, an AGEAS Group company – had turnover in Portugal, said turnover referring to markets other than that of the acquired company (although, in the case of the AGEAS Group, some turnover-generating activities had a vertical relation with the activity of the acquired company). The notifying parties argued that the transaction was not notifiable in Portugal on the grounds of Article 2(2) of the Competition Act, according to which Portuguese Competition Law only applies to operations that take place in the Portuguese territory or have effects therein, which was arguably not the case here. However, the PCA considered that the transaction was notifiable, since the participating companies generated a turnover of more than 100 million euros in Portugal and at least two of them exceeded the *de minimis* threshold of five million euros, as mentioned above. Regardless of the absence of direct competitive effects in the Portuguese territory, the transaction was assessed by the PCA, which concluded that it did not create significant barriers to effective competition in the national market and, consequently, approved the notified transaction.

Withdrawal of filings

Additionally, year 2025 also registered cases in which the merger control procedure was terminated due to withdrawal by the notifying party(ies). Case Ccent. 05/2025 – *Idealista/Portal47*, concerned the proposed acquisition by Idealista (a company managing and operating online classified ad platforms for the real estate sector) of sole control over Portal47, a company incorporated under English law that owns an online classified advertising platform for the real estate sector aimed at European investors located in Germany, the

United Kingdom and northern Europe who wish to buy or rent property in certain southern European countries (in particular France, Italy, Portugal and Spain). In light of the evidence gathered during the first phase of the investigation, the PCA considered that the transaction could create significant barriers to competition in the relevant market and initiated an in-depth investigation. Almost four months after the start of this second phase, the notifying party withdrew the request for a non-opposition decision, which means that it abandoned the transaction in question.

In case Ccent. 86/2024 – *Nestlé/Nestea*, Nestlé sought authorisation to acquire the rights to use the Nestea brand in Portugal but ultimately withdrew said request five months after submitting the prior notification of the transaction to the PCA. Also, in case Ccent. 66/2025 – *Luz Saúde*C2 Capital Partners/GHB*, which consisted of the acquisition by Luz Saúde, together with C2 MedCapital – Closed-End Venture Capital Fund, of control over GHB – Grupo Hospitalar das Beiras, S.A., involving a post-merger market share of more than 50%, the notifying parties submitted a request for withdrawal approximately four months after the respective notification. In both cases, the withdrawal occurred before the PCA adopted any decision to proceed to the in-depth investigation phase.

Judicial review of merger control decisions

Finally, 2025 was also marked by litigation in the area of merger control. In these proceedings the role of the court is limited to verifying that the procedural and reasoning rules have been complied with and that there are no serious inaccuracies in the facts or manifest errors of assessment. This approach ensures the separation of powers and limits judicial review, protecting the PCA's administrative discretion.

In case Ccent. 17/2023 – *LNE/R&B*Arena* Atlântico, the issue at stake was the acquisition by Live Nation Entertainment Inc., a company active in the live music entertainment industry, of an indirect controlling stake in Ritmos & Blues Produções, Lda. (dedicated to promoting live events in Portugal) and Arena Atlântico – Gestão de Recintos Multiusos, S.A. (the entity that manages and operates the MEO Arena in Lisbon) and their respective subsidiaries. One year and seven months after notification of the transaction, the PCA adopted a non-opposition decision with commitments. The company Everything is New, a counter interested party in the administrative proceedings conducted by the PCA, ultimately filed an interim measures request and an action for annulment against the aforementioned non-opposition decision with commitments. The interim measures request sought to suspend the effects of the non-opposition decision, while the action for annulment sought to annul the PCA's decision and, as a result of that annulment, to frustrate the transaction in question. The Competition, Supervision and Regulation Court (TCRS) dismissed both actions, and the case is currently under appeal.[6]

Secondly, the TCRS ruled on the action for annulment brought by the Portuguese Federation of Tobacco Wholesalers (*Federação Portuguesa de Grossistas de Tabaco*) and the Portuguese Association of Tobacco Wholesalers[7] against the non-opposition decision issued by the PCA in case Ccent. 64/2022 - *Midsid/Dois Lados*. In this case, the TCRS partially upheld the appeal and annulled the non-opposition decision adopted by the PCA on the grounds that there was an error in the facts leading to the definition of the relevant market without taking into

[6] Ruling of the Competition, Supervision and Regulation Court of 19 June 2025, Case 3/25.2YQSTR-A and Ruling of the Competition, Supervision and Regulation Court of 28 October 2025, Case 3/25.2YQSTR.

[7] Ruling of the Competition, Supervision and Regulation Tribunal of 12 February 2025, Case 5/23.3YQSTR.

account the context in which the parties were operating, thereby affecting the competition analysis carried out.

