



EU AND COMPETITION LAW

News – Competition law and policy

3rd Quarter 2026

Each quarter, we present the key developments in competition law in Portugal and the European Union.

This edition highlights recommendations from the Portuguese Competition Authority in the banking and rail sectors, legislative and judicial developments regarding the competition act, with a particular focus on the statute of limitations, and the recovery of State aid and investigative powers. We also provide updates on digital markets, foreign subsidies, foreign investment, mergers, State aid and abuse of a dominant position.

This summary of current events supports our clients in overcoming the challenges they face in the market.

PORTUGAL

I. Portuguese Competition Authority

THE AUTHORITY RECOMMENDS MEASURES TO STRENGTHEN COMPETITION IN THE BANKING AND RAIL SECTORS

On 20 July and 20 August 2026, the Portuguese Competition Authority (PCA) published two sector-specific studies focusing, respectively, on retail banking and rail transport of passengers and freight. In both cases, the PCA identified constraints on the competitive functioning of the markets and put forward recommendations aimed at reducing barriers to customer mobility, the comparison of offers, and the entry or expansion of operators.

In the banking sector, the PCA concluded that difficulties persist in comparing banking products and switching financial institutions. Among other measures, it proposes the creation of a model for the centralised management of the account switching service by an independent body and the development of a strategy for open banking and open finance. In the rail sector, the PCA recommended changes to the sector's organisational model, including rules governing public service contracts and measures relating to access to rolling stock, staff, rail capacity and the information required to provide ticketing services.

Both studies highlight a cross-cutting priority for PCA: to promote conditions for competition in regulated sectors through measures aimed at customer mobility, the comparability of offers and market contestability. Although not binding, the recommendations may influence future legislative and regulatory decisions affecting the retail banking and rail sectors.

II. Legislation

2022 REFORM NOW APPLIES TO PENDING CASES

On 17 August 2026, Law 51/2026 was published, stipulating that the amendments introduced to the Competition Act in 2022 will apply to cases pending on the date of its entry into force. The legislation concludes the legislative process already highlighted in the previous newsletter and expressly establishes that the rules introduced by the 2022 reform apply to pending cases, in a context marked by divergent case law regarding the temporal application of these amendments.

This initiative follows the conclusion of the banking sector case and the debate surrounding the risk of competition cases pending before the courts becoming time-barred. During the legislative process, the Portuguese Competition Authority warned of the risk of 19 cases becoming time-barred. These cases involve fines totalling approximately €880 million.

The scope of the new law extends beyond the debate that gave rise to the legislative initiative. Although public discussion has focused primarily on the issue of limitation periods, the approved solution provides for the application to pending cases of all the amendments introduced by the 2022 reform of the Competition Act. The practical impact of this legislative choice and its relationship with the principles governing the succession of laws over time may continue to give rise to debate in the courts.

III. National courts

COURT OF APPEAL SETS ASIDE LIMITATION PERIOD IN THE EDP/SONAE CASE

On 15 July 2026, the Lisbon Court of Appeal concluded that the proceedings concerning the non-competition agreement between EDP and Sonae in the supply of energy were not time-barred, thereby overturning the decision of the Court of Competition, Regulation and Supervision.

The judgment was handed down following appeals lodged by the Competition Authority and the Public Prosecutor's Office. The Lisbon Court of Appeal held that the issue of the applicability of the periods of suspension of the limitation period provided for in the COVID-19 legislation had already been decided in a previous judgment by the court itself and could not be reconsidered. On the basis of this understanding, it concluded that the administrative offence proceedings were not time-barred.

The judgment reinforces the importance attached to the principles of res judicata and the binding effect of previous judgements in the context of administrative competition proceedings. It may also influence the ongoing debate on the limitation period for such proceedings.

COURTS REINFORCE THE REQUIREMENT FOR THE EFFECTIVE RECOVERY OF AID FROM THE MADEIRA FREE ZONE

On 29 July 2026, the Southern Central Administrative Court once again ruled on the recovery of unlawful State aid in the context of Scheme III of the Madeira Free Zone (ZFM). The court ruled that, pursuant to European State aid rules and the primacy of European Union law, national provisions on the waiver of security must be set aside where their application would allow the immediate and effective recovery of unlawful aid to be suspended.

On 16 September 2026, the Supreme Administrative Court confirmed that it is not permissible to suspend enforcement through payment in instalments or the waiver of a security, accepting only a security that effectively deprives the beneficiary of the amount corresponding to the aid declared unlawful, including interest.

