

COMPETITION & REGULATORY NEWSLETTER

QUICK LINKS

[Main Article](#)

[Other Developments](#)

[Merger control](#)

[Antitrust](#)

[General competition](#)

European Court of Justice rules on “no-poach” agreement between Portuguese football clubs

On 30 April 2026, the European Court of Justice (CJ) delivered its judgment in [CD Tondela and Others](#), on a request for a preliminary ruling from the Competition, Regulation and Supervision Court in Portugal (referring court). The judgment concerned a “no-poach” agreement concluded by Portuguese professional football clubs in April 2020 in the context of the COVID-19 pandemic, assessed under Article 101(1) of the Treaty on the Functioning of the European Union (TFEU). The CJ held that such arrangements should, in principle, be categorised as a restriction of competition “by object”, while accepting that the specific pandemic context and the agreement’s parallel pro-competitive aim of preserving the integrity of competition may, exceptionally, displace that categorisation. The CJ also confirmed that, in the alternative, an agreement of that nature may fall outside the scope of Article 101(1) TFEU if it is suitable, necessary and proportionate to the legitimate objective of ensuring the regularity of sporting competitions.

Background

In March 2020, the COVID-19 pandemic led to the suspension of the 2019/2020 professional football season in Portugal. Shortly thereafter, the Portuguese Professional Football League (LPFP) and clubs participating in the First and Second Divisions publicly committed not to recruit players who had unilaterally terminated their employment contracts citing pandemic-related difficulties (as reported in a [previous edition](#) of this newsletter). In April 2022, the Portuguese Competition Authority found that this arrangement constituted a restriction of competition “by object” on the player recruitment market, contrary to Article 101(1) TFEU. The LPFP and a group of clubs appealed that decision before the referring court, which referred several questions to the CJ for a preliminary ruling. The questions examined whether a “no-poach” agreement should be considered a restriction “by object”, and if sporting specificities or pandemic circumstances might exclude it from Article 101(1) TFEU.

In his May 2025 [Opinion](#) Advocate General (AG) Emiliou took the view that “no-poach” agreements between competitors generally display the characteristics of a “by object” restriction but stressed that “*context always matters*”. On the facts he concluded that, where the genuine rationale was to safeguard the fairness of the competition, the agreement should not be treated as restrictive “by object”.

The CJ’s judgment

In its judgment, the CJ broadly followed AG Emiliou’s Opinion.

“By object” analysis: content, context and objectives

The CJ began by recalling the established three-step framework for assessing whether a conduct restricts competition “by object”: examination of (i) the content of the

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Main Article**Other Developments**

Merger control

Antitrust

General competition

agreement; (ii) the economic and legal context of which it forms a part; and (iii) the objective that it pursues. Building on its earlier judgment in *FIFA*, the CJ confirmed that “no-poach” arrangements between competing employers can be treated as horizontal agreements for the sharing of “*sources of supply*” within the meaning of Article 101(1) TFEU. By restricting the freedom of clubs to recruit players already employed by another participating club, such arrangements operate to partition the workforce between them and may have an indirect, potential impact on the “*purchase price*” of those workers (in this case, the players’ wages).

The CJ added that, in the field of professional football, an agreement of this kind constitutes a manifest restriction of an essential parameter of competition between clubs, namely the recruitment of players who have already been trained or are undergoing training.

Economic and legal context: the pandemic and sporting specificities

The CJ went on to consider the economic and legal context of which the agreement formed a part. The judgment confirmed that Article 165 TFEU does not exclude sports from EU competition law, and that events like the COVID-19 pandemic do not override Article 101(1) TFEU. The CJ observed, however, that the pandemic had a fundamental impact on the functioning of the professional football sector. The indefinite suspension of the season created uncertainty as to the date on which competitions might resume and as to the date on which existing player contracts would expire and, consequently, as to the composition of clubs’ rosters (itself, the Court emphasised, one of the essential parameters of competition between clubs).

Objectives: both anti- and pro-competitive aims

In that setting, the CJ accepted that while the agreement pursued an objectively anti-competitive aim (limiting recruitment competition between clubs), it also pursued, in parallel, an aim “*objectively favourable to competition*”, consisting in maintaining the stability of player rosters to allow the season to resume in conditions preserving the integrity of competition.

The Court’s answer on “by object” categorisation

On that basis, the CJ held that the agreement at issue could be categorised as a restriction of competition “by object”, unless a specific examination of its content, its objective competition-related aims and specific economic and legal context demonstrate the precise reasons why it is not to be so categorised. The CJ affirmed that it is for the referring court to carry out that assessment, based on all relevant facts and law, and to set out specific reasons supporting any conclusion in either direction.