New Guidelines

It is also worth noting that the PCA launched a public consultation on the draft Guidelines on Ancillary Restrictions, which aimed to gather comments on the interpretation and assessment of these restrictions in the context of merger control. The proposed Guidelines aim to provide legal certainty to the parties to notified transactions by clarifying the general principles applicable and the areas covered by the analysis – material, subjective, temporal and geographical – that the PCA considers when assessing non-competition clauses, licence agreements and purchase and supply obligations.

At European level, the closure of the public consultation on the European Commission's reviewed Merger Guidelines concerning horizontal and non-horizontal mergers is also noteworthy. The comments from interested parties responded to the seven topics raised in the public consultation: *(i)* competitiveness and resilience, *(ii)* assessment of market power, *(iii)* innovation and other dynamic elements, *(iv)* decarbonisation, sustainability and clean technologies, *(v)* digitalisation, *(vi)* efficiencies, and *(vii)* public policy, security and labour market considerations.

In general, stakeholders called for a more dynamic, forward-looking and case-by-case approach to merger assessment, which considers long-term effects beyond prices (such as innovation, investment, sustainability and quality), updates the analytical framework in light of economic and technological transformations (particularly digitalisation), and provides greater clarity and legal certainty, balancing the protection of competition with the recognition of genuine efficiencies and broader public policy objectives.

The draft guidelines are expected to be adopted by mid-2026, with final adoption expected by the end of 2026 or early 2027.

Perspectives for 2026

For year 2026, the PCA identifies as priorities for competition policy, in the area of merger control, a commitment to ensuring a timely and technically robust assessment of notified transactions, while also continuing to investigate failures in the duty of prior notification or implementation before the adoption of a non-opposition decision (gun jumping), including through the use of the Screen-IT digital tool.

At the legislative level, a review of the guidelines on commitments will be developed, as well as monitoring of the review of the European Commission's guidelines on horizontal and non-horizontal mergers.

STATE AID

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The year 2025 is marked by the Commission's regulatory agenda focused on selected strategic areas and sectors. Key developments took place in the field of sustainability, notably the new Clean Industrial State Aid Framework (CISAF), amendments to the State Aid Guidelines for the European Union (EU) Emissions Trading System (ETS) and in the defence sector through the "Defence Readiness" *Omnibus*. The Court of Justice of the European Union also delivered relevant judgments on several substantive and procedural State aid rules.

Clean Industrial State Aid Framework

On 4 July 2025, the European Commission adopted Communication 2025/3602, establishing the Clean Industrial State Aid Framework, which simplifies State aid rules under the Clean Industrial Deal and replaces the Temporary Crisis and Transition Framework. The CISAF sets out the conditions for the compatibility of aid under Article 107 of the Treaty on the Functioning of the European Union (TFEU), complementing the General Block Exemption Regulation (Regulation (EU) No. 651/2014, of 16 June), the Guidelines on State aid for climate, environmental protection and energy (Communication 2022/C 80/01, of 18 February) and the Guidelines on regional State aid (C 153, 29 April 2021).

Under this framework, simplified compatibility conditions were introduced for investment aid and operating aid in the areas of renewable energy, energy storage, renewable and low-carbon fuels, capacity mechanisms and measures promoting non-fossil flexibility, as well as for aid supporting the decarbonisation of industrial processes.

The CISAF further provides higher maximum aid intensities for clean-tech manufacturing capacity, for projects supported by the EU Innovation Fund, for temporary reductions in electricity prices for energy-intensive users and for risk-mitigation measures designed to crowd in private investment, in particular in energy infrastructures.

Guidelines on State aid in the context of the EU Emissions Trading System

Towards the end of the year, the European Commission also amended the Guidelines on State aid in the context of the EU ETS, with the aim of strengthening the prevention of carbon leakage, namely the risk that undertakings relocate production activities to jurisdictions with less stringent or no emissions constraints, or that EU products are replaced by imports with a higher carbon intensity.

The amendments include an extension of the list of sectors eligible for compensation, the addition of new energy-intensive sectors and sub-sectors and an increase in the maximum aid intensity from 75% to 80% for sectors already covered (such as aluminium production or refined petroleum products manufacture).

The ETS Guidelines also allow for the notification of sectors not included in the list, subject to evidence of a genuine risk of carbon leakage and to additional obligations on large beneficiaries to support the transition to clean energy.

Defence Readiness *Omnibus* Package

In October 2025, the European Commission adopted the Defence Readiness *Omnibus* Package Communication, with the aim of aligning State aid rules with the need to strengthen public and private investment in the European defence sector.

In line with the case-law of the Court of Justice, the Communication clarifies that measures falling within the scope of Article 346 TFEU, even where they constitute State aid, are not subject to notification to the Commission. Still, the necessity and proportionality of national measures protecting essential security interests are to be assessed on a case-by-case basis, taking into account their context and effects. Other measures entailing State aid may also benefit from the compatibility mechanisms provided in the applicable guidelines and legal frameworks, including *inter alia* the General Block Exemption Regulation or the *de minimis* Regulation (Regulation (EU) 2023/2831, of 13 December).