These judgments confirm that the debate over the legality or quantification of the recovery does not, in itself, preclude the requirement to neutralise the competitive advantage while the dispute is ongoing. This is against a backdrop where pressure to recover aid granted under Regime III of the ZFM continues to intensify. Since 22 April 2026, an infringement action brought by the European Commission (EC) against Portugal, relating to the enforcement of the decision to recover aid granted under the ZFM, has been pending before the Court of Justice of the European Union. According to the EC, circumstances such as requirements under national procedural law, the insolvency of beneficiaries, the need to assess economic viability, or suspensions pending preliminary rulings do not, in themselves, constitute an absolute impossibility justifying the non-enforcement of the recovery order.

For the companies concerned, these developments highlight the importance of assessing, on a case-by-case basis, which safeguards and procedural measures may be compatible with the European requirement for immediate and effective recovery, without prejudice to the discussion of the legality, quantification and scope of the obligation to repay.

EUROPEAN UNION

I. European Commission

COMMISSION SCRUTINISES RESPONSES TO COST INCREASES

On 20 July 2026, the European Commission (EC) sent a statement of objections to several manufacturers of construction chemicals and to three national industry associations. At issue is the alleged coordination of price increases in France, Germany and Spain for products used in cement, concrete and mortars.

According to the EC's preliminary assessment, between 2021 and 2022, the companies may have coordinated future price increases in response to rising raw material costs linked to the COVID-19 pandemic and Russia's invasion of Ukraine. The EC also indicated that the alleged coordination is said to have taken place in the context of the preparation of press releases within national associations, intended to justify the price increases.

The statement of objections does not prejudice the outcome of the investigation. The case nevertheless warrants particular attention in a context where many companies continue to face significant cost pressures. The EC's preliminary position notes that exchanges of information on future prices, costs and commercial strategies may raise competition concerns, even when linked to sector-wide responses to external shocks. The case also highlights the caution required of sector associations when circulating commercially sensitive information or coordinating other initiatives likely to influence the conduct of their members.

COMMISSION TESTS THE FSR'S INVESTIGATIVE POWERS

On 31 July 2026, the European Commission (EC) sent a Statement of Grounds to PDD Holdings Inc., the owner of Temu, and its subsidiary WhaleCo Technology Limited, as part of an investigation conducted under the Foreign Subsidies Regulation (FSR). The Statement of Grounds forms part of a procedure relating to the exercise of the EC's investigative powers under the FSR and does not prejudice the final outcome of this procedure or of the main investigation currently underway.

The case illustrates the increasing use of the EC's investigative powers under the FSR and contributes to the consolidation of its decision-making practice.

ARBITRATION AWARDS REMAIN ON THE STATE AID RADAR

On 4 August 2026, the European Commission (EC) launched an in-depth investigation to assess whether an arbitral award ordering Spain to compensate JGC Holdings Corporation for changes to a renewable energy support scheme constitutes State aid. The compensation amounts to €23.5 million, plus interest and costs, and was notified by Spain to the EC under the State aid rules. The dispute arose from changes introduced by Spain to a support scheme for renewable energy production.

The investigation shows, once again, that arbitral awards relating to changes to public support schemes may be subject to EC scrutiny, even when they result from decisions handed down by arbitral tribunals. For investors and public authorities, the case highlights the growing intersection between State aid, investment arbitration and energy transition policies. The opening of the in-depth investigation does not, however, prejudice the EC's final conclusion as to the compatibility of the compensation with EU law.

COMMISSION APPROVES SECTOR-SPECIFIC SUPPORT TO ADDRESS COST SHOCKS

On 26 August, the European Commission (EC) approved a compensation scheme for fishermen affected by the implementation of the new Azores Marine Park, which is due to run until 31 December 2028. A few days later, on 2 September, it also approved a Portuguese scheme worth €30 million aimed at agricultural, fisheries and aquaculture businesses affected by rising fuel and fertiliser prices, under the Temporary Framework relating to the Crisis in the Middle East.

These decisions illustrate how State aid rules continue to accommodate measures addressing specific challenges faced by certain economic sectors, including constraints linked to environmental objectives and significant increases in production costs. For potential beneficiaries, the EC's approval of the schemes is only the first step. Effective access to support will depend on compliance with the applicable eligibility criteria, the maximum limits per undertaking, the rules on cumulation, and the ability to demonstrate that the conditions required by the national measures have been met.

II. Legislation

COMMISSION CONSIDERS ADJUSTMENTS TO THE FOREIGN SUBSIDIES SCHEME

On 14 July 2026, the European Commission (EC) published the results of the first review of the Foreign Subsidies Regulation (FSR). It concluded that the regulatory framework currently in force is adequate for tackling distortions in the internal market caused by subsidies from third countries and has functioned effectively during its first three years of application.

Despite this generally positive assessment, the review identified concerns regarding the complexity of the procedure, the administrative burden associated with reporting foreign financial contributions, and uncertainty regarding the EC's powers to require notification of transactions below the applicable thresholds. To address these concerns, the EC is considering raising the notification and reporting thresholds applicable to mergers, establishing simplified procedures and introducing new exemptions. It is also considering simplifying the forms and obligations applicable to public procurement.

