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01 CNMC merger decision. The CNMC clears Atresmedia's acquisition of Clear Channel España in Phase I, subject to unbundling the sales of outdoor advertising (Decision of 20 July 2026, ATRESMEDIA/CLEAR CHANNEL ESPAÑA, file C/1638/25).

By decision of 20 July 2026 the CNMC cleared in Phase I, subject to commitments and under Article 57.2.b) of the Spanish Competition Act (LDC), the acquisition by Atresmedia Corporación de Medios de Comunicación, S.A. (Atresmedia), controlled by Grupo Planeta, of sole control of Clear Channel España, S.L.U. (Clear Channel).

The transaction concerns a conglomerate. Atresmedia sells advertising on television and radio and in online display. Planeta is present in press advertising through La Razón. Clear Channel sells out-of-home advertising, principally street furniture (*mobiliario urbano*, or MOBUR), the format that accounts for more than half of Spanish outdoor advertising expenditure and delivers coverage above 80% of the population. The CNMC analysed national television advertising including connected TV (CTV), national and local radio advertising, press advertising, and outdoor advertising nationally and locally, with particular attention to MOBUR, leaving the boundaries of the outdoor market open as it had in *JCDECAUX ESPAÑA/CLEAR CHANNEL ESPAÑA* (file C/1426/23), the earlier attempt by JCDecaux to acquire Clear Channel España, which went to Phase II and was closed on 6 November 2024 after JCDecaux withdrew its notification in the light of the commitments required by the CNMC.

After the transaction Atresmedia becomes the only group with a significant presence in most of the main advertising media in Spain, and so is able to assemble combined offers across television, radio, press and outdoor that competitors with a narrower footprint cannot replicate. The CNMC also considered the reinforcement of Clear Channel's own competitive capacity in outdoor advertising and with the market conditions (high concentration, significant barriers to entry and expansion, and limited capacity for demand and rivals to react in the short and medium term) to conclude that the transaction could reduce competitive pressure across the advertising sector.

The merger commitments, which run for a maximum of eight years, are behavioural and separation-based rather than divestiture-based. Any form of joint commercialisation of outdoor advertising with the remaining Atresmedia and Planeta advertising products is prohibited, and the prohibition covers the whole of the negotiation, from the design of the advertising products through media agency intermediation to the final sale. Clear Channel must be kept structurally separate from the group's other advertising sales houses, with functional, commercial and economic autonomy and a prohibition of any exchange of commercial information between them. Within outdoor advertising, limits are imposed on bidding for public tenders and on managing third-party operators' inventory. An independent trustee will monitor compliance.

The decision is consistent with the CNMC's longstanding attention to conglomerate effects, seen in recent years, for instance, in the pharmaceutical sector, where the bundling of products to compete in public tenders has been a concern. It also confirms that behavioural remedies remain markedly more available in Spain than before the EC, reflecting the courts' longstanding application of the administrative principle of proportionality to merger control and merger remedies.

02 EU FDI screening / Spain. The European Parliament and the Council adopt a new Regulation on the screening of foreign investments in the Union, replacing the current EU FDI cooperation mechanism (Regulation (EU) 2026/1386 of 17 June 2026, OJ L, 26 June 2026). Spain opens a public consultation on the reform of its own regime.

Regulation (EU) 2026/1386, published in the Official Journal of 26 June 2026, repeals and replaces Regulation (EU) 2019/452 and marks a qualitative leap in the European framework for foreign investment screening: the voluntary cooperation mechanism established in 2019 gives way to a mandatory and harmonised system, under which every Member State must have a screening mechanism in place (Article 3). The final configuration of the regime remains a national competence, but it must now be exercised within a binding common framework covering scope, procedure, deadlines and cooperation. Harmonisation is one of minimum standards: Member States may adopt

complementary or more specific provisions provided they are consistent with the common regime (Article 3(1)).

The Regulation applies from 17 January 2028, the date on which Regulation (EU) 2019/452 is repealed and by which Member States must have adapted and notified their mechanisms (Articles 3(2), 30(1) and 31); a limited set of provisions, forms, the secure information exchange system and certain Commission powers apply from 16 July 2026. Investments carried out, or already under screening, before 17 January 2028 remain governed by the previous regime (Article 30(2) and (3)).