In addition, the Communication provides that aid intended to facilitate the development of economic activities in the defence sector may also be approved directly under Article 107(3)(c) TFEU, with compatibility assessed, *inter alia*, in light of its contribution to the Defence Readiness 2030 objective.

State Aid decisions regarding Portugal

In April 2025, in case SA.111450, the European Commission approved a national State aid scheme aimed at reducing electricity charges for energy-intensive undertakings, applicable until April 2035 and providing levy reductions of between 75% and 85%, subject to environmental and energy-efficiency conditions.

In September 2025, in case SA.120081, the Commission approved a budgetary increase to an existing national scheme for the compensation of indirect emission costs, finding it necessary, appropriate and proportionate to mitigate the impact of electricity prices linked to the EU ETS until 2030.

Under the General Block Exemption Regulation (Regulation (EU) 651/2014), more than 30 notifications of State aid schemes and *ad hoc* aid measures were also submitted by national authorities to the European Commission, many of which linked to incentive schemes under the Portuguese Recovery and Resilience Plan and Portugal 2030.

European case-law

In 2025, the case-law of the Court of Justice of the European Union contributed to clarifying key aspects of State aid rules.

In case C-588/23, *Scai*, the Court held that Union law does not preclude national law from allowing authorities to enforce a Commission decision ordering the recovery of aid from an entity other than the one identified, provided there is economic continuity with the original beneficiary.

Similarly, in case C-653/23, TOODE, the Court ruled that an individual aid measure integrated into an approved scheme is deemed to be granted on the date when the competent national authority wrongly refused the benefit to the individual, if that refusal is later annulled by a judicial decision.

In case C-59/23 P, *Austria v. Commission*, the Court recalled that when the Commission assesses the compatibility of a notified aid measure with the internal market, it must take into account certain inseparable elements of that measure, in that case, the direct award of the contract for the construction of two new nuclear reactors without a public procurement procedure. Consequently, a potential breach by such an inseparable element of provisions or general principles of Union law, such as EU public procurement rules, may prevent the aid measure from being declared compatible with the internal market.

RECENT DEVELOPMENTS IN PRIVATE ENFORCEMENT IN PORTUGAL

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The decisions handed down by Portuguese courts in proceedings concerning actions for damages arising from infringements of competition law continued to be largely favourable to plaintiffs in 2025, and we expect the case-law to keep evolving in this direction in 2026.

Individual actions

Regarding individual actions (as opposed to class actions), the main developments are set out in **two judgments of the Supreme Court of Justice**, in which it upheld decisions of the Lisbon Court of Appeal (TRL) on actions for damages based on a by-object infringement relating to gross list prices declared in a fining decision of the European Commission (EC), in which the TRL had:

- Presumed, in the light of the description of the infringement in the fining decision and based on a **judicial presumption** derived from Portuguese civil procedure rules (that in the typical course of events, the infringement is more likely to have resulted in damage than not), the **existence of harm** caused to direct customers or (assuming a full pass-on of the harm) to indirect customers, depending on the capacity in which the plaintiff had acquired the affected good, despite the fact that the legal presumptions provided for in Article 17(2) of Directive 2014/104/EU of the European Parliament and of the Council, of 26 November 2014, and Article 9(1) of Law No. 23/2018, of 5 June 2018 (Private Enforcement Law, LPE, which transposed the aforementioned Directive into national law) were not applicable *ratione temporis*;

- In one of the two cases, resorted to a **judicial estimate of the *quantum* of the harm**, within the meaning of Article 17(1) of Directive 2014/104/EU of the European Parliament and of the Council, of 26 November 2014 and Article 9(2) of the LPE, despite the fact that the plaintiff had not made use of its rights conferred by Directive 2014/104/EU of the European Parliament and of the Council, of 26 November 2014 to facilitate that task, *i.e.* not requested the defendant to provide evidence in its possession (but only submitted a gravely deficient economic report based on third-party data); in the other case, **ordered the defendant to pay compensation to be quantified at a subsequent stage of the proceedings (liquidation)**, despite the fact that the plaintiff had not produced any evidence of the *quantum* of harm (but only invoked the fining decision, erroneously interpreted as containing that evidence), thus giving it not only a second chance to produce evidence, but also the certainty that, even if the plaintiff maintains his evidential inertia, its action for damages can no longer be dismissed; and

- Rejected the **plaintiff's request to** add to **the default interest** (due from the time the damage occurred until the time of payment of the damages) indemnification for monetary devaluation of the compensation amount, considering that Directive 2014/104/EU of the European Parliament and of the Council, of 26 November 2014, in its recital 12, leaves the regulation of this matter to the discretion of each Member State and that under Portuguese civil law attributes default interest has a compensatory nature, including in its scope all losses resulting from late payment, such as those resulting from the devaluation of the currency.