Thus, the judgment does not depart from the strong presumption that “no-poach” agreements between competitors are “by object” restrictions. It does, however, leave open a narrow path by which such conduct may, in circumstances combining genuinely pro-competitive aims with an exceptional context, escape that categorisation following an in-depth contextual analysis.

Possible justification: ensuring the regularity of sporting competitions

In the alternative, the CJ examined whether the agreement could fall outside the prohibition in Article 101(1) TFEU. The CJ confirmed that ensuring the regularity of sporting competitions is a legitimate objective in the public interest, which is of particular importance in football and can justify, in principle and without prejudice to their actual content, the rules implemented by an agreement such as the one at issue. The Court further clarified that this analysis applies regardless of the formal nature of the conduct, including where it takes the form of an agreement between undertakings supported by a national sporting association, provided that the conditions of suitability, necessity and proportionality, in the strict sense, are met.

Conclusion

The judgment appears to signal that the CJ is more open to the possibility that agreements and conduct in a sporting context, which in a purely commercial setting would be treated as restrictive “by object” under Article 101(1) TFEU, may be saved by the sporting context in which they are entered into. The CJ recognised that the

[Main Article](#)[Other Developments](#)[Merger control](#)[Antitrust](#)[General competition](#)

agreement pursued an aim "*objectively favourable to competition*" (the stability of player rosters and the integrity of the competition) and framed the "by object" categorisation as the default "*unless*" a contextual analysis shows otherwise. However, if this represents the CJ opening the door to such arguments, it has done so only very narrowly: the strong presumption against "no-poach" agreements remains, and any escape from it will depend on a fact-specific analysis combining genuinely pro-competitive aims with an exceptional context.

OTHER DEVELOPMENTS

MERGER CONTROL

European Commission opens in-depth investigation into proposed joint venture between UPM and Sappi

On 28 April 2026, the European Commission announced that it has opened an in-depth [Phase II merger investigation](#) into the proposed creation of a joint venture between UPM-Kymmene Corporation and Sappi Limited. UPM, of Finland, and Sappi, of South Africa, are the two largest manufacturers of communication paper products in the EEA. The proposed joint venture will combine the entire UPM Communication Papers business in Europe and the USA, with Sappi's European graphic paper business.

The Commission is concerned that the proposed transaction may reduce competition in the markets for the production and supply of magazine paper (in particular coated mechanical paper) and fine paper (in particular wood-free coated paper) - markets where the Commission found that the parties are: major suppliers; each other's main competitors; the JV would control a significant portion of EEA production capacity; and competitors would not have the ability or incentive to offset any price increases by the JV. The Commission therefore concluded that the proposed transaction could result in a reduction of production capacity, as well as higher prices and lower quality for customers, including printers and publishers.

In addition - because of vertical and spill-over effects - the Commission has identified preliminary concerns in the speciality paper markets for the production and supply of coated-one-sided paper-based face material (C15 face material) and pressure sensitive labels (PSL) in the EEA. According to the Commission's press release, UPM and Sappi are close competitors and post-transaction they would both retain activities in C15 face material and would compete with the JV. Also, post transaction UPM would continue to be active in the PSL market, to which C15 face materials are a key input.

In a public [statement](#), UPM indicated that it expects the JV to deliver "*benefits to customers*" and strengthen the "*resilience of European graphic paper supply*" in declining markets. In addition, the Commission has indicated in its press release, that it "*will continue to assess the benefits the companies claim the transaction would bring, namely in terms of cost efficiencies, environmental benefits, and a more resilient European paper industry, and whether these benefits would offset any potential harm created by the transaction*".

The UPM/Sappi Phase II investigation arrives at the same time as the Commission launching its [consultation on draft new Merger Guidelines](#) (for details, see also, our [previous briefing](#)). In particular, the draft Guidelines seek to clarify how efficiencies and a so-called "theory of benefit" should be articulated and assessed, and expressly recognise that sustainability and resilience considerations may, where properly substantiated, constitute relevant consumer benefits. Against that background, the case will be closely watched as a potential early indication of how the Commission may apply such benefit-based arguments - including resilience and other non-price parameters - within the established appraisal of concentrations, when weighed against traditional theories of harm tied to high market shares and increased prices.

[Main Article](#)[Other Developments](#)[Merger control](#)[Antitrust](#)[General competition](#)

ANTITRUST

Hong Kong Competition Commission proposes to accept commitments offered by Keeta

On 28 April 2026, the Hong Kong Competition Commission (HKCC) [launched](#) a consultation on proposed commitments offered by Kangaroo Limited (trading as Keeta), a major online food delivery platform in Hong Kong and a subsidiary of the Chinese food delivery platform Meituan.