The notion of foreign investment is broad: any investment by a third-country investor, direct or through an EU subsidiary, allowing effective participation in the management or control of an EU target (Article 2(1) and (5)). That test is wider than the “*decisive influence*” standard of merger control: minority stakes may be caught (recital 15), and the notion now expressly covers intra-EU investments channelled through subsidiaries established in the Union but controlled by a foreign investor (Article 2(1) and (7)). Greenfield projects fall within scope but are not subject to prior authorisation (Article 4(17)), and certain transactions are excluded altogether, such as intra-group restructurings that do not alter beneficial ownership (Article 1(5)(b)).

The central novelty is the common minimum scope of Article 4(15): sectors in which screening and prior authorisation are compulsory, so that the transaction may not be implemented before clearance (Article 4(9)). It covers dual-use items and defence products, critical technologies (semiconductors, quantum and certain artificial intelligence technologies), critical transport, energy and digital infrastructure, strategic raw materials, financial market infrastructures and systemically important financial institutions, and systems used to hold and certify elections. Member States may extend screening beyond that core (Article 4(16)). On procedure, the Regulation sets an initial review of up to 45 calendar days followed, where appropriate, by an in-depth phase (Article 4(2)); *ex officio* review of investments not subject to prior authorisation for between 15 months and 5 years from completion (Article 4(4)), and of at least 24 months for investments subject to prior

authorisation that were not filed, or were filed only after completion (Article 4(5)); effective, proportionate and dissuasive penalties (Article 4(11)); and guarantees of judicial review and confidentiality (Article 4(6) and (7)).

Where a risk to security or public order is identified by reference to the factors listed in Article 19, the screening authority must either authorise the investment subject to mitigating measures (such as governance changes, voting rights, restrictions on access to sensitive technology, supply commitments or an obligation to store and process specific data within the Union) or prohibit or unwind it, the latter only where the risk cannot be adequately addressed by other means (Article 20(1), (3) and (4)). The cooperation mechanism is also reinforced: notification to the Commission and the other Member States is mandatory, first, for investments within the common minimum scope where the investor is controlled by a third-country government, is subject to EU restrictive measures or has significantly or repeatedly breached earlier mitigating measures (Article 5(1)); and, second, whenever an in-depth investigation is opened into a target that participates in a project of Union interest or has subsidiaries in other Member States (Article 5(2)). The screening Member State keeps the final decision but must give due consideration to the comments and opinions received and state its reasons where it departs from them (Article 12(1), (3) and (4)).

In practice, the Regulation consolidates FDI screening as a structural feature of M&A rather than an exceptional one. Companies should map their exposure against the common minimum scope and their ownership chain, run the FDI analysis alongside merger control and foreign subsidies clearances from the outset, and factor the extended post-closing review periods into the allocation of regulatory risk. In Spain, attention will focus on how the common core is reflected in the regime under Article 7 bis of Law 19/2003 and its implementing rules, which already capture acquisitions of 10% or more of the share capital, or of control, of a Spanish company. The possibility of retroactive review of closed transactions now introduced is a feature that stands out and should be well anticipated by investors.

In parallel, the Ministry of Economy has opened prior public consultations (*consulta pública*

previa), open until 14 October 2026, on the reform of Law 19/2003 and on a new Royal Decree replacing the screening provisions of Royal Decree 571/2023. The stated objectives include express coverage of data centres and other specific sectors, a dedicated regime for greenfield investments, a two-phase authorisation procedure and making permanent the screening of certain investments by EU and EFTA investors, which currently rests on the transitional provision of Royal Decree-Law 34/2020 (as last extended by Royal Decree-Law 9/2024) and expires on 31 December 2026.

The calling of a general election for 29 November 2026 (Royal Decree 806/2026 of 5 October, dissolving the Cortes) makes it unlikely that the consultation will lead to draft legislation before a new government is formed, which will then decide whether to revive the reform. The more immediate issue is the EU/EFTA regime: unless it is extended again before 31 December 2026, which with the Cortes dissolved would require a Royal Decree-Law adopted by the caretaker government and validated by the Standing Committee (Diputación Permanente) of the Congress, the screening of those investments will lapse at the end of the year.