The draft amendments are expected to be published for public consultation in autumn 2026, with the EC aiming to adopt the revised procedural rules in 2027. The changes under discussion could reduce the burden of collecting and reporting information and focus scrutiny on situations most likely to raise concerns, without removing the need to identify in advance any financial contributions received from third countries.

EUROPEAN UNION STRENGTHENS FOREIGN INVESTMENT CONTROLS – FDI

On 16 July 2026, the new European Union (EU) Regulation on the screening of foreign investments (foreign direct investment) in the Union (FDI Regulation), published on 26 June 2026, entered into force. The Regulation will be fully applicable from 17 January 2028 and requires all Member States to have national screening mechanisms in place that comply with its harmonised minimum requirements; it also establishes a common minimum scope of foreign investments subject to mandatory prior authorisation, with a standstill obligation pending a decision. This minimum scope covers, in particular, dual-use items, defence-related products, advanced technologies (including semiconductors, quantum technologies and artificial intelligence), critical transport, energy and digital infrastructure, strategic raw materials, systemically important financial entities and electoral infrastructure. Member States may extend the scope of application to other sectors or adopt supplementary provisions.

Key developments include the extension of the regime to so-called intra-EU investments, i.e. investments made through companies established in the EU that are ultimately controlled by third-country investors, either because they are not nationals of a Member State or because they are incorporated under the laws of a third country; the introduction of a mandatory ex officio intervention power (call-in powers) for national authorities, with a minimum look-back period of between 15 months and five years, to be determined by the national legislator, in respect of transactions that are not subject to prior authorisation or have not been notified; the establishment of a mandatory, non-exensible 45-calendar-day Phase I screening period; and the introduction of common criteria for assessing risks to security or public order.

The FDI Regulation further strengthens cooperation between the Member States and the European Commission, imposes annual reporting obligations and requires the publication of guidance on national screening mechanisms. It also requires provision to be made for conditional authorisations (mitigation measures), with the prohibition or unwinding of transactions to be used only as a measure of last resort, in accordance with the principle of proportionality. The decision to authorise, condition or prohibit each investment nevertheless remains within the competence of the national authorities.

The new framework will have a particular impact on Portugal, where the current regime is based on voluntary notification, with no standstill obligation, has a narrower scope of application – limited to strategic assets in the energy, transport and communications sectors, or assets essential to national defence or security, held by investors from outside the EU – and relies primarily on a post-transaction intervention mechanism, under which the Government may initiate opposition proceedings within 30 working days of the completion of the transaction or of becoming publicly aware of it.

Adapting the current regime to the new FDI Regulation is expected to require the introduction of a more preventive system based on mandatory prior authorisation for certain transactions, with a broader substantive scope and a significantly longer ex officio intervention period than the current 30-working-day window. Accordingly, for investors and target companies, the assessment of foreign investment risks is likely to become increasingly important in structuring and scheduling transactions.

COMMISSION ADOPTS NEW GUIDELINES ON EXCLUSIONARY ABUSES BY DOMINANT UNDERTAKINGS

On 3 September 2026, the European Commission (EC) adopted new guidelines on the application of Article 102 of the Treaty on the Functioning of the European Union (TFEU) to exclusionary abuses by undertakings in a dominant position (Guidelines), replacing the 2009 Framework. The Guidelines seek to reflect developments in European case law and reinforce an analysis centred on the effects of the conduct, providing updated criteria for assessing practices such as exclusivity agreements, refusals to supply, margin squeezes or predatory pricing.

This development comes at a particularly significant time for Portugal. In its priorities for 2026, the Portuguese Competition Authority (PCA) announced that it would step up its investigation of anti-competitive practices, including abuses of a dominant position, while also emphasising that it would closely monitor the Guidelines in this area.

For companies with significant market power, the message is clear: commercial practices traditionally regarded as legitimate may be subject to more intense scrutiny. The combination of the Guidelines and the PCA's enforcement priorities suggests that exclusionary abuses may play an increasingly central role on the competition agenda in the coming years.

III. EU Courts / CJEU

CJEU CLARIFIES THE STANDARD OF PROOF FOR ABUSE IN DIGITAL MARKETS

On 2 July 2026, the Court of Justice of the European Union (CJEU) upheld the fine of approximately €4.1 billion imposed on Google for abuse of a dominant position. The infringement related, among other aspects, to the pre-installation conditions for Google Search and Chrome on Android devices, as well as to restrictions on the use of alternative versions of the operating system.

