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COMPETITION LAW INSIGHTS

1. Portugal
2. European Union
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PORTUGAL

Highlights from 2024 and Q1 2025, and What to Expect for the remainder of the Year



KEY HIGHLIGHTS

Competition Authority

In 2024, the Portuguese Competition Authority (AdC) imposed fines totaling €40 million.

- Several infringement decisions were issued concerning:
  - Collusion in the healthcare sector.
  - Abuse of dominance in payment services.
  - No-poach agreements in the technology consulting industry.
  - Vertical agreements restricting competition in tech consultancy.
- In merger control, the most notable decision was the prohibition of Vodafone's acquisition of Nowo in the telecommunications sector.

In July 2024, the AdC:

- Approved Regulation No. 747/2024, establishing procedures for leniency applications and fine reductions.
- Published the Settlement Procedure Terms.
- Issued a revised version of its Guidelines on Fine Calculation Methodology, first published in December 2012.

2025 began with a decision sanctioning no-poach agreements in the labor market.

Judicial Developments

Key court rulings in 2024 included:

- A Constitutional Court decision upholding the AdC's interpretation of search and seizure authorizations in competition cases.
- A Competition, Regulation, and Supervision Court (TCRS) ruling confirming the AdC's decision in the case regarding information exchanges between banks.

The first quarter of 2025 saw:

- The Lisbon Court of Appeal ruling that the case regarding information exchanges between banks was time-barred.
- The Supreme Court's first ruling on a private damages claim related to the "truck cartel" case.

PORTUGUESE COMPETITION AUTHORITY HIGHLIGHTS

AdC fines five companies for alleged participation in a tele--radiology cartel

The AdC fined five companies €6.89 million for allegedly participating in a cartel in public procurement procedures for tele-radiology services in hospitals and healthcare centers in Portugal.

According to the AdC, these companies, along with others previously sanctioned, shared the market and adopted pricing strategies that led to a general increase in the cost of services provided to public hospitals within the National Health Service.

AdC fines SIBS for alleged abuse of dominance through tying practices

The AdC fined SIBS SGPS (SIBS) €13.87 million for allegedly abusing its dominant position through tying practices.

SIBS is a technology holding company that provides financial services through the development and management of payment, processing, security, business process outsourcing, and card production and personalization solutions.

Tying occurs when customers purchasing one product (the tying product') are required to purchase another product (the 'tied product') from the same company.

The AdC found that SIBS conditioned access to services such as MB scheme, MB WAY, and the MULTIBANCO network on the mandatory acquisition of processing services from the same group. As a result, customers were not given the option to contract only the services they required.

AdC fines a laboratory association and five laboratory groups for alleged involvement in a cartel for clinical analysis and CO-VID-19 testing

The AdC imposed fines exceeding €48 million on five laboratory groups and an association for allegedly participating in a restrictive agreement in the market for clinical analysis services, including the provision of COVID-19 tests.

AdC sanctions another tech consulting company for allegedly entering into a no-poach agreement in the labor market

The AdC fined one of the four technology companies under investigation €278,000 for allegedly participating in a no-poach agreement. The company opted for a settlement procedure, along with two others. The case proceeded against a fourth business group, which chose not to cooperate. In February 2025, the three companies in this group were fined €3.09 million.

No-poach agreements are agreements between competing companies in which they commit not to hire or solicit each other's employees. These agreements may harm competition by limiting companies' autonomy in setting commercial terms and hindering labor market innovation. They can also negatively impact workers, reducing their bargaining power, wages, and job mobility.

AdC fines SAP Portugal and SAP SE for allegedly restricting sales by SAP distributors to limit market distribution

The AdC fined SAP €29.25 million for allegedly entering into a vertical agreement with its distribution partners to restrict sales and allocate customers in the Enterprise Application Software products and associated services market.

According to the AdC, SAP prevented its distributors from bidding in public and private procurement procedures that SAP deemed should be supplied directly by itself, thereby restricting the distribution of its products and associated services. In public procurement, the market allocation was supposedly determined by whether the contract specifications aligned with SAP's policies and interests, whereas in private procurement, the criterion was based on client size.

The AdC prohibits the Vodafone/Nowo merger and decides not to oppose the Digi/Nowo merger.

In July 2024, the AdC prohibited the Vodafone/Nowo merger, issuing its only prohibition decision that year. The case concerned Vodafone Portugal's acquisition of Cabonitel, Nowo Communications' sole shareholder.

The AdC considered that the proposed commitments were insufficient to address competition concerns related to high market concentration, the limited number of competitors, significant entry and exit barriers, and low customer mobility due to long-term contracts.

Three months later, in October 2024, the AdC cleared the Digi/Nowo merger without conditions. Digi, a new entrant in the market, had an insignificant market share at the time of the transaction.

The AdC issued a clearance decision with commitments regarding the Live Nation Entertainment/Ritmos & Blues Produções and Arena Atlântico merger.

In November 2024, the AdC approved, subject to commitments, the acquisition of Ritmos & Blues Produções (R&B) and Arena Atlântico by Life Nation Entertainment (LNE). The transaction had been notified in July 2023.

LNE, a U.S. company, operates in live event promotion, venue management, ticketing, and artist representation. R&B organizes events in Portugal, while Arena Atlântico manages the MEO Arena in Lisbon and jointly controls Blueticket with Altice/MEO Portugal, which sells tickets for shows and live events.

The AdC identified competition risks, including potential restrictions on rival promoters' access to the MEO Arena, preferential treatment for R&B, and the strengthening of Blueticket's position in the ticketing market. During its investigation, the AdC consulted the ten largest clients of the MEO Arena, including Everything is New (EIN), also a competitor of R&B. These companies raised concerns about LNE's access to commercially sensitive information and potential practices to limit competition in access to the MEO Arena.

In response, LNE committed to: (i) allowing other ticketing operators to sell tickets for MEO Arena events under fair conditions; (ii) capping the number of shows LNE and R&B can promote annually at the MEO Arena; (iii) ensuring a transparent and non-discriminatory commercial policy for the MEO Arena; (iv) avoiding practices that disadvantage competing promoters, such as margin squeezing in event promotion, particularly when other promoters have also competed for the organization; and (v) protecting commercially sensitive information from third parties.

