



EU AND COMPETITION LAW

News - Competition law and policy

4th Quarter 2025

Each quarter, we present the key developments in competition law in Portugal and the European Union. This edition highlights a public consultation by the Portuguese Competition Authority ("PCA") on ancillary restrictions and the opening of an in-depth phase in the port sector. We also highlight European scrutiny of AI integration by large platforms, an investigation under the Foreign Subsidies Regulation in a Lisbon public tender, and new case law developments at the European level. This summary of current events supports our clients in overcoming the challenges they face in the market.

PORTUGAL

I. The Portuguese Competition Authority

PORTUGUESE COMPETITION AUTHORITY SUBMITS DRAFT GUIDELINES ON ANCILLARY RESTRICTIONS FOR PUBLIC CONSULTATION

On 30 October 2025, the PCA submitted draft Guidelines on Ancillary Restrictions (the "Draft") for public consultation. The Draft aims to enhance transparency and legal certainty in the analysis of concentrations. It clarifies the conditions under which certain clauses, such as non-competition or non-solicitation clauses, may be considered directly related to and necessary for the operation. Therefore, this falls within the scope of the PCA's non-opposition decision.

Although the comments submitted on the Draft are not yet public, the final text may be adjusted in light of the contributions received. If approved, the final text is likely to require more robust justification of the necessity and scope of these clauses, impacting the preparation of notifications of transactions subject to merger control.

BOLUDA GROUP'S ACQUISITION OF REMOLCANOSA RAISES QUESTIONS AT THE PCA

The PCA has decided to launch an in-depth investigation (Phase II) into Boluda Group's acquisition of Remolcanosa Portugal. The PCA has expressed 'serious doubts' regarding the compatibility of the acquisition with competition rules in the towage and port assistance services sector in Portugal.

The opening of Phase II reflects the need to assess the risk of a substantial reduction in competition, and to determine whether any corrective measures are appropriate. The market in question involves critical infrastructure and incurs high costs. Therefore, consolidation movements may affect prices and access conditions in the main Portuguese ports.

The PCA's final decision could provide clarity on the approach to concentrations in port services, as well as the type of remedies (structural and/or behavioural) that are deemed appropriate in this economically important sector.

EUROPEAN UNION

II. European Commission

EC FINES CARTEL €72 MILLION

On 15 December 2025, the EC imposed fines totalling €72 million on three automotive battery manufacturers and the EUROBAT association for alleged cartel activity.

The companies participated in the cartel for over a decade and agreed to apply premiums to the price of lead. During negotiations, the companies passed these costs on to vehicle manufacturers in the starter battery market, which is vital to the automotive and aftermarket supply chain. The EC stated that this practice aimed to standardise prices and reduce competition, thereby increasing costs for the automotive industry. Through the leniency programme, one of the participants was granted immunity for reporting the cartel, while others received reductions in exchange for their cooperation.

This case is particularly significant given the structural challenges currently facing the European automotive sector, including the transition to electric vehicles and cost pressures. The size of the fines imposed highlights the importance of robust compliance programmes and continuous internal monitoring.

SANCTIONS IMPOSED ON THREE LUXURY BRANDS FOR ALLEGED INTERFERENCE IN THE PRICING OF THEIR INDEPENDENT RETAILERS

On 14 October 2025, the European Commission (EC) fined Gucci, Chloé and Loewe for alleged resale price maintenance (RPM) practices. The investigation found that the companies had restricted independent retailers' ability to set retail prices for most products sold under their respective brands, both online and offline.

The EC concluded that the companies had monitored and interfered with retailers' commercial strategies by imposing restrictions such as the obligation not to deviate from: (i) resale prices, (ii) maximum discount rates, (iii) specific sales periods, and (iv) a ban on granting discounts. Gucci was also found to have imposed restrictions on online sales of certain product lines, requesting retailers to discontinue such sales.

The proceedings were conducted in parallel and resulted in fines totalling €157 million, which were reduced due to the cooperation provided by the companies.

These cases reinforce the EC's focus on RPM practices, a topic that has also been investigated and decided upon by the PCA, resulting in significant fines in certain cases.

GATEKEEPERS IN THE COMMISSION'S SIGHTS

In December 2025, the European Commission (EC) launched investigations into Google and Meta for potentially abusing their dominant position by integrating artificial intelligence (AI) into their services. As AI has grown exponentially, Google has started to integrate features such as AI Overviews and AI Mode, while Meta has launched Meta AI on WhatsApp.

The EC is investigating Google's use of content from websites published on its search engine and YouTube without authorisation or remuneration from their owners, and without effective opt-out mechanisms. The EC is also investigating allegations that Google is downgrading certain content. According to the EC, such practices may limit the freedom of publishers to innovate and compete fairly.

As for Meta, the investigation focuses on a WhatsApp policy that prevents external AI providers from offering services directly to users while Meta itself makes Meta AI available exclusively on the platform. The EC will assess whether this configuration could harm competition and strengthen the company's dominant position in the market.