If the jurisprudence of the Portuguese courts in the field of private enforcement continues to develop in the sense that public enforcement decisions almost automatically result in a condemnation of defendants to pay damages for harm presumed to have been suffered by plaintiffs, the already reduced incentives of companies to disclose competition law infringements to the EC or the Portuguese Competition Authority (PCA) under their leniency regimes (and/or to recognise their liability in settlement

proceedings) will continue to diminish and, therefore, to weaken public enforcement.

Class actions

This trend is aggravated by the emergence, in recent years, of collective or class actions (for compensation for damages arising from infringements of competition law) that typically involve very high compensation amounts (hundreds of millions of euros), as they aggregate a large number of individual cases, benefitting from an extremely favourable legal regime (*e.g.*, opt-out regime, absence of procedural costs for the plaintiff, possibility of obtaining financing from third parties without cap) and the creation of specialised claims vehicles heavily financed by litigation funds (*e.g.*, *Ius Omnibus*).

As an example, there were relevant developments in 2025 in class actions related to the PRC/2012/09 case, in which the **AdC**, in 2019, had condemned the main **banks** operating in Portugal, for having **exchanged information**, considered to be sensitive and confidential, relating to the mortgage, consumer and corporate credit markets, in violation of Portuguese and European Union competition rules.

The public enforcement proceeding was declared extinct due to expiry of the statute of limitation by the TRL judgment of 10 February 2025, but in the meantime **several** private enforcement **class actions** were brought by two associations, *Ius Omnibus* and the Association of Portuguese Micro, Small and Medium Sized Enterprises (AMPEMEP), which are pending before the Competition, Regulation and Supervision Court (TCRS, court of first instance).

In a proceeding concerning a **class action brought by AMPEMEP** in connection with the infringement relating to **corporate credit**, the **TCRS**, on September 18, 2025, issued a decision **dismissing the class action** for being inadmissible, considering that the **lack of homogeneity of interests** of the class represented.

The TCRS noted – as was recognised by the claimant – that not all members of the represented class had suffered harm, as certain undertakings were able to pass on the overcharge and, consequently, did not suffer any impact on profit margins. This circumstance rendered it impossible to differentiate such undertakings from those that lacked the ability to do so. Although the claimant is not required to demonstrate the absence of pass-on, the TCRS underscored that pass-on constitutes a defence by way of exception, which may legitimately be invoked by the defendants in relation to specific potential claimants.

Furthermore, the TCRS held that declaring the action inadmissible on this ground did not undermine the principle of effectiveness of EU law, as it was not established that SMEs individually lack either the interest or the capacity to pursue an action for damages, nor that a class action is indispensable to guarantee the effectiveness of the right to compensation. The TCRS further observed that it would, in any event, be possible to confine representation to SMEs exhibiting homogeneous conditions, particularly with regard to the inability to pass on the overcharge. Several appeals brought against the TCRS decision are currently pending.

Another **decision** recently issued by the TCRS in a proceeding concerning a class action brought by ***Ius Omnibus*** in connection with the infringement relating to **mortgage and consumer credit**[8] raises novel questions regarding ***locus standi*** **and the third-party financing of**

[8] *Cf. Ius Omnibus* press release of 25.11.2025.

class actions for damages for infringements of competition law.

In terms of third-party funding, the TCRS concluded that neither the LPE nor the Class Actions Law (Law No. 83/95, of 31 August) contains specific or express provisions governing such agreements in the context of private enforcement actions. Moreover, Directive (EU) 2020/1828 of the European Parliament and of the Council, of 25 November 2020 on representative actions for the protection of consumers' interests, as well as Decree-Law No. 114-A/2023, of 5 December, which transposes that Directive into Portuguese law, are not directly applicable to actions for damages resulting from infringements of competition law. According to the TCRS, this legal gap should be closed by way of an **analogous application of the standing requirements foreseen in Decree-Law No. 114-A/2023, of 5 December**.

Article 6(1)(d) of the Decree-Law establishes that, for an association to have standing, it must be **independent and remain free from influence exerted by third parties other than consumers**, particularly from professionals with an economic interest in the initiation of the collective action, notably in circumstances involving third-party funding. Furthermore, the provision requires the adoption of adequate mechanisms to prevent such influence and to safeguard against conflicts of interest between the association, its funders, and the consumers' interests. Paragraph 2 of the same article further provides that an association shall be deemed independent when it holds exclusive responsibility for decisions to initiate, withdraw, or settle the collective action.

Entertaining doubts as to the independence of the plaintiff association in the case concerned, the TCRS deemed it appropriate to make a preliminary reference to the Court of Justice of the European Union (CJEU), asking whether EU law, specifically the provisions on the funding of representative actions set out in Directive (EU) 2020/1828 of the European Parliament and of the Council, of 25 November 2020, and the principle of effectiveness enshrined in Directive 2014/104/EU of the European Parliament and of the Council, of 26 November 2014, precludes the interpretation of national legislation that allows a collective action for damages for infringement of competition law to be brought by an association whose only revenues derive from third-party financing, including for the purpose of payments to members of its administration.