The AdC considered these commitments sufficient to address competition concerns and issued a clearance decision subject to commitments. However, EIN challenged the decision before the Competition, Regulation, and Supervision Court (TCRS).

New procedural rules and guidelines

The AdC approves the Regulation establishing the procedure for requesting fine exemption or reduction.

The leniency program allows companies and individuals involved in horizontal antitrust infringements to report or provide evidence in exchange for reduced or exempted fines in administrative proceedings.

In July 2024, the AdC issued Regulation No. 747/2024, which outlines the procedure for requesting exemption or reduction of fines in administrative proceedings concerning agreements or concerted practices between competing companies. This regulation replaces the previous Regulation No. 1/2013.

The main changes to the procedure are as follows:

- Replacement of the term "cartels" with "horizontal dimension" – The new regulation eliminates the explicit reference to cartels, adopting instead the term

"horizontal dimension" to cover agreements or concerted practices between competing companies. This includes practices that exhibit horizontal elements but do not constitute cartels (e.g., complex practices that combine both horizontal and vertical elements).

- Clarification of the "significant additional value" of the information and evidence provided by applicants for a fine reduction – This includes information and evidence dating from the period of the infringement, directly relating to the facts and not requiring corroboration by other means of proof, or those that extend the temporal scope of the violation.
- Imposition of an obligation on the applicant to refrain from engaging in "contradictory, inconsistent actions or those that undermine their request."
- Exemption from ancillary sanctions – If a fine is exempted or reduced, the applicant will also be relieved of ancillary sanctions, including the loss of the right to participate in public procurement procedures or to receive licenses and permits.

The AdC has published the Terms of the Settlement Procedure.

The settlement procedure is a legal mechanism designed to expedite decision-making in competition law administrative proceedings. It requires the cooperation of the party under investigation with the AdC, with such cooperation resulting in a reduced fine. To participate, the party must either waive their right to contest the case or formally acknowledge their involvement and responsibility in the infringement.

In July 2024, the AdC published the Terms of the Settlement Procedure, which provide further clarifications on the procedure outlined in Articles 22 and 27 of the Portuguese Competition Law, specifically addressing the following points:

- When the procedure takes place during the investigation phase (i.e., before the statement of objections is issued), the party under investigation can contribute effectively to determining the facts and their legal qualification, which will be outlined in the proposed Settlement Draft.
- During the investigation phase, the AdC informs the party concerned of the facts attributed to them, the evidence supporting the imputation, the corresponding legal qualification, the seriousness and duration of the conduct, the criteria for determining the sanction (including the range of the potentially applicable fine), and the factors influencing the reduction in the fine (e.g., the extent of procedural efficiencies achieved).
- The AdC reserves the right to reject or invalidate the confirmation of the settlement draft if the terms are deemed inadequate in achieving the objectives of the settlement process, particularly in ensuring procedural efficiencies and upholding the principles of legal certainty and security.

The AdC has reviewed its Guidelines on the Methodology for Calculating Fines, originally published in December 2012.

The Guidelines on the Methodology for the Application of Fines under Article 69 of the Portuguese Competition Law aim to provide clear insights into the method used by the AdC in determining the applicable fines in administrative proceedings.

In July 2024, the AdC revised the previous guidelines issued in 2012, largely preserving the core steps for determining fines in competition law infringement cases. The key changes primarily focus on the consideration of various factors at each stage of the process:

- In the first stage of the procedure, which concerns the determination of the base fine amount, the revised guidelines adjust the weight attributed to the duration of the infringement as a multiplying factor when calculating the fine based on the undertaking's turnover related to the violation. Specifically, the weight assigned to each year of the infringement has been reduced, and the duration beyond the 10th year is no longer considered in the calculation.

- For particularly serious Infringements (such as abusive unilateral exclusionary practices, the creation of entry barriers, as well as collusive practices), the AdC now incorporates an additional percentage of the turnover related to the infringement in the base fine. This fraction ranges from 15% to 30%, as opposed to the previous 15% to 25%.
- In stage 2, which concerns the adjustment of the base fine, the AdC now establishes a temporal limit, aligned with the limitation period, for evaluating prior offenses in cases of recidivism in anticompetitive practices.
- In this stage, the new guidelines also establish a 50% cap for increasing the base fine amount due to aggravating circumstances. Conversely, a reduction of up to 50% or more can be applied in the presence of mitigating circumstances.
- Regarding the final stage of the procedure, where the AdC determines the actual fine and evaluates the proportionality of the amount calculated in the previous steps, the new guidelines clarify the criteria under which an inability to pay the fine may be deemed relevant.

/ CASE LAW HIGHLIGHTS

Portuguese Constitutional Court rules on the examination, collection, and seizure of opened emails in competition proceedings

In 2023, the Constitutional Court ruled unconstitutional the interpretation of Article 18 of the Competition Act, which allowed the AdC to examine, collect, and seize emails in administrative offence proceedings with the authorization of the Public Prosecutor.

In 2024, the Constitutional Court reversed its position.

In its new assessment, the Court reconsidered the scope of protection under Article 34(4) of the Portuguese Constitution. It concluded that there was no interference in data transmission, affirming the Public Prosecutor's authority to authorize such measures. However, the ruling was not unanimous, with four dissenting opinions.

The Constitutional Court's decision in Ruling No. 533/2024 is not final. Since it stems from a concrete review of constitutionality, it applies only to the specific case in question. However, if the Court rules the provisions of Article 18 of the Competition Act unconstitutional once more, it may trigger an abstract review. A declaration of unconstitutionality in an abstract review would have general binding effect (*erga omnes*).

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TCRS and Lisbon Court of Appeal rulings on alleged information exchange among banks

In 2019, the AdC fined 14 Portuguese banks a total of €225 million for allegedly engaging in a concerted practice of exchanging commercially sensitive information for over ten years. The AdC found that banks shared confidential details on future mortgage loan spreads and past credit approvals.