These cases signal a growing focus from regulators and competitors on the integration of AI into digital ecosystems, which could impact downstream markets and models of access to users and data.

EUROPEAN COMMISSION SUSPENDS VIOLET LINE TENDER ON SUSPICION OF STATE AID

On 5 November 2025, the European Commission (EC) launched an in-depth investigation under the Foreign Subsidies Regulation (FSR) into potential market distortions in the public tender for the concession, construction and maintenance of the new Violet Line of the Lisbon Metro. The company under investigation is CRRC Tangshan Rolling Stock Unipessoal, which is part of a consortium led by Mota-Engil. The company is alleged to have received foreign subsidies that may have given it an undue competitive advantage in the bidding process.

The EC has previously used the FSR in investigations involving Chinese entities, including Nuctech, where the Commission moved to a second phase in December 2025.

This case underscores the intensified scrutiny by Europe of distortions in public procurement procedures linked to financing or benefits from third countries, particularly in infrastructure projects.

EUROPEAN COMMISSION ISSUES STATEMENT OF OBJECTIONS TO THE ACQUISITION OF DOWNTOWN BY UMG

On 24 November 2025, the EC opened an in-depth investigation (Phase II) into the acquisition, signalling potential impacts on the European markets for the wholesale distribution of recorded music and A&R services (i.e. intermediation between artists/labels and digital platforms).

The main competition concerns are: (i) access to and use of competitors' sensitive commercial data, including through royalty management tools, which could give UMG an advantage and reduce rivals' incentives to compete, and (ii) the loss of a significant competitor in the A&L services sector.

This case demonstrates the increased scrutiny of acquisitions involving platforms with access to competitors' sensitive data in adjacent markets.

EUROPEAN COMMISSION OPENS IN-DEPTH INVESTIGATION INTO MMG'S ACQUISITION OF ANGLO AMERICAN'S NICKEL ASSETS

On 4 November 2025, the European Commission (EC) announced the opening of an in-depth investigation (Phase II) into MMG's proposed acquisition of Anglo American's nickel assets. This signals potential impacts on European ferrometal supply markets, as well as on the downstream stainless steel and critical raw materials value chains.

The main competition concerns are: (i) the possible diversion of supply outside the EU, which would reduce European producers' access to an essential raw material at competitive prices and with reliability, (ii) the strengthening of MMG's position in the supply chain, which could lead to price increases or reduced choice, and (iii) doubts as to whether behavioural commitments alone would be effective in mitigating these risks. This process reflects the growing attention of European authorities to mergers and acquisitions in critical raw material sectors, as well as the implications of state ownership, particularly where there are risks of supply constraints that could affect the competitiveness and security of supply of the European industry.

APPROVAL OF BOEING'S ACQUISITION OF SPIRIT SUBJECT TO STRUCTURAL DIVESTITURE COMMITMENTS

On 14 October 2025, the European Commission (EC) approved the acquisition of Spirit AeroSystems Holdings, Inc. (Spirit) by The Boeing Company (Boeing), but only if certain conditions are met, including the sale of parts of the business by Boeing to avoid harming competition.

The investigation identified risks of a significant reduction in competition in the global markets for aerostructures and large commercial aircraft. Specifically, the investigation identified the risk that Boeing could disrupt or degrade the supply of aerostructures to manufacturers such as Airbus and access commercially sensitive information to gain a competitive advantage.

To address these concerns, Boeing has committed to the following divestments: (i) Spirit's activities that currently supply aeronautical structures to Airbus, including assets and personnel, to Airbus, and (ii) Spirit's facilities in Malaysia, which supply Airbus and others, to Composites Technology Research Malaysia Sdn. Bhd.

This case is noteworthy in that it illustrates how the EC deals with risks typical of vertical integration, such as the risk of disruption or degradation of the supply of critical inputs, and the risk of undue access to sensitive information. It also demonstrates that when critical supply chains are at stake, the EC prioritises structural solutions such as asset sales.

III. Court of Justice

AG MEDINA REINFORCES EX-POST CONTROL IN THE SEIZURE OF EMAILS

On 23 October 2025, Advocate General Laila Medina issued her second opinion in cases C-258/23 and C-260/23. The issue at hand concerns the compatibility of the PCA's seizure of emails without prior judicial authorisation with the fundamental rights to personal data protection and privacy enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union.

According to AG Medina, Article 8 of the Charter does not require prior judicial authorisation for the collection and seizure of emails in competition investigations, provided there are effective safeguards and subsequent review mechanisms in place. However, she acknowledges that Member States may impose additional safeguards, such as prior authorisation. The AG also considers that if prior authorisation is considered necessary, the Public Prosecutor's Office, as an independent and impartial body, could verify the legitimacy of the measure.

The case is awaiting a final decision by the CJEU's plenary session.

EU COURTS CONFIRM THE LEGALITY OF THE €2.55 BILLION RESTRUCTURING AID TO TAP

On 10 December 2025, the General Court of the European Union dismissed the appeal brought by Ryanair against the European Commission's (EC) decision to approve a €2.55 billion state aid package for TAP Air Portugal. The EC's decision was intended to support the restructuring of the Portuguese airline.