Perspectives for 2026

In light of these developments, the future evolution of Portuguese case law on private enforcement merits close attention. The issues raised by the TCRS pose significant interpretative challenges that may shape the future of collective actions for infringements of competition law. The manner in which the courts reconcile the principle of effectiveness of EU law with the requirements of transparency and the safeguarding of the interests of the parties involved will be decisive for the consolidation of an effective and balanced regime.

FOREIGN SUBSIDIES CONTROL – DEVELOPMENTS IN THE EUROPEAN UNION AND REPERCUSSIONS IN PORTUGAL

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Introduction

Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (the Foreign Subsidies Regulation, FSR) formally entered into force on 12 January 2023; the notification obligations became applicable on 12 October of the same year.[9] Two years after the start of the application of the FSR, the European Commission has recently launched the first review of the Regulation, with the first review report expected in July 2026.

In this article, we will focus on the institutional, procedural and case-law developments that occurred during 2025, both at EU level and in the Portuguese context, seeking to provide an overview of the evolution of this (relatively) new regulatory instrument.

Quantitative overview of the application of the FSR in 2025

To date, the European Commission has received 218 notifications under the FSR.

As mentioned in the 2024 review, the Commission created "Directorate K" within its Directorate-General for Competition (DG COMP). Directorate K, dedicated to the FSR, currently comprises three operational units, but it continues to be overstretched by the volume of cases it receives and remains, for the time being, well below the number of staff initially envisaged by the Commission.

Overall, it should be noted that notifications have far exceeded initial expectations, as the Commission had forecast around 30 notifications per year for merger and public procurement cases, whereas the actual figures have, as seen, been substantially higher.

Key enforcement cases in 2025

Merger control

On 14 November 2025, the Commission conditionally approved the acquisition of Covestro by ADNOC following an in-depth investigation under the FSR. It preliminarily concluded that subsidies from the United Arab Emirates had enabled a deterrent investment strategy. ADNOC undertook to limit the State guarantee and to license Covestro's sustainable technology patents on transparent terms.

Ex officio investigations and public procurement

In 2024, in the context of the in-depth investigation into Nuctech under the FSR, the General Court confirmed that the Commission may use seized electronic correspondence and access data stored outside the EU, including in servers located in China, dismissing risks invoked under Chinese law. The appeal lodged with the Court of Justice was rejected in 2025, thereby consolidating important procedural principles for the application of the FSR.

In the field of public procurement, investigations continued into procedures involving Chinese state-owned companies, in particular CRRC, Shanghai Electric, Longi Green Energy and Goldwind, in sectors such as rolling stock, solar and wind energy. All of these companies ultimately withdrew from the respective tenders, reinforcing the Commission's stance on the protection of competition and European industry.

[9] Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market [2022] OJ L 330/1. Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 [2023] OJ L 177/1.

Exercise of "call-in" powers and monitoring below the thresholds

Article 21(5) of the FSR grants the Commission the power to request a notification even where a transaction does not meet the notification thresholds laid down. The Commission's request must be made before the concentration is implemented. This call-in power may be useful, for example, where the Commission becomes aware of the transaction through a merger control notification which, although it does not meet the FSR thresholds, appears to involve foreign subsidies.

A recent example of the Commission's exercise of these powers is the acquisition of Arbonia by the Chinese company Midea. During the merger control assessment, the Commission sent the parties a request for information under the FSR. Although this request did not ultimately lead to a notification order, it clearly demonstrates the Commission's intention to use its call-in powers where necessary.

Even so, and although it came close to using its call-in powers in this transaction, the Commission has not yet exercised its authority to require the submission of "extraordinary" notifications. It is, however, reported to have sent several information requests in other non-public transactions.

Review of the FSR

In August, the Commission launched its first comprehensive review of the FSR. This process was foreseen in the Regulation itself: Article 52 requires the Commission to review and prepare a report on its application by 13 July 2026 (and every three years thereafter).

The review began with a public consultation and a call for evidence that will feed into a Commission report to the European Parliament and the Council, and the Commission may put forward legislative proposals if it considers them appropriate. The scope of the review is very broad, covering both substantive and procedural aspects.

The call for evidence closed on 18 November 2025, and the Commission will present its report to the European Parliament and the Council by 13 July 2026.

New Commission Guidelines

The Commission adopted the FSR Guidelines on 9 January 2026, following a widely participated process that included a public consultation on a draft between July and September 2025.

The final Guidelines – which complement the Frequently Asked Questions and add to the Commission Staff Working Document of 2024 – clarify how the Commission will assess the existence of distortions of competition and in public procurement procedures, apply the balancing test and exercise its call-in powers in mergers and public tenders, also introducing new safe harbours (for example, exclusions for low-value procedures and for limited amounts of subsidies). Compared with the draft published for consultation in 2025, the final version does not substantially change the underlying approach, but is more developed and detailed, with additional examples and procedural guidance.