The HKCC has indicated that certain terms in Keeta's agreements with partnering restaurants may restrict the entry and expansion of new or smaller platforms, and may therefore prevent, restrict or distort competition in the Hong Kong online food delivery market, potentially contravening the First Conduct Rule under section 6(1) of the Competition Ordinance. In particular, the HKCC's concerns relate to:

1. **Exclusivity:** Keeta charged partnering restaurants a lower commission rate if they work exclusively with Keeta;
2. **Breach of exclusivity:** Partnering restaurants were restricted from or penalised for switching from partnering exclusively with Keeta to also partnering with other platforms; and
3. **Price restriction:** Partnering restaurants were prevented from offering lower menu prices to consumers on their own direct channels and on competing platforms (commonly known as price parity restriction).

In response, Keeta offered a [two-step resolution](#): first by offering voluntary amendments on an interim basis in November 2025 (as reported in a [previous edition](#) of this newsletter) and now, offering formal commitments under section 60 of the Competition Ordinance. In summary, Keeta has offered to:

1. Relax exclusivity provisions to allow restaurants to partner with platforms which do not exceed a market share of 10 per cent in Hong Kong, without losing exclusivity-related incentives with Keeta;
2. Amend breach of exclusivity provisions to allow restaurants to partner with other platforms; and
3. Remove price parity restrictions.

These commitments broadly mirror the commitments [previously accepted](#) in December 2023 by Foodpanda and Deliveroo (the latter exited the Hong Kong market in April 2025) (see our [previous newsletter](#)). If the HKCC accepts the proposed commitments, the amendments will become legally binding and specifically enforceable, supported by monitoring and reporting arrangements. The consultation period closed on 12 May 2026.

GENERAL COMPETITION

European Commission publishes 2025 Report on Competition Policy

On 5 May 2026, the European Commission published its [2025 Report on Competition Policy](#), setting out how EU competition policy was applied during 2025 across State aid, antitrust, merger control, and the enforcement of newer instruments such as the Foreign Subsidies Regulation (FSR) and the Digital Markets Act (DMA). The report presents competition enforcement as a central tool for safeguarding the Single Market in a period marked by economic uncertainty, increasing digitalisation and the green and clean transition. The Commission has also published an [infographic](#) summarising the key developments in 2025.

The report reflects the first year of the Commission's 2025-2029 mandate, identifying robust enforcement alongside modernisation and simplification as its core priorities.

1. As regards State aid, the adoption of the Clean Industrial Deal State Aid Framework (CISAF) enabled accelerated support for renewable energy, industrial decarbonisation and clean-tech manufacturing. By the end of 2025, the Commission had authorised €18.4 billion in aid across nine measures notified by five Member States.

[Main Article](#)[Other Developments](#)[Merger control](#)[Antitrust](#)[General competition](#)

2. Merger control activity remained high. In 2025, the Commission received 384 merger notifications. According to the Commission's report, 88 % of all decisions were adopted under the simplified procedure. At Phase I nine proposed transactions were approved subject to commitments, while four Phase II investigations were opened. According to the Commission's [Merger Statistics](#) at Phase II, two proposed transactions received unconditional clearance, whilst there were no conditional clearances. No prohibition decisions were adopted.
3. Antitrust enforcement remained active, seeing abuse of dominance investigations against companies active in numerous markets, and in particular digital markets. The enforcement activities also covered cartels where the Commission adopted three infringement decisions and carried out three unannounced inspections.
4. Under the FSR, the Commission adopted its second final decision, accepting commitments in ADNOC/Covestro, and opened an own-initiative in-depth investigation into Nuctech. The Commission also carried out one unannounced inspection at the premises of a company active in the e-commerce sector.
5. Enforcement of the DMA also intensified, which included the adoption of the first specification decisions, the conclusion of three non-compliance investigations, and the imposition of fines in two cases, alongside the opening of market investigations into cloud computing services.

From a policy perspective, the Commission launched major revisions of the Horizontal and Non-Horizontal Merger Guidelines, continued work on the draft revised Article 102 guidelines on exclusionary abuses, and initiated reforms of Regulation 1/2003. It also carried out a public consultation and call for evidence on the DMA's overall effectiveness and implementation and its ability to face emerging challenges such as the rapid and transformative rollout of AI-powered services. Regarding foreign subsidies, the Commission issued a consultation on the draft FSR guidelines (for details, see also our [previous briefing](#)).

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