Ryanair had argued that the financial support violated European internal market rules by giving TAP an unfair advantage. However, the Court rejected these allegations, reaffirming the wide margin of discretion granted to the Commission in matters of state aid when the necessity, proportionality, and adequacy of the measure to achieve objectives of public interest are demonstrated.

This ruling is particularly relevant for Portugal as it involves a flagship company in the national aviation sector, and it clarifies the parameters for the compatibility of restructuring aid in future cases involving strategic sectors.

CJEU UPHOLDS FINES IN PHARMACEUTICAL SECTOR PAY FOR DELAY CASE (TEVA/CEPHALON)

On 23 October 2025, the CJEU dismissed the appeal brought by Teva Pharmaceutical Industries and Cephalon in its entirety, thereby confirming the EC's decision to sanction the companies for a patent litigation settlement agreement relating to the drug modafinil. The agreement in question, entered into in 2005, involved Cephalon transferring economic value to Teva with the aim of delaying the launch of a generic version of the drug in the European Union.

The Commission classified this agreement as a 'pay-for-delay' agreement, concluding that the associated payments and commercial transactions were motivated by the intention to restrict competition.

The CJEU rejected the companies' arguments that the agreement had pro-competitive effects or constituted a legitimate patent transaction. It concluded that the transfers of value were essentially aimed at preventing the generic drug from entering the market.

This decision further strengthens the European Union's strict stance on agreements that artificially delay competition in the pharmaceutical sector. This has a direct impact on drug prices and limits access by health systems and consumers to more economical alternatives. It also highlights the risks associated with exclusivity protection strategies.

IV. European legislation

FDI: FDI SCREENING ANNUAL REPORT AND POLITICAL AGREEMENT TO STRENGTHEN SCRUTINY IN THE EU

On 14 October 2025, the European Commission (EC) published its fifth annual report to the European Parliament and the Council on the application of the foreign direct investment (FDI) screening mechanism. The report focuses on 'economic security' and the EU's ability to detect and mitigate risks associated with certain investments from third countries. These include investments in critical infrastructure, advanced technologies, critical raw materials, energy, transport, and areas with potential dual civil/military use. The EC's report highlights the evolution of the cooperation mechanism established by Regulation 2019/452 and focuses on the intensification of scrutiny and the increased use of the notification and information exchange system between Member States and the Commission.

On 11 December 2025, the Council and Parliament subsequently announced a political agreement to revise the FDI Regulation. This provides for a minimum common scope, strengthened institutional cooperation, and streamlined procedures. It will enter into force 18 months after publication. This agreement is in line with the EC report, which aims to strengthen the European framework so that investment screening does not depend on the 'level of requirement' of each Member State. Instead, it provides for a minimum set of sectors and assets to be covered, as well as more harmonised procedural obligations. These include enhanced cooperation and greater capacity to respond to risks to security or public order.

In Portugal, the national mechanism for controlling foreign direct investment (Decree-Law 138/2014 of 15 September) remains unchanged. Unlike most EU countries, there is no general obligation for prior notification or systematic screening. The government may intervene on a discretionary basis in an ex-post assessment with its own deadlines and tacit approval in the absence of opposition, with a narrow sector-specific focus on strategic assets in energy, transport and communications. Meanwhile, European review is moving towards mandatory mechanisms, a minimum common scope and more harmonised procedural rules, including greater cooperation and capacity to respond to risks to security and public order. This approach could impact how transactions with potential risks are assessed internally, potentially providing for prior notification in broader critical sectors, and aligning cooperation and screening procedures with European standards.

PROFESSIONAL PRIVILEGE OF IN-HOUSE LAWYERS IN COMPETITION INVESTIGATIONS: PUBLIC POLICY POSITION

A policy brief published by the European Commission (EC) reaffirmed that legal professional privilege (LPP) does not extend to communications with in-house lawyers in competition investigations conducted by the EC. This remains restricted to communications with independent (and EU-qualified) external lawyers, in line with CJEU case law.

The Commission adopts the traditional interpretation (as set out in the AM&S and Akzo Nobel cases) that in-house lawyers, due to their employment relationship with the company, lack the independence required for LPP under EU law. The policy brief discusses arguments put forward in recent years, such as national changes, ethical rules and compliance, and concludes that there is insufficient basis for changing the rules. It also invokes the effectiveness of investigations as a reason for maintaining the status quo.

In the related area of cooperation and of the litigation arising from investigations, the prevailing view continues to be one of strong, though not absolute, protection for leniency statements and settlement submissions. There are significant limitations on third-party access and on the scope of protection for "adjacent" materials, such as annexes or explanatory documents. This has a direct impact on document-risk management and on procedural strategy.

This framework provides guidance on compliance and governance programmes for companies in Portugal and the EU. It clarifies the limits of professional privilege and the best practices for organising legal advice (e.g. when involving external lawyers) and document management. These guidelines have very real implications for inspections, information requests and the development of cooperation strategies.

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