Impact and context in Portugal

Although Portugal is not among the Member States with the highest number of target companies notified under

the FSR, the application of the Regulation is relevant for economic operators active in Portugal. The participation of Portuguese companies in large-scale public procurement procedures, as well as in concentration transactions involving foreign financial contributions, is subject to the notification obligations and the investigative powers of the European Commission. The institutional cooperation between national authorities and the Commission is particularly important in strategic sectors, notably energy, infrastructure and security technologies, where public procurement plays a central role.

Commentary

The first two years of operation of the FSR have seen a high volume of notifications but a low rate of intervention.

This procedural burden suggests that the notification thresholds may be set too low and may be capturing many cases without substantive issues. Much of this burden stems from the extremely broad definition of "financial contribution" in the Regulation. Frequently, the specific financial contribution identified is unrelated to a particular transaction or bid, yet it still counts towards the thresholds and reporting requirements. The absence of a simplified notification route – mirroring that under the EU Merger Regulation – also contributes to this administrative load.

The European Commission is expected to continue applying the FSR vigorously in the future as a policy instrument to support the Union's long-term competitiveness. At the same time, its enforcement must be carefully balanced against the need to maintain the European Union's attractiveness to foreign investors.

As it gains experience, the Commission is becoming more targeted in its questions and increasingly open to granting waivers, particularly where certain information is not essential to assess the transaction. With increasing resources at its disposal, however, the Commission may also begin to make more regular and demanding use of its call-in powers.

The ongoing review and the publication of the final Guidelines in January 2026 are important milestones for the future framework of the FSR and may lead to procedural and substantive adjustments addressing current criticisms regarding the administrative burden on companies and the need for greater predictability.

In practical terms, it is important for companies potentially subject to the FSR to keep an up-to-date record of all foreign financial contributions received over the past three years, in order to assess in advance the applicability of the FSR to specific transactions and procedures.

Experience also shows that it is advisable for notifications submitted to the Commission to contain, from the outset, correct and complete information and documentation, in particular as regards the categories and amounts of financial contributions received by the undertakings concerned, which requires adequate preparation of the filing.

Finally, even where a transaction does not meet the notification thresholds, companies should consider the risk that the Commission may exercise its call-in powers, particularly where there are indications of foreign subsidies capable of distorting competition in the EU, not only when preparing the transaction but also when considering whether to include specific provisions in the transaction documents.

COMPETITION AND LABOUR MARKETS

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Introduction

2025 proved to be particularly rich in competition law developments related to anti-competitive behaviour in labour markets. There was particularly intense activity on the part of competition authorities in such area, from the adoption of various awareness-raising and guidance tools aimed at companies' human resources departments to the launch of a significant number of investigations and the adoption of decisions in 2025. The main practices under scrutiny consist of *(i)* no-poach agreements, whereby companies agree not to hire each other's employees, and *(ii)* agreements between companies to set salaries and other benefits and remuneration conditions of their employees (which also involve, as a rule, the sharing of commercially sensitive information, and are intended to align these conditions outside a lawful context, such as collective bargaining).

This article aims to identify and summarise relevant developments in this area and analyse potential future impacts on the application and development of competition law in the labour context.

Activity of the European Commission (Commission) and the Portuguese Competition Authority (PCA)

In 2025, scrutiny of labour markets was clearly a priority for the Commission and the PCA. Both entities strengthened their enforcement activity and remained concerned with raising awareness among companies, sending a clear signal that restrictions in this area had become a central priority of the competition policy.

On 2 June 2025, the Commission announced that it had reached an agreement with Delivery Hero and Glovo to pay a fine of 329 million euros (223.3 million euros and 105.7 million euros, respectively). The restriction in question concerned a no-poach obligation that came into force in July 2018, when Delivery Hero acquired a minority non-controlling stake in Glovo (having acquired sole control of Glovo four years later). According to the Commission, this obligation was part of a broader anti-competitive strategy that also included the sharing of sensitive commercial information and the geographical allocation of markets. This was the first condemnatory decision on no-poach agreements adopted by the Commission and highlighted the risks of collusion in the context of minority shareholdings in competing companies.

In 2025, the PCA launched a set of thematic short papers, publishing a document in July on the global shortage of skilled labour in the artificial intelligence sector, which addressed anti-competitive practices in labour markets. Among other aspects, the document addresses "traditional" issues such as the possibility of excluding competitors or limiting the mobility of specialised workforce (*e.g.*, non-competition and confidentiality clauses). It also highlights more sophisticated employee hiring practices intended to avoid merger control and the respective competition analysis, such as reverse acquihires.

Also in 2025, the PCA fined the Inetum group approximately 3 million euros for entering into no-poach agreements between March 2014 and August 2021, and adopted two statements of objections regarding anti-competitive practices in the labour market: one related to the alleged no-poach obligations concerning temporary workers contained in the Code of Ethics of an association of companies in the employment and human resources sector, and the other related to supposed no-poach agreements in the beverage industry.