The banks challenged the decision before the TCRS, which upheld the AdC's findings. The court confirmed that the practice constituted a restriction by object, aligning with a prior European Court of Justice preliminary ruling in the case.

The banks then appealed to the Lisbon Court of Appeal, which, in February 2025, ruled that the case was time-barred and ordered its dismissal. The AdC has appealed this ruling to the Constitutional Court.

First Supreme Court of Justice ruling on private damages in competition cases

On February 13, 2025, the Portuguese Supreme Court of Justice (STJ) issued the first ruling in Portugal on a civil action for damages arising from anti-competitive practices under the Private Enforcement Law (Law No. 23/2018 of June 5, which transposes Directive 2014/104/EU).

The ruling followed a lawsuit based on a European Commission Decision that, in 2016 and 2017, imposed fines on several truck manufacturers for participating in a cartel to align truck prices and other commercial conditions across Europe—commonly known as the "Trucks Cartel."

In this ruling, the STJ was called upon to decide two issues related to the amount of compensation. The Court had to clarify, first, whether statutory default interest could be combined with compensation for currency depreciation and, second, whether the judicial estimate presented by the Lisbon Court of Appeal—setting the damage at 5% of the overcharge on the actual purchase price of the trucks—was appropriate.

Regarding the first issue, the STJ held that, since the entry into force of Decree-Law No. 200-C/80, default interest not only compensates for damages resulting from late payment but also offsets monetary depreciation. As such, the update of the value is already incorporated into default interest, meaning that the interpretation allowing for their accumulation is incorrect.

On the second issue, the STJ found that when damage is proven but the exact percentage of the overcharge paid by the injured parties is not demonstrated, it is appropriate to rely on a judicial estimate to determine the compensable amount. The Court also noted that, given the lack of similar precedents in Portuguese case law, the Lisbon Court of Appeal was right to consider decisions from other European courts on the same cartel, particularly those issued by the Spanish Supreme Court, which set compensation using judicial estimates of 5% of the actual truck purchase price as the overcharge.

This ruling sets an important precedent for future private damages claims, particularly where courts must estimate compensation amounts.



// OUTLOOK FOR 2025

In January 2025, the AdC published its competition policy priorities, which include:

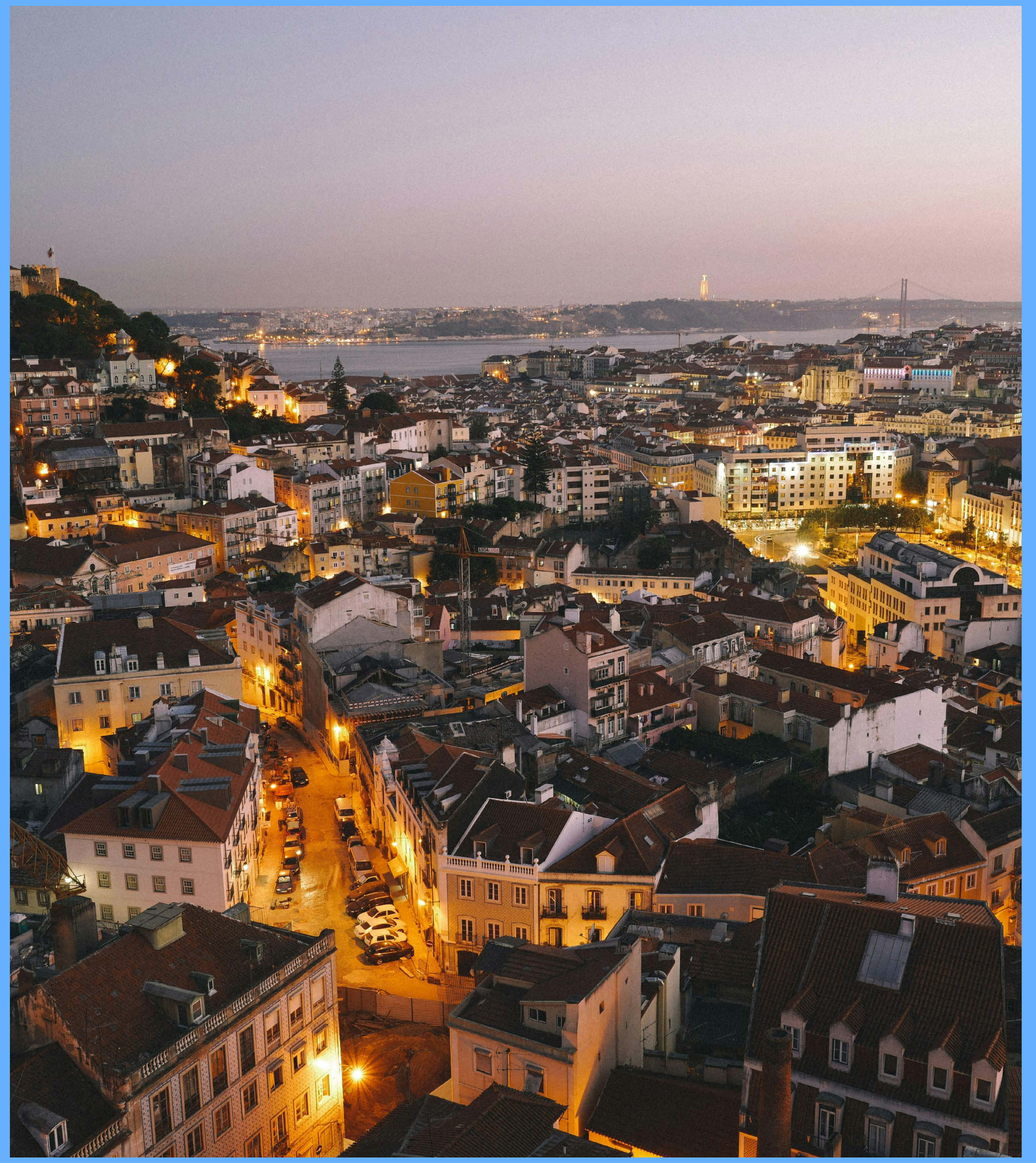
- Launching a new dialogue with key economic sectors to raise awareness of competition benefits and compliance.
- Promoting competition in digital markets, particularly in generative AI, in close collaboration with the EU.
- Implementing AI-powered forensic IT tools to detect unlawful practices and support investigations.

