



EU AND COMPETITION LAW

News - Competition law and policy

3rd Quarter 2025

Each quarter, we present the main developments in competition law in Portugal and the European Union. This edition highlights not only the traditional investigations into the private hospital healthcare, labour, beverage and media markets, and a significant court decision in the banking sector, but also the adoption of several pioneering measures and the strong focus on sustainability issues. We also present a summary of current events to support responses to market challenges and those of our clients.

PORTUGAL

I. Competition Authority

PCA MONITORS PRIVATE HEALTHCARE FROM VARIOUS ANGLES

Private healthcare, which has been undergoing increasing consolidation, is under scrutiny from the Competition Authority (PCA). On 16 July 2025, the PCA launched an in-depth investigation into CUF's acquisition of sole control of Hospital Particular do Algarve. If approved, this will enable the largest national operator (and one of the main regional operators) to expand into the south of the country, a region in which it has not previously had a presence.

At the same time, the investigation into a sector association and five hospital groups has been reopened due to evidence of alleged collusion regarding strategies and negotiating positions in negotiations with ADSE (Health Assistance for State Employees), at least between 2016 and 2019. This reopening comes after the seizure of electronic mail was declared null and void in court due to the lack of authorisation from a criminal investigating judge. This resulted in the case being returned to the investigation phase and the evidence being expunged. On 26 June 2025, the PCA issued a new statement of objections (accusation) in the case.

WAR FOR AI TALENT RAISES ALARMS

On 25 July 2025, the Competition Authority (PCA) published its third short paper on generative artificial intelligence (AI), this time focusing on competition issues related to access to talent in the sector.

The PCA highlights in this study that, given the shortage of talent in the AI sector, the “war for talent” will be the most obvious way to recruit workers from competitors. This “war” can involve various strategies, some of which have significant implications for competition policy. Hiring all (or almost all) of a company's employees and/or its key specialists, without directly acquiring the company, may constitute a concentration. The inclusion of certain clauses in employment contracts that are particularly prevalent in the digital sector may reduce labour mobility. Examples include non-competition clauses; confidentiality clauses, and clauses transferring intellectual property rights over discoveries, creations or innovations; non-solicitation and non-recruitment agreements; and training expense reimbursement clauses. This may be part of a deliberate exclusion strategy by a company in a dominant position. Agreements between companies that restrict labour mobility are likely to violate competition law, for example, no-poaching agreements or wage-fixing agreements.

Without prejudice to the PCA's focus on the digital sector, such practices may be censured in other sectors, as illustrated by the various cases cited in the paper.

PCA CURBS ABUSES IN THE DISTRIBUTION OF MADEIRA BANANAS

On 13 August 2025, the Competition Authority (PCA) announced that it had fined a company €30,000 for abuse of a dominant position by imposing exclusivity agreements on banana producers in Madeira. The practice was identified as part of the PCA's ongoing market monitoring and following a recommendation by the PCA to the Autonomous Region of Madeira to promote greater diversity in the marketing phase. The company cooperated with the PCA and agreed to a settlement that waived its right to contest the charge and ceased the conduct. This resulted in a reduction in the amount of the fine.

Despite the lower penalty, this case confirms the priority given by the PCA to combating abuses of dominant positions.

NO-POACH AGREEMENTS SHAKE UP THE BEVERAGE INDUSTRY

On 10 September 2025, the Competition Authority (PCA) issued statements of objections against three companies and the parent company of one of them for allegedly entering into non-poaching and non-solicitation agreements for their respective employees. The investigation originated from a leniency application.

This is yet another case demonstrating the PCA's continued focus on business practices that may, in its view, compromise competition in the labour market. This focus is in line with the PCA's competition policy priorities in recent years. Labour-competition self-awareness is therefore increasingly a critical risk management tool for companies.

II. National courts

BANKING INVESTIGATION ENDS WITHOUT FINES

On 25 August 2025, the Competition Authority's (PCA) long investigation into the banking sector, which began more than ten years ago, finally came to an end. The Constitutional Court (TC) confirmed its refusal to review the conformity of the Lisbon Court of Appeal's ruling that the case was time-barred on the grounds that the preliminary ruling referred to the Court of Justice of the European Union did not automatically suspend the limitation period. The TC considered that the questions raised were not matters of constitutionality, but rather of interpretation of common law, and should be corrected by the ordinary courts.