Also noteworthy are the conclusions of Advocate General Emiliou in the preliminary ruling requested in the Liga case, in which the PCA sanctioned 31 professional football clubs and the Portuguese Professional Football League

itself for an agreement that allegedly prevented clubs from hiring footballers who unilaterally terminated their employment contracts due to the Covid-19 pandemic. The Advocate General Emiliou emphasised the need to analyse and consider the context surrounding the agreement, which should not be classified as a restriction by object if its purpose was to preserve the fairness and integrity of the sporting competition affected by the pandemic. The judgment to be adopted by the CJEU will certainly be a significant milestone in case law applicable to competition law infringements in the labour context (and in the sports sector).

A trend among national competition authorities (NCAs)

In addition to the PCA and the Commission, other European and non-European NCAs have shown growing concern in 2025 about anti-competitive behaviour in labour markets.

The French authority, *Autorité de la Concurrence*, decided to impose fines on four companies (ranging from 1.9 million euros to 24 million euros), based on two anti-competitive agreements: *(i)* a *no*-poaching and no-hiring agreement for the management team members of two of the companies, which was in force between 2007 and 2016; and *(ii)* a no-poaching agreement for the members of two other companies (which also included a prohibition on hiring in the event of unsolicited applications from any of their employees), which was in force between February and September 2018. This was the first conviction in which the French Authority ruled independently on non-solicitation clauses for employees.

The Polish competition authority (UOKiK) launched an investigation into Jeronimo Martins Polska (owner of the Biedronka retail chain) and a group of 32 transportation companies, as well as eight directors. According to UOKiK, Jeronimo Martins Polska and transport companies entered into an agreement with the aim of restricting the ability of the latter's drivers to move between companies providing services to Biedronka's distribution centres. Jeronimo Martins Polska allegedly played a coordinating role, supervising and enforcing the agreements and preventing drivers who wished to change employers from entering its premises. Subsequently, the president of UOKiK opened an investigation into three other companies in the transport sector, due to similar evidence of anti-competitive practices.

Also in Romania, as part of an investigation into alleged restrictive practices by the Romanian Dental Association, the Romanian authority identified evidence that one of the conducts in question was related to limiting the hiring of staff by speciality, in order to fragment the market and reduce potential benefits for users. According to the Romanian authority's preliminary thesis, this agreement contributed to maintaining salaries above their real market value. A final decision on this investigation is not yet known.

Outside the EU, the work of the UK Competition and Markets Authority (CMA) is noteworthy. In September 2025, it published a guide for companies on how to conduct recruitment processes in accordance with competition rules. This document provides a number of practical guidelines on potential anti-competitive conducts in this context (including in relation to collective bargaining) and tips on how to avoid illegal behaviour. It also addresses issues relating to the sharing of commercially sensitive information and the use of benchmarking as a source of information for recruitment.

The CMA also adopted a decision regarding an exchange of commercially sensitive and strategic information between the BBC, BT, IMG, ITV and Sky on the fees of freelancers (such as camera operators or sound technicians)

– essential elements in the production/broadcasting of certain content, such as major sporting competitions. The companies concerned (with the exception of Sky, which benefited from being the first company to report the agreement) agreed with the CMA to pay fines totalling 4.2 million Great British pounds (approximately 4.8 million euros).

Throughout 2025, the United States Department of Justice (DOJ) was also very active. On the one hand, it is worth noting the creation of a DOJ task force mandated to fight no-poach practices. On the other hand, it is also relevant mentioning the first conviction, with an effective prison sentence, of a healthcare executive who played a leading role in an agreement to fix the wages of nursing home nurses in the Las Vegas area between March 2016 and May 2019.

The intervention of the Turkish national competition authority should also be highlighted, as in 2025 it published a decision adopted in 2023 in which it condemned a group of 16 companies for no-poach agreements, with fines amounting, in some cases, to 59.59 million Turkish lira (around 1.8 million euros). During that year the Turkish authority also condemned several pharmaceutical companies to pay a fine of 244.8 million Turkish lira (approximately 4.9 million euros) because it identified a series of illegal no-poach agreements and the exchange of commercially sensitive information about their employees' future salaries and benefits.

Perspectives for 2026

Developments in this area are expected to continue in 2026 and labour issues are likely to remain in the spotlight of competition authorities, given the relative novelty of this matter and the fact that the associated precautions may not yet be properly consolidated within companies.

In Portugal, the PCA has once again included the investigation of anti-competitive practices in labour markets among its priorities for the new year.

Further developments are also expected at EU level. Restrictive behaviour in labour markets has been the subject of particular attention by the Commission, which has already launched investigations involving this type of conduct. Given the Commission's restrictive approach in this area, further investigations are expected, including by other European and non-European NCAs.