The CJEU confirmed that the assessment of anti-competitive effects must take account of the relevant economic context and clarified that neither the conduct of a counterfactual analysis nor the application of the efficient competitor test (AEC test) constitutes an indispensable requirement for demonstrating an abuse of a dominant position in all circumstances, and that it is for the dominant undertaking to demonstrate objective justifications or efficiency gains. The CJEU also emphasised that, in markets characterised by significant network effects and high barriers to entry, non-price behaviour does not lend itself to a quantitative analysis based on prices, rendering the application of the AEC test inappropriate.

The decision is of particular relevance to the application of Article 102 of the Treaty on the Functioning of the European Union, particularly in digital markets, as it clarifies the relevant criteria for demonstrating exclusionary effects and the role of counterfactual analysis and the AEC test in the assessment of alleged abuses of a dominant position.

PRIVATE REGULATORY POWER UNDER COMPETITION SCRUTINY

On 16 July 2026, the Court of Justice of the European Union (CJEU) ruled on the compatibility of the FIFA Football Agents Regulation (RAF) with European Union (EU) competition law, the freedom to provide services and the GDPR, in the context of a request for a preliminary ruling submitted by a German court. The specific assessment of these issues was, however, left to the national court.

Notwithstanding this, the CJEU concluded that FIFA may hold a dominant position for the purposes of Article 102 of the Treaty on the Functioning of the European Union (TFEU), by virtue of its regulatory, supervisory and sanctioning powers over the markets for football agents' services and the employment of players and coaches, even though it does not engage in direct commercial activity in those markets. The CJEU also emphasised that the compatibility of the RAF rules with EU law depends on a separate analysis depending on the applicable legal framework, and it is for the national court to assess, in each case, whether the restrictions identified are appropriate, necessary and proportionate.

The significance of the ruling extends beyond the football sector. It serves as a reminder that private rules affecting market access must be designed and applied in accordance with transparent, necessary and proportionate criteria. The ruling also clarifies that an entity may be considered dominant not only on the basis of its economic activity, but also on the basis of the regulatory power it exercises over a market.

CJEU CLARIFIES LIMITS ON THE SEIZURE OF EMAIL

On 16 July 2026, the Court of Justice of the European Union (CJEU) ruled, following requests for a preliminary ruling submitted by the Portuguese Court of Competition, Regulation and Supervision, on the limits of the investigative powers of national competition authorities regarding the seizure of email during their investigations. The dispute arose from investigations conducted by the Portuguese Competition Authority (PCA).

For companies subject to inspections by the PCA, this judgment is relevant for two reasons. Firstly, the CJEU confirmed that business emails fall within the concept of 'communications' under the Charter of Fundamental Rights of the European Union (Charter), meaning that treating them as 'business documents' does not remove the protection afforded to the confidentiality of communications.

Secondly, the judgment clarifies that EU law does not preclude seizures without prior authorisation from a judge, provided that certain conditions are met, nor does it prevent Member States from requiring, under national law, authorisation from a judicial authority. The CJEU has made it clear that Member States have discretion to lay down the rules applicable to the seizure of electronic mail in the context of competition investigations, by virtue of their procedural autonomy. Prior authorisation by a judge or an independent authority is, however, required for access to personal devices, given the potentially sensitive nature of the personal data that may be stored on them.

In Portugal, the Supreme Court of Justice had already established case law according to which the seizure of electronic mail in administrative offence proceedings is subject to prior authorisation by the investigating judge. Similarly, several judgments of the Constitutional Court have ruled that the interpretation allowing authorisation by the Public Prosecutor's Office to suffice in administrative offence proceedings is unconstitutional. The PCA has, however, since begun to apply to the investigating judge for a warrant to seize email.

CJEU prohibits market foreclosure in non-horizontal mergers

On 9 September 2026, the General Court of the European Union upheld the European Commission's decision of 25 September 2023, which prohibited the acquisition of eTraveli – a company specialising in online flight bookings – by Booking Holdings, which operates in the online travel agency market within the hotel sector.

The General Court held that the Guidelines on the assessment of non-horizontal mergers allow for a 'reverse leverage' theory of harm, according to which a presence in a market where the acquirer is not dominant may serve to strengthen its position in the market where it is already dominant. It also held that even a small increase in market share may be sufficient, since, in a market with strong network effects, it consolidates and perpetuates an already reduced level of competition. It further confirmed that the European Commission may rely on qualitative evidence, provided that it is sufficiently convincing and consistent.

This is the first time that the EU courts have upheld the prohibition of a merger between complementary activities of a predominantly non-horizontal nature, on the basis of concerns regarding 'entrenchment' and 'ecosystem' expansion. The judgment – which may still be appealed to the Court of Justice – thus reinforces the scrutiny of acquisitions of complementary businesses and foreshadows the approach set out in the Commission's new guidelines on mergers. ■