The application of fines by the PCA, totalling €225 million, was thus definitively annulled.

EUROPEAN UNION

I. European Commission

ACTIVE PHARMACEUTICAL INGREDIENTS MAKE THEIR DEBUT IN SANCTIONING “PRESCRIPTIONS”

On 4 July 2025, the European Commission (EC) fined Alchem €489,000 for allegedly participating in a cartel in the pharmaceutical sector for more than 12 years. At issue were alleged practices of setting minimum sales prices for distributors and generic manufacturers, allocating annual sales quotas and exchanging sensitive commercial information.

Although the possible illegality of these practices is nothing new, it should be noted that this is the first time that the EC has sanctioned an alleged cartel related to an active pharmaceutical ingredient. This shows an expansion of the EC's focus of investigation to this segment of the sector.

COOPERATION IN THE AUTOMOTIVE AND PORT SECTORS LED TO THE FIRST INFORMAL GUIDANCE LETTERS

On 9 July 2025, the European Commission (EC) invoked the mechanism set out in its Communication on informal guidance for the first time by issuing letters clarifying new or unresolved questions regarding the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union. One of these letters concerns the formation of a licence trading group in the automotive sector. The other addresses an agreement for joint purchasing and the definition of minimum technical specifications for electrical container handling equipment in ports.

While these letters are not binding, they provide a practical framework that enables companies to independently assess their decisions in grey areas. However, it is essential that companies do not confuse guidance with exemption from liability and continue to rigorously self-assess competitive risks.

UNPRECEDENTED OPINION IN THE WINE SECTOR BOOSTS SUSTAINABILITY

On 15 July 2025, the European Commission (EC) issued its first opinion on the compatibility of a sustainability agreement in the agricultural sector with the applicable agriculture competition rules. This agreement, which will remain in force for two years, comes in response to the crisis experienced by the French wine sector.

The EC considered that the setting of indicative prices and certain exchanges of information are essential to achieving environmental objectives, provided that the conditions set out in the Common Market Organisation Regulation are met.

In Portugal, where the wine sector faces similar challenges, this type of instrument could help to protect sustainable agricultural practices and ensure fair remuneration without compromising competition rules.

GUN JUMPING REMAINS ON THE RISE

On 18 July 2025, the European Commission (EC) issued a statement of objections (accusation) to Vivendi for allegedly violating prior notification and standstill obligations, as well as the conditions and obligations set out in the EC's 9 June 2023 decision to authorise the acquisition of Lagardère by Vivendi, subject to commitments.

The EC suspects that Vivendi exercised decisive influence over Lagardère prior to the notification of the concentration in question, between that notification and the EC's conditional authorisation, and even until the final approval of the purchasers of the assets to be divested. This type of practice remains the focus of competition authorities. At national level, the Competition Authority has made this type of investigation one of its priorities for 2025.

FOREIGN SUBSIDIES REMAIN IN THE EC'S SIGHTS

On 28 July 2025, the European Commission (EC) launched an in-depth investigation under the Foreign Subsidies Regulation (FSR) into the acquisition of the German chemical company Covestro by the United Arab Emirates (UAE) state oil company ADNOC. The investigation focuses on potential market distortions resulting from an unlimited guarantee granted by the UAE and a capital increase carried out by ADNOC. These circumstances may have allowed an offer above normal market conditions and raise questions about the impact on competition in the European Union. The transaction was notified on 15 May 2025 and the EC has until 2 December 2025 to take a final decision.

This case illustrates the growing need for rigour in planning foreign investment transactions to ensure compliance with all deadlines and legal requirements. This requirement is all the more pressing given that, after being in force for around two years, the FSR has established itself as a key instrument in the regulation of foreign subsidies. In this context, in August 2025, the EC began the first review of the FSR, accompanied by a public consultation that runs until 18 November. The contributions received will be considered in a report to be presented in July 2026. At the same time, the EC has published draft guidelines on the FSR, with the aim of clarifying the approach and principles guiding its implementation, thereby enhancing the transparency and predictability of the framework. The final version is scheduled for publication on 12 January 2026.