CNMC activity.

03 CNMC activity / Abuse of dominant position. The CNMC fines the Naturgy Group's electricity distributor EUR 5.08 million for abusing its network monopoly, and twice refuses to lift the resulting public procurement ban because the compliance programme adopted in response is merely formal (Decision of 11 December 2025 and monitoring decision of 8 April 2026, UFD CONTADORES, files S/0006/23 and VS/0006/23).

The CNMC has fined UFD Distribución Electricidad, S.A. (UFD), a subsidiary of the Naturgy Group, EUR 5.08 million for a single and continuous infringement, classified as very serious, that lasted from May 2018 to May 2021, during which UFD took advantage of its natural monopoly in the network to distort the liberalised market for the installation of electricity meters, in breach of Article 2 LDC and Article 102 of the Treaty on the Functioning of the European Union (TFEU).

UFD's reading of the Unified Metering Points Regulation (Royal Decree 1110/2007), as amended, was flawed. UFD claimed that all meters at low-voltage type 3 and 4 metering points (the industrial segment, *i.e.* larger, higher-consumption connection points) had to be integrated into its own remote management system – a requirement that current regulations mandate only for domestic (type 5) meters. By sticking to this view, UFD forced numerous industrial customers to replace their telemetry equipment (often supplied by competing metering service companies) with equipment owned by UFD.

This conduct was not an isolated incident but reflected an internally documented operational strategy to protect revenue from meter rentals and discourage the installation of third-party equipment.

The exclusionary effects of this practice were significant for metering service companies. Companies such as Axon Time and Linkener, whose complaints initiated the case, reported systematic delays in the activation of their equipment. In addition, UFD used information obtained in its capacity as the statutory meter reader to launch targeted recovery or forced adaptation campaigns. Likewise, the company deliberately kept many competitors' equipment on a "local reading" route, technically preventing its remote activation.

Although UFD corrected its stance in May 2021 through a clarifying instruction, the CNMC has determined that the damage to the market during the previous years was substantial and fined UFD and set a four-month ban on contracting with the public sector, covering works, supply and service contracts related to the installation of electricity metering equipment and associated management systems throughout the national territory.

To restore effective competition, behavioural obligations have been imposed. UFD must activate all third-party telemetry equipment already installed and allow the installation and activation of new equipment when requested by the customer, allow the installation of electricity metering equipment covered by regulations, inform the owners of the affected supply points and publish the new obligations on its website.

Finally, the CNMC has exonerated the group's parent companies, Naturgy Energy Group and

Holding Negocios Electricidad, from joint and several liability, considering that UFD acted with sufficient autonomy in carrying out these practices and that the presumption of decisive influence over the subsidiary in this specific case has been rebutted. Successful rebuttal of the presumption is rare, and the contrast with the Repsol decision discussed below, in which the parent companies were held jointly and severally liable, is worth noting.

The ban was subsequently entered in the Official Register of Tenderers on 17 December 2025 and a monitoring file was opened the same day (file VS/0006/23). UFD paid the fine on 19 December 2025 and applied four days later for the ban to be lifted under Article 72.5 of the Public Sector Contracts Act (Law 9/2017, LCSP), which allows dispensation where the undertaking has paid the fine and has adopted appropriate technical, organisational and personnel measures to prevent further infringements. The CNMC rejected the request on 18 February 2026. UFD's Board then approved a competition compliance programme on 3 March 2026 and applied again the following day for the ban to be lifted. By decision of 8 April 2026 the CNMC refused a second time.