The AdC reaffirmed its 2024 enforcement priorities, particularly:

- Investigating anti-competitive practices in public procurement and the labor market.
- Detecting and prosecuting abuses of dominance in key economic sectors that impact consumer welfare.

In merger control, the AdC will contribute to the EU's review of current merger rules, particularly regarding innovation-driven markets. It also highlights the need for ongoing monitoring of digital markets and killer acquisitions, especially in the tech sector.

On the litigation front, 2025 is expected to see an increase in private enforcement cases, including lawsuits against Portuguese banks, Apple, and Google. Courts are also set to rule on 2024 AdC decisions, such as those involving SIBS and SAP.





EUROPEAN UNION

Highlights from 2024 and Q1 2025, and What to Expect for the remainder of the Year

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KEY HIGHLIGHTS

Key Court of Justice of the European Union (ECJ) rulings in 2024:

- Conclusion of the Intel and *Google Shopping* cases.
- Definition of criteria for *pay-for-delay* agreements as restrictions by object (*Servier*).
- Confirmation of the Portuguese Competition Authority's position that stand-alone information exchanges may constitute a restriction by object (*Portuguese Banks*).
- Rejection of the European Commission's interpretation of Article 22 of the Merger Regulation (*Illumina/Grail*), reigniting the debate on *killer acquisitions*.

ECJ developments in 2025:

- Confirmation of Dutch jurisdiction in the *Macedonian Thrace Brewery vs. Athenian Brewery & Heineken case*, based on a decision by the Hellenic Competition Commission.
- Clarification of abuse of dominance criteria for refusal to ensure platform interoperability (*Alphabet and Others*).

European Commission actions:

- Abuse of dominance sanctions:
  - *Apple* for alleged exploitative practices.
  - *Meta* for alleged tying practices.
- New communication on market definition:
  - Published on 8 February 2024, marking the first revision since 1997.

Digital Markets Act (DMA):

- *Gatekeeper* obligations became binding on 6 March 2024.
- First non-compliance investigations launched against Alphabet, Apple, and Meta approximately 20 days later.

First year of the Foreign Subsidies Regulation (FSR):

- Scrutiny of subsidies in mergers, public procurement, and ex officio investigations.
- In-depth investigations in 2024:
  - Public procurement: *CRRC's* bid withdrawn before the investigation was concluded.
  - Merger control: *Emirates Telecommunications Group Company's acquisition of PPF Telecom Group*, which resulted in a clearance with commitments.

ECJ Case Law Highlights: Antitrust Practices

ECJ Confirms that Pay-for-Delay Agreements Between Servier and Six Other Companies Constitute Restrictions by Object

In July 2014, the European Commission imposed a fine of €427.7 million on Servier for concluding agreements with Niche/Unichem, Matrix, Teva, Lupin, and Krka. Under these agreements, the companies committed not to market generic versions of perindopril—a cardiovascular drug developed by Servier—or challenge its patent in exchange for financial compensation. The Commission classified these agreements as restrictions of competition both by object and effect under Article 101 Treaty on the Functioning of the European Union (TFEU). It also considered them part of an exclusionary strategy that amounted to an abuse of dominance under Article 102 TFEU.

Servier appealed to the General Court of the European Union (General Court). In December 2018, the General Court held that: (i) the agreements with Niche/Unichem, Matrix, Teva, and Lupin were restrictions by object; (ii) the agreements with Krka were not anticompetitive; (iii) the Commission failed to prove that the relevant market was limited to the original and generic perindopril market. As a result, the General Court annulled the Commission's finding of abuse of dominance against Servier.

In 2024, the ECJ overturned part of the General Court's ruling. It found that at least two of the agreements between Krka and Servier were indeed restrictions by object. The Court clarified that pay-for-delay agreements can be classified as restrictions by object when the value of the financial transfer can only be justified as an incentive not to compete.

The ECJ also ruled that the General Court erred in considering the relevant market to be broader than the original and generic perindopril market. The ECJ emphasized that market definition cannot rely solely on functional analysis. Instead, it must also assess the cross-price elasticity of demand in the pharmaceutical sector and whether consumers would switch to substitute products in response to a small but permanent price increase.

ECJ Rules that Exchange of Information Between Competitors Can Constitute a Restriction by Object Even Without a Restrictive Agreement

In 2019, the Portuguese Competition Authority (AdC) imposed a €225 million fine on 14 Portuguese banks. The AdC found that these banks had engaged in a concerted practice of exchanging sensitive commercial information for over ten years. According to the AdC, each bank shared confidential data on their future mortgage loan spreads and the volume of credit granted in previous months.

The AdC's decision was challenged before the Portuguese Competition, Regulation, and Supervision Court, which referred a preliminary question to the ECJ. The key issue was whether an exchange of information, such as that between the 14 banks over more than a decade, could constitute a restriction by object, as the AdC had concluded.

The ECJ ruled that "a comprehensive and reciprocal monthly exchange of information between competing credit institutions, which took place in markets where concentration is high and there are barriers to entry, relating to the conditions applicable to transactions carried out on those markets, in particular current and future credit spreads and risk variables, and individual production figures of the participants in that exchange, in so far as, at the very least the spreads thus exchanged are those which those institutions intend to apply in the future, must be classified as a restriction of competition by object".

This ruling clarifies that the exchange of sensitive information among competitors can amount to a restriction by object. Consequently, national competition authorities and the European Commission may find an infringement without needing to demonstrate actual market effects of such practices.

