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Client briefing

COMPETITION LAW

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Competition scrutiny of labour markets: the Portuguese Competition Court confirms competition fine in the software labour market case

In February 2025, the Portuguese Competition Authority ("PCA") fined Inetum group companies for entering into bilateral no-poach agreements in the technology consulting sector. The Portuguese Competition Court (TCRS) upheld this decision on 27 March 2026. In March 2026, the PCA also fined APESPE RH for maintaining a no-poach clause in its Code of Ethics for nearly 40 years. These developments confirm the PCA's approach to tackling restrictive labour market practices, as evidenced by the increasing number of investigations and sanctioning decisions that are now starting to be endorsed by the courts.

The PCA began addressing potential competition restrictions involving labour markets in 2021, positioning itself at the forefront of competition enforcement and labour-related investigations in the EU. Labour markets continue to be a key priority, and the PCA has recently issued two decisions concerning no-poach agreements: one relating to the temporary employment market and the other to SAP software specialists. Notably, on 27 March 2026, the TCRS confirmed the latter as constituting a restriction by object.

1. NO-POACH AGREEMENTS AND PORTUGUESE COMPETITION LAW

Growing attention and the Liga *case*

Both Article 101 of the Treaty on the Functioning of the European Union ("**TFEU**") and article 9 of Law No. 19/2012 ("**Portuguese Competition Law**") prohibit agreements and concerted practices between undertakings, as well as decisions by associations of undertakings whose object or effect is to prevent, distort or significantly restrict competition in all or part of the relevant market. For a long time, labour markets remained largely outside the remit of competition law enforcement. However, this has changed, with the PCA at the forefront of this shift, building on earlier cases in the US that were often privately enforced and not always successful.[1]

[1] For a comprehensive analysis of the intersection between competition law and labour markets – covering development in the US, the EU and Portugal – see the award-winning article by the UM Team, recipient of the 2026 Concurrences Award: https://awards.concurrences.com/en/awards/2026/business-articles/competition-enforcement-and-the-labor-market-too-much-too-soon.

In Portugal, the PCA's intervention in the professional football sector illustrates this shift. After *Liga Portuguesa de Futebol Profissional* ("**LPFP**") announced that member clubs would not hire players who had unilaterally terminated their contracts during the COVID-19 pandemic, the PCA ruled on 28 April 2022 that this arrangement constituted an anticompetitive no-poach agreement.

This decision was appealed to the TCRS, who referred several key questions – including some on the concept of restriction by object and the scope of the *Meca-Medina* case – to the CJEU for a preliminary ruling. This ruling is still pending. A comparable investigation into a wage cap in the women's football sector was later settled.[2]

Beyond individual enforcement actions, in September 2021, the PCA published its "*Labour Market Agreements and Competition Policy – Issues Paper*". This followed its first enforcement decision and came at a time when investigations were already underway, and there was little to no decisional practice in Portugal or the EU. The paper signalled the PCA's view that competition law plays a meaningful role in labour markets.

Regarding the PCA's investigation into the Inetum group and a competitor in the technology consulting sector, the authority found a reciprocal informal no-poach arrangement – referred to internally as a "gentleman's agreement" – under which the parties agreed not to approach or hire each other's SAP software specialists. This practice lasted for at least seven years, from March 2014 to August 2021. Other companies settled through a settlement procedure and benefited from reduced fines. However, the Inetum group did not settle and had to pay a fine of €3,092,000.

The PCA classified the conduct as a restriction of competition by object and noted that, while such agreements are already deemed void under Portuguese employment law, this does not prevent the application of competition law, which protects distinct and equally important interests.

On appeal, the TCRS upheld the decision in full, marking the first judicial confirmation in Portugal of a competition law sanction for restrictive labour market conduct. The TCRS emphasised that labour mobility is not only an individual right, but also a vital factor in promoting efficiency and innovation, particularly in a highly specialised market where qualified professionals are scarce and demand is high.

2. KEY TAKEAWAYS

No-poach agreements are now firmly within the scope of competition law. The PCA – now backed by the TCRS – has begun to establish in Portugal that no-poach, no-hire, and non-solicitation agreements between competing employers constitute restrictions by object under both Portuguese and EU competition law. The fact that such agreements are already void under Portuguese employment law does not shield them from competition law scrutiny. Further investigations in other sectors appear to be ongoing. Employers should therefore proactively review their recruitment practices, HR policies and any

[2] See https://www.concorrencia.pt/sites/default/files/processos_e_decisoes/epr/2020/Recomenda%C3%A7%C3%A3o%2520a%2520FPF.pdf.

inter-company arrangements that could, directly or indirectly, restrict worker mobility, including those within trade associations.

No-poach agreements are treated as restrictions "by object". Following the TCRS' endorsement of this classification, the PCA is not required to prove that the agreement has had any actual, measurable effect on the market or caused any specific harm to consumers. Such conduct is considered inherently anti-competitive by its very nature.

Informal arrangements carry the same legal risk as formal agreements. In the *Inetum* case, the arrangement was described as a "gentleman's agreement" – there was no written contract or formal commitment, and it arose in the context of an existing commercial partnership. This did not prevent the PCA from finding a competition-law infringement. Businesses should be aware that informal understandings, verbal commitments or established practices regarding recruitment can also be legally risky.

Trade associations must scrutinise their codes of conduct and internal rules. They should assess their governing documents, codes of conduct and any recommendations issued to members to ensure that they do not include provisions that restrict labour mobility or influence recruitment practices.

The PCA has made labour market enforcement a strategic priority. Since 2020, it has made competition in labour markets a key priority, and the TCRS' decision in the *Inetum* case confirms that this is not a passing concern. Further investigations in other sectors are therefore expected.

3. CONCLUSION

Competition law is undergoing a fundamental shift – moving beyond its traditional focus on consumer prices and market structure to encompass upstream markets. This has important implications for labour mobility and innovation.

In Portugal, the PCA has identified labour market enforcement as a strategic priority since 2021. This trend is increasingly reflected at the EU level (*e.g.* EC's *Food Delivery Services* case), in other Member States (*e.g.* the Spanish *Retail Distribution* case and the French Alten, Expleo and Bertrandt case) and in jurisdictions such as the UK (*e.g.* the *Freelance Services* case), all of which are actively pursuing antitrust enforcement in labour markets.

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