The reasoning is a point-by-point application of the CNMC's Guide on competition compliance programmes of 10 June 2020. Payment of the fine was not in issue. The programme failed on the second limb because, in the assessment of the CNMC Competition Chamber (the Chamber), it had at best a formal degree of development: it did not identify with sufficient precision who was responsible for executing it, carried no clear, firm and public commitment from management, and evidenced no training, communication or internal dissemination from which it could be concluded that the obligations had actually reached the organisation. The Chamber then worked through each element the Guide treats as evidence of effectiveness and found all of them insufficient: a whistleblowing channel not specifically directed at competition infringements, no demonstration of the independence, functional autonomy or resources of the compliance officer, a risk inventory and protocols too generic to individualise risks, owners and controls, no concrete, pre-established and known internal procedure for handling suspicions; and a disciplinary system referred generically to

ordinary employment rules, with no competition-specific content or visibility. The programme did not, in short, reflect a genuine, effective and verifiable commitment to a culture of compliance. Assuming the four-month ban ran from its registration on 17 December 2025, the second refusal came only days before it was due to expire in any event; the value of the decision lies less in its practical effect than in the yardstick it sets for self-cleaning requests under Article 72.5 LCSP.

04 CNMC activity / Google. The CNMC accepts Google's commitments on remuneration for press publishers and news agencies (Decision of 17 December 2025, GOOGLE DERECHOS CONEXOS, file S/0013/22).

The CNMC has closed by way of commitments (*terminación convencional*) its investigation into Google for alleged abuse of dominance in its dealings with Spanish press publishers and news agencies, after accepting as binding the commitments offered by Google under Article 52 of the LDC.

The investigation had its origins in a complaint filed in 2021 by CEDRO (the Spanish Reprographic Rights Centre), which alleged that Google was imposing unfair commercial conditions on publishers in connection with the licensing of their content for use across Google Search, Google News, Google Discover and Google News Showcase. The CNMC formally launched the investigation in March 2023, examining whether Google was exploiting the economic dependence of the media sector, given that its platform functions as an essential channel through which a very large proportion of Spanish readers access digital news, to extract conditions incompatible with competition law.

On 19 March 2025, Google presented commitments which the CNMC found adequate. The commitments, which now become binding, cover five main areas. First, Google must explain in detail the methodology and advertising revenue parameters it uses to calculate publisher remuneration. Second, licensing negotiations must follow a structured procedure with clear phases and deadlines, reducing uncertainty for publishers. Third, publishers will have access to dispute resolution mechanisms under Spanish law if no agreement is reached. Fourth, the retroactive nature of compensation is recognised: publishers may claim payments for content used

since Article 129 bis of the Copyright Act (TRLPI) entered into force on 4 November 2021. Fifth, Google has committed to refrain from any form of retaliation against publishers who choose to limit the use of their content or who simply fail to reach an agreement.

Additional safeguards include (i) an annual update to financial offers, with publishers retaining the option to maintain prior terms if more favourable, (ii) a strict limitation on licence scope to the services specifically agreed, preventing ambiguous extension to other Google products, (iii) a commitment not to enforce termination clauses in Google News Showcase agreements triggered by a publisher bringing legal proceedings, (iv) the separation of the Extended News Previews and Google News Showcase negotiations and remuneration from each other and from other Google products and services, and (v) submission of the agreements to Spanish law and to Spanish courts or arbitration, with the Spanish-language version prevailing.

The commitments apply for an initial period of five years, renewable for a further five, and bind Google in its dealings with all Spanish press publishers and news agencies, regardless of whether or not they had pre-existing arrangements with the company. The conduct complained of by CEDRO that was unrelated to this file has been transferred to a separate file (S/0009/25). The contrast with France is marked: the French Competition Authority fined Google EUR 500 million in 2021 and EUR 250 million in 2024 over its negotiations with press publishers on related rights, whereas the CNMC has opted for binding commitments with no infringement finding. The test will be whether the transparency and negotiation commitments translate into concluded remuneration agreements.

05 CNMC activity / Repsol. The CNMC fines several Repsol Group companies EUR 20.5 million and prohibits them from tendering for public contracts (Decision of 28 January 2026, *DISTRIBUCIÓN HIDROCARBUROS*, file S/0011/22).

The CNMC has fined Repsol Comercial de Productos Petrolíferos, S.A. (now Repsol Soluciones Energéticas, S.A.), Solred, S.A. and

Campsa Estaciones de Servicio, S.A. a total of EUR 20.5 million for abusive margin squeeze at the expense of independent service stations competing with Repsol's own network.