APPROVAL OF PIONEERING SUPPORT FOR SUSTAINABLE AVIATION

On 29 July 2025, the European Commission (EC) approved, for the first time, a state aid scheme to promote the use of sustainable aviation fuel (SAF). This support, worth €36 million, aims to reduce greenhouse gas emissions in domestic aviation in Denmark, in line with national and European climate objectives.

This decision is an important milestone in decarbonising the aviation sector and could inspire similar initiatives in other Member States, provided they are compatible with the European aid framework. In Portugal, a scheme with similar objectives could have an impact on operators and airports, potentially affecting operating costs and stimulating the SAF supply chain, a crucial element for compliance with the European ReFuelEU Aviation regulation and for maintaining the competitiveness of air links.

SWEDEN INVESTS IN ENERGY SECURITY WITH THE SUPPORT OF THE EUROPEAN UNION

On 29 July 2025, the European Commission approved Swedish state aid worth €300 million for the creation of a strategic electricity reserve to ensure security of supply in emergency situations, especially during the winter months. This decision reinforces Europe's commitment to energy security and ecological transition and could serve as an example for other Member States.

II. Legislation

COMMISSION WANTS TO HEAR FROM STAKEHOLDERS ON DIGITAL MARKETS AND AI

On 3 September 2025, the European Commission (EC) concluded its public consultation on how the Digital Markets Act (DMA) could strengthen competition in digital markets and respond to the challenges posed by artificial intelligence (AI).

The aim of this public consultation is to assess the DMA's effectiveness, evaluate its impact on businesses and consumers, and identify areas for improvement to keep pace with technological developments, including the expansion of AI-based services. The contributions collected will form the basis of the report that the EC will present to the European Parliament, the Council and the European Economic and Social Committee in May 2026.

BRUSSELS PREPARES FOR A NEW ERA

On 3 September 2025, the European Commission (EC) closed the public consultation on revising the guidelines on horizontal and non-horizontal mergers. This paves the way for a new framework for analysing these operations. This update aims to reflect two decades of change – digitalisation, globalisation and sustainability – and ensure that a competitive internal market is maintained. After collecting contributions, the EC will publish a draft of the new guidelines for comment, with the aim of completing the review in 2027.

In parallel, between 10 July and 2 October 2025, a public consultation was held on the revision of Regulations 1/2003 and 773/2004, which govern the application of competition rules in the European Union. After more than 20 years in force, the EC intends to adjust its powers of investigation and enforcement, strengthen procedural rights and optimise cooperation with national authorities and courts, adapting the framework to the digital economy.

For businesses and consumers, clearer and more predictable procedures, greater scrutiny of platforms and ecosystems, and faster coordination between Brussels and Member States are expected.

III. Court of Justice

GCEU IMPOSES GREATER STRICTNESS IN CONDUCTING SURPRISE INSPECTIONS

In its judgment of 9 July 2025, the General Court of the European Union (GCEU) clarified the scope of surprise inspections conducted by the European Commission (EC). The decision examined the legality of searches conducted at Michelin's premises as part of an ex officio investigation into alleged price fixing among tyre manufacturers.

While essentially validating searches based on public information and allowing flexible language in decisions determining the conduct of surprise inspections, provided that the object, markets and suspicious conduct were defined, the GCEU annulled part of the proceedings relating to an initial period due to a lack of evidence. Specifically, the GCEU ruled that the EC had not presented sufficient consistent and serious evidence to substantiate suspicions of price coordination during that period.

Without prejudice to the procedural autonomy of Member States in these matters, the Michelin case highlights the importance of strict judicial control over authorisations granted to national competition authorities, particularly when they include vague time references (such as “at least from...” or similar), in order to ensure their legal compliance.

CJEU SETS TWO-SPEED LIMITATION PERIOD: COMMISSION V NATIONAL AUTHORITIES

On 4 September 2025, in a dispute between CP and Nissan Iberia, the Court of Justice of the European Union (CJEU) confirmed that, in actions for damages resulting from infringements of competition rules brought following a decision by a national competition authority, the limitation period only begins to run when that decision becomes final.

This differs from the approach taken with regard to the start of the limitation period for actions for damages brought following condemnatory decisions by the European Commission (EC). The CJEU explained this difference by stating that EC decisions are binding on national courts immediately after their publication in the Official Journal of the European Union, regardless of whether they are final or not. ■