Therefore, organisations must continue to take special care in their recruitment processes (including in contracts with their partners) and collective bargaining to reduce competition risks. A focus on compliance and specific training will certainly be relevant in providing companies with the technical knowledge necessary to mitigate such risks.

COMPETITION IN THE DIGITAL SECTOR

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The year 2025 was particularly dynamic in terms of enforcement, monitoring and evaluation by competition authorities in the digital markets, both in Portugal and at European Union level.

This had been already anticipated by the attention that the authorities have been giving to these markets, not only because of their economic significance, dynamism and constant evolution that characterises them, but also because of their proximity and real impact on consumers.

At national level, the Portuguese Competition Authority's (AdC) intervention in the digital real estate sector stands out, both in terms of merger control and in the context of investigations into restrictive practices.

In the area of merger control, the AdC decided to conduct an in-depth investigation into the acquisition of Portal47 by Idealista, considering that the operation was likely to create significant barriers to effective competition in the relevant market in question.[10] In September 2025, Idealista ultimately withdrew from the procedure, and the operation did not go ahead.

At the end of 2025, the AdC announced the opening of an investigation into an alleged abuse of a dominant position in the national market for online property advertising portals. According to the AdC, the investigation concerned practices that restricted access to the dominant online property advertising portal to certain estate agencies that used a competitor's customer relationship management (CRM) software.[11]

Alongside traditional enforcement, in July 2025 the AdC also published a short paper entitled "Competition and Generative AI: Labour Markets",[12] in which it analyses competition issues related to access to talent in the generative Artificial Intelligence (AI) sector. In this context, the AdC paid particular attention to the role of labour mobility in promoting innovation, analysing how certain practices – such as acquihires,[13] non-competition, confidentiality and non-poaching obligations, among others – can have a negative impact on competition.

With regard to the modernisation of research methods, the AdC had already established as a priority for 2025 the integration of AI and computer forensics tools into its processes, with the aim of strengthening the proactive detection of infringements.[14]

At the end of the year, the authority announced that it would intensify this strategy in 2026 by applying new machine learning tools to data from the BASE portal.[15] This effort will be accompanied by close cooperation with the Portuguese Criminal Investigation Police Agency, with plans to strengthen joint training and technical support for the detection of restrictive practices in public procurement.[16]

At European level, which has also been showing growing dynamism in the technology sector, 2025 saw a sanctioning decision in the online food delivery sector, as well as the first formal decisions related to the Digital Markets Act (DMA), alongside new investigations focused on Big Tech.

[10] See the AdC press release.

[11] See the AdC press release.

[12] Available here.

[13] Mergers that aim to hire a key group of employees from a target company.

[14] See the AdC document "Competition policy priorities for 2025".

[15] The BASE portal's essential function is to centralise information on public contracts concluded in Portugal. It serves as a virtual space where data regarding the formation and execution of public contracts is disclosed, thereby enabling their tracking and monitoring.

[16] See the article in the ECO newspaper (available only in Portuguese).

In this context, we highlight the European Commission's (EC) decision of June 2025, which imposed a total fine of 329 million euros on Delivery Hero and Glovo for participating in an alleged cartel in the online food delivery sector. According to the EC, these companies entered into non-solicitation agreements, exchanged commercially sensitive information and shared geographical markets.[17] We note that this infringement arose in the context of Delivery Hero's acquisition of a stake in Glovo, which reinforces the need to adopt appropriate preventive measures with regard to the circulation of sensitive commercial information in this context. Both companies acknowledged their participation in the conduct in question and opted for a settlement procedure.

Among the first formal decisions on non-compliance with the DMA adopted by the EC, it is worth mentioning the 500 million euros fine imposed on Apple for violating anti-steering obligations by restricting the ability of developers to inform users about alternative offers outside the App Store and to direct them to those offers.

And the 200 million euros fine imposed on Meta, with the EC concluding that its "pay or consent" model did not allow users a real and free choice about the processing of their personal data for advertising purposes. Following this case, the EC announced in December 2025 that Meta will introduce a new advertising model offering EU users an alternative with less personalised advertising, with a view to ensuring full compliance with the DMA.

At the end of the year, in December 2025, the EC announced the opening of an investigation into Google's use of online content for AI purposes. At issue is the use of articles from news publishers and YouTube videos to train generative AI models, without offering adequate compensation or the possibility of refusal to the creators.

According to Commissioner Teresa Ribera, this process complements the investigation launched in November into the possible demotion of content in the search engine and is already the second formal investigation in the AI sector, following the opening of a similar case against Meta regarding the blocking of third-party AI assistants on WhatsApp.

In conclusion, the cases highlighted here are just a few examples of a very busy year. In addition to these, there have been other cases from the EC and various national authorities related to the digital sector, which clearly demonstrates the dynamism and concerns that exist in these markets.

Looking ahead, the trend is likely to continue, with authorities increasingly relying on technological tools to supervise this and other sectors.

[17] See the EC press release.

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