ECJ Confirms Google's Abuse of Dominance Through Self-Preferencing

In June 2017, the European Commission fined Google €2.42 billion for abusing its dominant position in online search. The Commission found that Google favored its own comparison shopping service, Google Shopping, by prominently displaying it in boxes at the top of search results while demoting rival services to less visible positions. The Commission argued that this practice harmed competition by limiting the visibility of competing services and unfairly benefiting Google.

Google appealed to the General Court, which in November 2021 ruled that Google had engaged in an abuse of dominance through self-preferencing. The General Court also held that this practice was distinct from a refusal to supply. Thus, the Commission did not need to apply the Bronner criteria, which require proof that the refusal would eliminate all competition in the market and that the conduct was not objectively justified.

In September 2024, the ECJ upheld the General Court's decision, dismissing Google's final appeal. The Court confirmed self-preferencing as a new category of exclusionary abuse but stressed that not all exclusionary practices are unlawful—only those that distort competition. It found that, in this case, the practice deviated from competition on the merits given Google's "super-dominant" position, the significance of search engine traffic for competitors, and the lack of objective justifications for the unequal treatment.

This ruling consolidates self-preferencing as a distinct category under competition law. The Court also confirmed that proving such practices does not require applying the strict Bronner criteria.

ECJ Confirms General Court's Ruling in Intel Case

Following a complaint by AMD in 2000, the European Commission fined Intel €1.06 billion in 2009 for abusing its dominance in the x86 CPU market. This triggered a legal battle that lasted over two decades.

The Commission found that Intel had implemented an exclusionary strategy by granting: (i) rebates to manufacturers such as Dell, HP, and Lenovo, conditioned on them purchasing almost exclusively from Intel; and (ii) financial incentives to delay or cancel AMD-based product launches. According to the Commission, this strategy significantly reduced competitors' ability to compete on the merits, limited consumer choice, and stifled innovation.

Intel appealed to the General Court, which in 2014 upheld the Commission's decision. The Court ruled that when rebates are inherently capable of restricting competition, the Commission is not required to conduct an in-depth analysis or apply the As Efficient Competitor (AEC) test.

Intel then appealed to the ECJ, which partially annulled the General Court's ruling. The ECJ held that the Commission must prove the actual exclusionary effects of the conduct. When a company argues that its rebates were not exclusionary, the Commission must analyze: (i) the extent of the dominant position; (ii) the market share affected; (iii) the conditions of the rebates; (iv) their duration and magnitude; and (v) whether they targeted equally efficient competitors.

Following this judgement, in 2022, the General Court partially annulled the Commission's decision. The Commission appealed once again.

In 2024, the ECJ confirmed the General Court's judgment. The ECJ ruled that: (i) the Commission failed to prove the rebates' exclusionary effects; (ii) the Commission misapplied the AEC test; and (iii) it is not the Court's role to assess whether Intel's rebates could exclude competitors — this must be determined during the administrative phase.

The judgment reiterates that not all exclusionary effects are anticompetitive. It also reinforces that proving an abuse of dominance requires considering all relevant facts. Furthermore, when an investigated company claims that its rebates

were not exclusionary and provides supporting evidence, the Commission must assess whether they could have excluded equally efficient competitors.

ECJ confirms Dutch jurisdiction in damages claim for competition law infringement in Macedonian Thrace Brewery SA v Athenian Brewery SA and Heineken NV

Following a decision by the Hellenic Competition Commission, Athenian Brewery was fined for abusing its dominant position in the Greek beer market. Athenian Brewery is a subsidiary of Heineken, a Dutch company, based in Greece.

Macedonian Thrace Brewery, a competitor harmed by these anti-competitive practices, filed a civil damages claim in the Netherlands against both Athenian Brewery and Heineken.

There were conflicting rulings on jurisdiction at different court levels. The Supreme Court of the Netherlands referred a preliminary question to the ECJ. It asked:

1. Whether the court in the parent company's home country, when assessing jurisdiction under Article 8(1) of Regulation No. 1215/2012, should presume that the parent company exercises decisive influence over its subsidiary in another Member State.
2. Whether, if the decisive influence is disputed, the mere possibility that such influence exists is enough to establish jurisdiction over the subsidiary under Article 8(1).

On February 13, 2025, the ECJ ruled that courts in the parent company's domicile may rely on the presumption of decisive influence when determining jurisdiction. However, the ECJ also clarified that defendants have the right to present evidence rebutting this presumption. They may also argue that the parent company does not own all or nearly all its subsidiary's capital.

ECJ rules that refusal to ensure platform interoperability may constitute abuse of dominance in Alphabet and Others

On April 27, 2021, the Italian Competition Authority ("AGCM") fined Alphabet Inc., Google LLC, and Google Italy Srl €102 million for violating Article 102 TFEU.

The case concerned the companies' conduct in delaying and obstructing the interoperability required by Enel X of its JuicePass application, which allows drivers to locate and book charging stations for electric vehicles, with the Android Auto digital platform.

Android Auto is Google's system that enables smartphone apps to be used on car screens. Typically, Google provides developers with models to ensure interoperability.

AGCM found that Google's refusal to grant Enel X the necessary model was a refusal of interoperability, equivalent to a refusal to deal. This allegedly gave an unfair advantage to Google's own apps.

Google challenged the decision before the Italian Council of State, which referred a question to the ECJ for a preliminary ruling.

On February 25, 2025, the ECJ ruled that a dominant firm's refusal to ensure interoperability between its platform and a third-party app may constitute an abuse of dominance. This applies even if access to the platform is not essential for the third party's business.

The Court clarified that such conduct may be abusive if:

1. The dominant firm did not develop the platform solely for its own business needs but also intended it to be used by third parties.
2. The platform, while not essential for the third party's business, significantly enhances the attractiveness of its app for consumers.

However, a dominant firm may justify refusing interoperability. Acceptable justifications include:

- The absence of a predefined model for the specific type of app.
- Risks to platform integrity or security.
- Technical impossibility of ensuring interoperability.

If no valid justification exists, the dominant firm must develop an interoperability model within a reasonable timeframe. It may charge an appropriate fee, considering:

- The third party's needs.
- The actual cost of developing the model.
- The dominant firm's right to earn a fair return for the service.