The conduct arose from Repsol's response to the loss of sales and market share it had been experiencing since 2019 in the face of competition from independent and low-cost operators. Holding a dominant position in the national wholesale market for road transport fuels supplied to service stations, Repsol implemented a two-pronged commercial strategy: it raised wholesale fuel prices to independent stations upstream, while simultaneously running a campaign of additional retail discounts at its own network stations for professional customers refuelling with class A automotive diesel (Gasóleo A), over and above the five-cent-per-litre discount the company was entitled to offer as an alternative to the government-mandated public financial contribution (*prestación patrimonial de carácter público*) under Royal Decree-Law 6/2022. The combined effect was a margin squeeze: independent stations found it increasingly difficult or impossible to compete at the retail level, and a number saw their professional diesel volumes drop sharply while Repsol's own sales and share recovered. The conduct took place between April and December 2022, during the period of elevated fuel prices that followed Russia's invasion of Ukraine.

In addition to the financial penalty, Repsol Soluciones Energéticas, Campsa and Solred are prohibited from tendering for public contracts for the supply of automotive fuels (Gasóleo A) for a period of six months. The parent companies, Repsol Customer Centric, S.L. and Repsol, S.A., are held jointly and severally liable for payment of the fine. Repsol has announced that it will appeal. Together with UFD, this is the second abuse of dominance decision in a matter of weeks in which the CNMC has imposed a public procurement ban under Article 71.1.b) LCSP, a sanction historically associated mainly with bid-rigging cartels.

06 CNMC activity / Self-testing kits. The CNMC challenges before the Supreme Court the restriction of sales of self-testing kits, such as pregnancy or COVID-19 tests, to pharmacies (Press release of 17 March 2026, file LA/04/2025).

The CNMC has brought an action (recurso contencioso-administrativo) before the Supreme Court (appeal No 51/2026), under Article 5.4 of Law 3/2013, which empowers the CNMC to challenge regulations that obstruct effective competition, against several provisions of Royal Decree 942/2025, of 21 October, regulating in vitro diagnostic medical devices (CNMC file LA/04/2025).

The CNMC had already flagged these restrictions in its June 2023 report on the draft Royal Decree (IPN/CNMC/009/23). It challenges two provisions:

- Article 19.7 only permits the sale of self-testing products in pharmacies, either in person or on their own websites, and not through digital platforms known as marketplaces.
- Article 19.8 prohibits the sale of these products through vending machines, even though the regulations do allow this channel for other non-prescription medical devices.

The CNMC considers that these measures unnecessarily reduce competition, may drive up prices, restrict access to these products, and limit distribution points, which can hinder the management of exceptional situations of high demand with a risk of shortages. The CNMC also notes that in other countries, self-testing kits are sold in supermarkets, parapharmacies, drugstores, or online platforms, and that this improves availability, increases competition, and lowers prices.

In the CNMC's view, the safety, storage, and traceability requirements for self-testing kits can be ensured in establishments that already comply with strict standards for selling their products (such as parapharmacies or drugstores).

07 CNMC activity / Madrid Bar Association. The CNMC accepts commitments from the Madrid Bar Association on its collective professional indemnity policy and its enrolment fee, closing the file with no infringement finding and no fine (Decision of 20 July 2026, *SEGUROS DE RESPONSABILIDAD CIVIL*, file SAMAD/01/25).

By decision of 20 July 2026 the CNMC approved the settlement by commitments, under Article 52 LDC and Article 39.5 of the Competition Regulation (Royal Decree 261/2008), of proceedings investigated by the Directorate General for Economy and Industry of the Madrid Region, which instructs competition cases in Madrid while the decision is adopted by the CNMC, against the Madrid Bar Association (ICAM), a public-law corporation with more than 75,000 members. The file originated from two complaints by individual members. The first, in August 2024, challenged the requirement that practising members take out the collective professional indemnity policy the ICAM had placed with the insurer CASER through the broker AON, with the premium embedded in the annual membership fee and no effective ability to opt out or contract elsewhere. The second, in February 2025, challenged the EUR 300 single enrolment and re-enrolment fee as excessive.

