Competition scrutiny of labour markets: the ECJ clarifies that context is key in the assessment of the *Liga Portuguesa* no-poach case

In April 2022, the Portuguese Competition Authority ("PCA") fined 31 sports clubs and the Portuguese Professional Football League ("LPFP"), for having entered into an agreement that prevented clubs in the *Primeira Liga* and *Segunda Liga* from signing footballers who had unilaterally terminated their employment contracts on grounds related to the COVID-19 pandemic, deeming it a by object competition infringement. In the context of the judicial appeal of this decision, in December 2023, the Portuguese Competition Court ("TCRS") issued a preliminary ruling request, questioning the ECJ on the concept of restriction by object. The ECJ has now provided further clarification on how to apply the "by object" concept to this case, which must now be applied by the TCRS.

The Liga Portuguesa case was the first labour market investigation of the PCA, positioning this authority at the forefront of competition enforcement and labour-related investigations in the EU, and jumpstarting the PCA's ongoing enforcement focus on labour markets. The case may now be challenged by the ECJ's ruling, in light of its very specific circumstances.

1. NO-POACH AGREEMENTS AND PORTUGUESE COMPETITION LAW

Growing attention

Both Article 101 of the Treaty on the Functioning of the European Union ("**TFEU**") and Article 9 of Law 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 changed, with the PCA at the forefront of this shift, building on earlier US cases that were often privately enforced and not always successful.[1]

In Portugal, the PCA's intervention in the professional football sector illustrated this shift. Indeed, the *Liga Portuguesa* case refers to an agreement, entered into by 31 sports clubs and the

1.- For a comprehensive analysis of the intersection between competition law and labour markets – covering development in the US, the EU and Portugal – see: https://awards.concurrences.com/en/awards/2026/business-articles/competition-enforcement-and-the-labor-market-too-much-too-soon.

Portuguese Professional Football League, to prevent clubs in the *Primeira Liga* and *Segunda Liga* from signing footballers who had unilaterally terminated their employment contracts on grounds related to the Covid-19 pandemic. This agreement, which was publicized by the LPFP amid the COVID-19 pandemic, was sanctioned by the PCA, in April 2022, with a total of €11.3 million in fines.

This decision marked the first in a series of labour-related infringement decisions by the PCA. However, following the judicial appeal of this decision to the TCRS, in December 2023 this court decided to refer to the ECJ a preliminary ruling requesting further clarifications on, among others, the concept of a "by object restriction" and its applicability to this case. On 30 April 2026, the ECJ issued its preliminary ruling, whose main takeaways are set out below, leaving the TCRS to apply them in the context of the judicial review of the PCA's decision.

Beyond individual enforcement actions, in September 2021, the PCA published its "*Labour Market Agreements and Competition Policy – Issues Paper*". This followed its investigation into the *Liga Portuguesa* case 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 and came at a time when this subject still was not in the focus of other competition authorities - for example, the EC's Competition Policy Brief on Antitrust in Labour Markets was issued three years later, in 2024.[2]

Indeed, 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. The PCA's sanctioning decision, regarding the latter, was confirmed by the TCRS in March 2026. In this case, the TCRS confirmed that a reciprocal informal no-poach arrangement – referred to internally as a "gentleman's agreement" – under which the involved undertakings agreed to not approach or hire each other's SAP software specialists was a by object restriction. In this case, where three of the four sanctioned undertakings relied on the settlement procedure, the PCA levied total fines of approximately €7 million.

2. KEY TAKEAWAYS

No-poach agreements have an anticompetitive content. The ECJ clarified that the agreement not to hire players who had unilaterally terminated their employment contracts citing difficulties caused by the COVID-19 pandemic was equivalent to a no-poach agreement, and, as such, a manifest restriction of a competitive parameter with an essential role in the concerned market. The ECJ further clarified that no-poach agreements are equivalent to agreements by which competitors share a "*source of supply*", pursuant to Article 101(1)(c) TFEU, and are, thus, harmful to competition since they lead to the artificial partitioning of a resource.

2.- European Commission, Competition Policy Brief, Issue 2, May 2024, Antitrust in Labour Markets.

An anticompetitive content is not enough to conclude on the existence of a by object restriction. Despite its conclusion on the anticompetitive content of the agreement, the ECJ reiterated its previous jurisprudence that it is also necessary to consider the economic and legal context in which the conduct in question takes place, as well as its objective.

It is up to the TCRS to ponder the impact of the economic and legal context. The ECJ left to the referring court to judge the impact of the relevant context on the assessment of the "by object" nature of the agreement. The TCRS should consider: (*i*) the specific characteristics of sports markets, where the sustainability of competition and maintenance of a certain degree of "equality of opportunity" are to be ensured; (*ii*) it may be legitimate for a sporting association to ensure a certain level of stability to the clubs' player roster; (*iii*) the impact of the COVID-19 pandemic. Nevertheless, the TCRS should consider that the agreement was enacted not by a sports association, but by the clubs themselves (although with apparent agreement of the President of the association) and that the COVID-19 pandemic was not, in itself, sufficient to warrant an exception to Article 101.

After pondering the content and context of an agreement, it must be clear why it has, or has not, a sufficient degree of harm from a competition standpoint. The ECJ stated that, after conducting the first two steps of the analysis of whether an agreement can be deemed as restrictive by object – i.e. in light of its content and context –, the TCRS must show the specific reasons why that conduct does not, in view of the specific characteristics of that context, present a sufficient degree of harm from a competition standpoint as to be held to have as its object the prevention, restriction or distortion of competition.

A no-poach agreement could have ambivalent aims. The ECJ noted that, in light of the considerations stated by the TCRS, the agreement aimed at preventing the more powerful clubs from hiring the best players of less powerful clubs. Thus, the agreement could have, in parallel, an objectively anticompetitive aim, consisting in the restriction of competition on the player recruitment market, and an objectively pro-competition aim, consisting in ensuring stability of player rosters.

3. CONCLUSION

The ECJ has confirmed that no-poach restrictions are equivalent, in their content, to source-of-supply restrictions under Article 101(1)(c) TFEU and, as such, anticompetitive. However, the ECJ has further refined the analysis of the legal and economic context, as well as the aims of an agreement, for the purposes of classifying it as a restriction by object. Although the ECJ left it to the TCRS to conclude whether, in light of the agreement's specific context and aims, it could constitute a by object restriction, the ECJ provided indications that could bes viewed as supporting the conclusion that it might not.

Nevertheless, this ruling is likely to be interpreted as supporting of labour market related investigations, in light of the considerations provided concerning the content of these agreements. Indeed, in Portugal, the PCA has identified labour market enforcement as a strategic priority since 2021. This trend is increasingly reflected at 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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