Highlights of the European Commission's Decision-Making Practice

The European Commission fined Apple €1.8 billion for allegedly abusing its dominant position by imposing restrictions on app developers

The European Commission found that Apple, the sole provider of an App Store for iOS users in Europe, imposed "anti-streering" provisions in its terms and conditions. These provisions prevented app developers from informing and directing users to alternative and more affordable music subscription services.

Specifically, these provisions prohibited developers from:

- Informing users about subscription prices available outside the App Store;
- Highlighting price differences between subscriptions inside and outside the App Store;
- Including links that directed users to external subscription options.

These restrictions were deemed unlawful under Article 102 TFEU, as they were neither necessary nor proportionate to protect Apple's commercial interests, while having a detrimental effect on iOS users, who were hindered in their ability to make informed decisions about music streaming subscriptions.

According to the Commission, Apple's conduct, which lasted for almost ten years, likely led many iOS users to pay significantly higher prices. The restrictions also harmed user experience by forcing them to search for alternative services outside the app. Some users may have ultimately chosen not to subscribe at all.

The European Commission fined Teva €462.6 million alleged patent system abuse and smear campaign against a competitor

The Commission found that Teva artificially extended patent protection for glatiramer acetate, the active ingredient in Copaxone, a multiple sclerosis drug. Additionally, Teva systematically spread misleading information about a competing product. The aim was to prevent the competitor from entering the market.

According to the Commission, this conduct constituted an abuse of dominance in the glatiramer acetate markets in Belgium, the Czech Republic, Germany, Italy, the Netherlands, Poland, and Spain.

The European Commission fined Meta €797.72 million for allegedly for alleged tying practices and unfair trading conditions to benefit Facebook Marketplace

The Commission found that Meta tied its classifieds service, Facebook Marketplace, to its social network, Facebook. As a result, Facebook users were continuously exposed to Facebook Marketplace..

According to the Commission, this conduct could exclude Facebook Marketplace's competitors from the market. The linking of platforms gave Facebook Marketplace a significant advantage that rivals could not match.

The Commission also found that Meta unilaterally imposed unfair commercial conditions on other online advertising service providers using its platforms – particularly Instagram and Facebook. Additionally, Meta allegedly used competitors' advertising data for the exclusive benefit of Facebook Marketplace.

ECJ overturns the European Commission's decision in Illumina/Grail case and rejects its interpretation of Article 22 of the Merger Regulation

In 2021, amid concerns over killer acquisitions, the European Commission issued its Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases. The guidance called for a reinterpretation of the so-called "Dutch clause."

Article 22 was originally introduced to allow Member States without national merger control regimes, such as the Netherlands, to request the Commission's review of potentially anticompetitive concentrations. It was meant to close an enforcement gap by ensuring that such transactions could still be examined at the EU level. Because of this, the Commission had traditionally discouraged referrals when national authorities lacked jurisdiction merely because the notification thresholds were not met, rather than due to the absence of a merger control system.

The reinterpretation advocated in the guidance expanded the scope of referrals. It clarified that national competition authorities could refer mergers even if they did not meet national notification thresholds, provided the merger affected trade between Member States or significantly threatened competition in the referring Member State.

That same year, at the request of six Member States, the Commission decided to review Illumina's acquisition of Grail and launched an in-depth investigation. Illumina and Grail challenged this decision before the General Court. In July 2022, upheld the General Court upheld the Commission's jurisdiction and endorsed its interpretation of Article 22.

Illumina and Grail appealed the ruling to the ECJ, which overturned the decision. their found that an expansive interpretation of the referral mechanism proposed by the Commission undermines the effectiveness, predictability and legal certainty needed in merger control. It ruled that this turns the mechanism into a corrective tool, departing from the literal, historical and teleological basis of its implementation. The ECJ emphasized that merger control thresholds exist to ensure legal certainty. These thresholds prevent

1. The Commission from accepting referrals from Member States when a transaction does not meet the notification criteria in the referring State.
2. Member States from reviewing mergers they lack jurisdiction over.

Commission clears NVIDIA's acquisition of Run:ai

As in Illumina/Grail, the acquisition of Run:ai by NVIDIA did not meet the quantitative thresholds required to trigger the referral mechanism to the European Commission.

Run:ai develops GPU-based computing solutions for AI and deep learning. NVIDIA designs and sells graphics processing units (GPUs).

However, since 2022, the Italian Competition Authority (AGCM) has had the power to review mergers below certain thresholds, provided specific conditions are met. In October 2024, the AGCM referred NVIDIA's acquisition of Run:ai to the European Commission.

The Commission reviewed the merger and approved it unconditionally.

The significance of this case lies in its illustration of the use of the referral mechanism by a national competition authority, in accordance with the ECJ's interpretation in the Illumina/Grail judgement. This approach provides an

alternative pathway for Member States to address potential concerns regarding killer acquisitions, while complying with national and EU merger control rules. This strengthens oversight of transactions that do not meet traditional thresholds but could still harm competition.

Highlights in FDR control

2024 marked the first year of enforcement under the Foreign Subsidies Regulation (FSR). The regulation empowers the European Commission to review subsidies granted by non-EU countries to companies operating in the internal market. It covers:

- Merger control involving foreign subsidies.
- Public procurement oversight.
- Ex officio investigations and market inquiries.

First In-Depth Investigation in Public Procurement: CRRC Bid

In February 2024, the Commission launched its first in-depth investigation into a public procurement procedure. The case involved a bid submitted by CRRC, a Chinese train manufacturer, in response to a tender by the Bulgarian Ministry of Transport and Communications.

During the investigation, CRRC withdrew its bid, leading to the closure of the case before a final ruling.

First Merger Control Investigation Under the FSR: PPF Telecom / Emirates Telecommunications

Also in 2024, the Commission initiated its first merger control investigation under the FSR. The case concerned the acquisition of PPF Telecom Group by Emirates Telecommunications Group Company, a telecom operator controlled by a UAE sovereign wealth fund.

The Commission cleared the transaction, subject to commitments offered by the parties.

// WHAT TO EXPECT IN 2025

Legislative Developments

2025 will be marked by:

- The revision of Regulation No. 1/2003, in force for over 20 years.
- The publication of guidelines on exclusionary abuses by dominant firms.

Revision of Regulation No. 1/2003

On September 6, 2024, the European Commission published an assessment of the procedural framework for investigating antitrust infringements. It concluded that EU competition rules are applied effectively, efficiently, and uniformly.

However, the Commission identified issues to be addressed in the upcoming revision, including:

1. Ineffective investigative tools: Digitalization has weakened the effectiveness of requests for information and inspections.
2. Insufficient powers to record statements: The Commission lacks authority to collect information without consent and cannot impose sanctions for false statements.
3. Limited enforcement powers: The Commission faces challenges in imposing structural remedies and interim measures.
4. Lack of sanctioning powers: Certain procedural violations undermine competition law enforcement, but the Commission cannot impose fines in these cases.

Guidelines on Exclusionary Abuses

On August 1, 2024, the Commission published its draft guidelines on exclusionary abuses by dominant firms. It also launched a public consultation on the draft. The final version is expected in 2025.

Public Enforcement Trends

In 2025, enforcement actions are expected to increase in:

- Abuse of dominance cases.
- Application of the Digital Markets Act (DMA) and the Foreign Subsidies Regulation (FSR).

Key sectors under scrutiny will include:

- Energy
- Telecommunications
- Healthcare
- Digital markets
- Information technology

Since 2022, the labor market has garnered particular attention from the Commission, which is currently investigating the online food delivery sector.



ÁFRICA

Highlights from 2024 and Q1 2025, and What to Expect for the remainder of the Year

ANGOLA / CAPE VERDE / DEM. REP OF THE CONGO / MOZAMBIQUE

REP. OF THE CONGO / CEMAC / ECOWAS / COMESA

KEY HIGHLIGHTS

- Ecowas Competition Authority becomes fully operational
- Mozambique approves its Leniency Regulation and allows the notification of previously completed transactions until 6 June
- Republic of Congo enacts Competition Act

ANGOLA

In 2024, the Angolan Competition In 2024, the Angolan Competition Regulatory Authority (CRA) issued fourteen merger clearance decisions, with the oil & gas sector and related services accounting for half of them. These approvals covered a range of activities, including upstream oil exploration and production, maritime services for offshore platforms, testing, inspection and certification services, offshore drilling, and the production of chemical products for the oil & gas industry.

In the freight forwarding sector, multiple transactions were cleared, reflecting increased restructuring and investment in Angola's logistics and transportation networks. In banking, the CRA approved several mergers aimed at expanding market presence and strengthening financial institutions. Merger approvals also extended to the construction and public works sector, as well as terminal operations management.

The ARC also issued two sanctioning decisions for failure to comply with the notification obligation for merger transactions.

Beyond merger control, the CRA actively exercised its advisory powers by issuing recommendations on customs clearance services and the implementation of local content policy in the oil & gas sector. These initiatives underscore the CRA's commitment to fostering competition and supporting economic development. The CRA has also enhanced cooperation with other regulatory bodies in Angola and with the competition authorities of Portugal, Mozambique, and South Africa.

Outlook for 2025

The CRA is expected to maintain strict enforcement of merger control rules, with particular attention to detecting and addressing non-notified mergers subject to filing requirements. At the same time, the Authority is likely to step up its efforts to uncover cartels and abuses of dominant position, further strengthening its role in promoting fair competition and market efficiency.

CAPE VERDE

The Competition Authority of Cape Verde (CACV) became fully operational in 2023 and is taking its first steps in shaping competition policy in the country.

For example, in 2024, the CACV published a clearance decision regarding the Taiwan Cement Europe Holdings B.V./ Cimpor Cabo Verde's transaction in the cement, ready-mix concrete and aggregates markets.

In terms of regulatory advancements, the CACV issued a public consultation on service fees, reflecting ongoing efforts to enhance its institutional framework.

Additionally, the CACV has strengthened its international presence by securing a seat as a Rapporteur on the ECOWAS Regional Competition Authority's Competition Advisory Committee and officially joining the International Competition Network, reinforcing its commitment to global competition standards.

Outlook for 2025

In 2025, the CACV aims to refine its enforcement mechanisms by developing a notification form for mergers, establishing a whistleblower channel, and enhancing stakeholder awareness of anti-competitive practices. Moreover, the CACV aims to strengthen its capacity to detect unnotified mergers and market abuses through proactive monitoring and investigative tools.

DEMOCRATIC REP. OF THE CONGO

In 2024, the Democratic Republic of the Congo (DRC) made significant efforts in enhancing its competition law framework. Building upon the foundation laid by the Organic Law No. 18/020 on Pricing Freedom and Competition enacted in 2018, the DRC, with assistance from the United Nations Conference on Trade and Development (UNCTAD), is focusing on finalizing the creation of legal and institutional frameworks for competition and consumer protection. This collaboration aims to: develop a comprehensive three-year plan to operationalize the Competition Authority (CMCO); provide specialized training for officials; conduct sectoral studies; and initiate advocacy campaigns to promote competitive practices within the DRC's economy.

Outlook for 2025

Although COMCO's competition enforcement is still dependent on its cooperation with the Common Market for Eastern and Southern Africa (COMESA), the UNCTAD initiative promises to enhance COMCO's operational capacity and regulatory effectiveness in the next few years.

MOZAMBIQUE

In 2024, Mozambique invested in training judges to handle competition law cases, strengthening the judiciary's capacity to adjudicate appeals against decisions of the Mozambican Competition Regulatory Authority (CRA).

Throughout the year, the CRA approved merger transactions across various strategic sectors, including vegetable oils, energy, natural gas (including LNG), insurance, pharmaceuticals, sugar, flour, and communications. These transactions reflect ongoing consolidation and investment in key industries, enhancing efficiency and competitiveness.

Additionally, the CRA introduced a six-month exemption period for mergers completed by December 31, 2024, that had not previously been notified. This measure allows businesses to regularize such transactions without penalties. The grace period, which runs until June 6, 2025, highlights the Authority's focus on promoting compliance with competition rules and market transparency.

The Authority also published a best-practice guide for combating collusion in public procurement, offering practical guidance to public bodies and businesses to prevent anti-competitive conduct in government contracting. Moreover, it issued a recommendation for the revocation of a telecommunications resolution, calling for a deeper market analysis to assess potential anti-competitive risks.

Outlook for 2025

Mozambique is expected to continue strengthening its competition framework. It has recently published a Leniency Regulation focusing on protecting confidentiality and allowing oral applications for leniency requests. However, concerns remain regarding certain gaps in the law, such as the absence of full immunity from fines for the whistleblowing company.

Merger control enforcement is expected to become more rigorous, particularly with respect to non-notified transactions subject to filing requirements. In parellel, efforts to tackle anti-competitive practices - including collusion in public procurement and potential abuses of market power - will remain a priority.

REPUBLIC OF THE CONGO

Until recently, competition regulation in the Republic of Congo existed only at regional level, under CEMAC's competition law. However, with the enactment of Law No. 16-2024 on Competition, approved on July 9, 2024, the country now has a national legal framework to regulate and penalize anti-competitive behavior as well as to control mergers and acquisitions.

The new law applies to all anti-competitive practices, mergers and acquisitions originating within the country or abroad that have an impact on the domestic market. This includes anti-competitive agreements, abuse of dominance, and merger control rules.

Law 19-2024 was also enacted on July 9 to create a national competition authority, which will oversee the application of the law.

Outlook for 2025

The next step for the Republic of Congo will be to operationalize the competition authority in order to ensure meaningful market supervision and encourage a competitive business environment.

CEMAC

In 2024, the Economic and Monetary Community of Central Africa (CEMAC)'s Competition Commission took a major step towards greater transparency by publishing, for the first time, its merger control decisions. The decision to implement this practice follows the Commission's restructuring in mid-2023, marking a new phase in its operations.

The Authority published a total of eight clearance decisions from 2024, related to key economic sectors, including banking, investments, oil and gas (upstream), industrial gases, international freight, defense vehicles, and construction materials. This diversity highlights the increasing role of CEMAC in regulating competition across a broad range of industries.

Outlook for 2025

With this new level of transparency, companies can better anticipate how concentrations will be assessed, which reduces legal uncertainty and facilitates investment planning. In the long term, the initiative is expected to foster a more stable and competitive business environment in the six Member States — Cameroon, Central African Republic, Chad, Republic of Congo, Equatorial Guinea, and Gabon.

ECOWAS

In 2024, the Economic Community of West African States (ECOWAS) reached a major milestone with the full operationalization of the ECOWAS Regional Competition Authority (ERCA). On October 2, the members of the ERCA Council were officially sworn in before the President of the Community Court of Justice, marking a significant step forward in promoting competition and economic integration in the 15 ECOWAS member states (Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo).

Outlook for 2025

With ERCA now fully operational, competition law enforcement across the region is expected to become more structured and harmonized.

One of ERCA's biggest challenges will be coordinating with national competition authorities to avoid jurisdictional conflicts and ensure smooth enforcement.

With some member states already having established competition authorities while others are still in the process of doing so, defining clear cooperation mechanisms will be essential.

COMESA

In 2024, COMESA's Competition Commission (CCC) proposed revisions (not yet implemented) to its 2004 Competition and Consumer Protection Regulations to modernize enforcement and align with global best practices.

Regarding merger control, a key change is the shift to a suspensory merger control regime, requiring companies to obtain CCC's approval before completing mergers or acquisitions. This replaces the current non-suspensory system, which allows transactions to proceed while under review.

Another major reform in merger control is the introduction of transaction value thresholds, particularly relevant for digital markets and high-value transactions. Previously, the notification criteria were based solely on turnover or assets thresholds, which often fail to capture the growing influence of digital platforms and cross-border deals that impact competition without generating significant local revenue.

Regarding anti-competitive practices, the proposed regulation introduces a presumption of market dominance for companies holding a 30% market share. This reduces the burden of proof required to establish dominance in legal proceedings.

In case of self-reporting of anti-competitive practices such as price-fixing agreements, collusive tendering, bid-rigging, refusals to deal, passive sales restrictions and minimum resale price maintenance, the proposed regulation introduce a leniency program that grants immunity to the reporting party.

As part of its new investigative powers, the CCC will be authorized to conduct unannounced inspection visits without obtaining prior warrants. This will allow the CCC to inspect premises, copy documents and interrogate representatives or employees of the entity under investigation when there is a reasonable belief that relevant information is present.

Outlook for 2025

If adopted, these reforms will enhance competition enforcement within COMESA's 21 member states (Burundi, Comoros, the Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia and Zimbabwe).

As a result, businesses will need to account for longer approval timelines and adapt their transaction strategies. Additionally, companies with 30% market share will face stricter scrutiny regarding their market practices.

Finally, the leniency program and the extension of the CCC's investigative powers will promote early detection of cartels and require companies to strengthen their compliance programs.



TIMOR-LESTE

Highlights from 2024 and Q1 2025, and What to Expect for the remainder of the Year

KEY HIGHLIGHT

Timor-Leste moves to establish a Competition Law Framework

TIMOR-LESTE

In the context of Timor-Leste's accession process to the Association of Southeast Asian Nations (ASEAN), the Council of Ministers approved the Draft Competition Law on February 26, 2025.

This Draft Law marks the first step towards establishing a competition law framework in the country. According to the Government of Timor-Leste, the goal is to promote competition, market efficiency and consumer protection, in line with international standards set by ASEAN and the World Trade Organization. The Draft Law will now be submitted to the National Parliament for discussion and approval.

The effective implementation of the Competition Law is expected to contribute to creating a more dynamic and attractive market for investors.



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