The market analysis is the interesting part of an otherwise procedural decision. The CNMC identified two markets: legal services supplied by members of the bar, and professional indemnity insurance for lawyers. In the second, members are the demand side and insurers and brokers compete to supply them. The CNMC accepts that a collective policy promoted by a professional body is a legitimate instrument for aggregating demand, provided its design respects transparency, voluntary adhesion and a real freedom to contract elsewhere. Embedding the premium in the membership fee and offering no clear opt-out failed that test, because it generated the appearance that adhesion was necessary and displaced the member's choice in the insurance market. On the enrolment fee, the reference point is Article 3.2 of the Professional Associations Act (Act 2/1974), under which the enrolment fee may not exceed the costs of processing the enrolment. The ICAM had not shown that EUR 300 corresponded to those costs.

The commitments, to be monitored for three years by the Madrid regional Directorate General for Economy and Industry, are that: (i) the membership fee and the insurance premium are billed separately, with separate accounting, in force since 1 January 2026, (ii) the voluntary character of adhesion is declared and published on the ICAM website, with an express opt-out in the enrolment forms and the ability to take out an alternative policy without penalty, (iii) future renewals of the collective policy follow a

transparent and competitive selection procedure with several insurers invited to bid and (iv) the enrolment fee is set at EUR 283.23 by reference to a costing study, with the cost categories published and an annual documented review. There is no infringement finding and no fine.

The reasoning of this decision applies to every professional body in Spain that places a collective policy for its members, and to every compulsory-membership body that charges an enrolment fee. Bodies in that position should unbundle the premium from the membership fee henceforward, document an express opt-out, run a competitive process before the next renewal of the policy, and hold a cost study capable of justifying the enrolment fee. Note also that the insurer and the broker were not parties to these proceedings: the commitments bind the ICAM alone.

Court activity.

08 Commercial Court / Meta. Meta is ordered to pay more than EUR 481 million (some EUR 542 million with interest) to Spanish digital publishers for unfair competition through breaches of the General Data Protection Regulation (Judgment No 98/2025 of Commercial Court No 15 of Madrid, 19 November 2025, proceedings number 109/2024).

El Comercio, S.A. and 86 other press publishers, news agencies and radio groups, all members of the Asociación de Medios de Información (AMI), sued Meta Platforms Ireland Limited (Meta), alleging that the platform obtained an unlawful competitive advantage in the online display advertising market. The plaintiffs argued that Meta used its users' personal data on a massive scale to offer personalised advertising without a valid legal basis under the General Data Protection Regulation (GDPR), which constitutes an act of unfair competition under Law 3/1991 of 10 January on Unfair Competition (LCD).

The Madrid Court partially upheld the claim on the basis of a violation of Article 15.1 LCD, which considers it unfair to exploit a competitive advantage acquired through the violation of laws. Specifically, the Court found that Meta had no valid legal basis for behavioural advertising between 25 May 2018 and 31 July 2023: its reliance on contractual

necessity (Article 6(1)(b) GDPR) was unlawful, as the Irish Data Protection Commission had previously found in its decisions of 31 December 2022.

The Court considers that Meta breached Article 5(1)(c) GDPR (data minimisation) by collecting data in a generalised and undifferentiated manner, including special categories of data without the explicit consent required by Article 9(2)(a) GDPR.

Damages were awarded under Article 32.1.5^a LCD. Meta did not produce its accounts for Spain, and the Court, applying the rules on the burden of proof, accepted that Meta earned more than EUR 5,281 million from online advertising in Spain during the infringement period. It allocated that revenue among competitors in the Spanish advertising market according to the digital press's market share, drawing on data and criteria from the CNMC's study on competition in online advertising, and held that the lost profits had been shown with "reasonable verisimilitude". It also found a direct causal link between Meta's non-compliance and the publishers' loss of display advertising revenue.

The compensation is divided into three blocks:

- i. Compensation to the AMI-member publishers: EUR 479,120,000.
- ii. Compensation to Europa Press: EUR 2,570,000.
- iii. Compensation to Radio Blanca: EUR 13,562.84.

Statutory interest runs from the date the claim was filed, adding a further EUR 60,137,629.85.

This ruling, not yet final, could set an important precedent in the Spanish advertising sector and could also have a significant cross-border impact, as Meta's Facebook and Instagram services are provided in the EU and are subject to the GDPR. A similar claim is pending against Meta in France.

09 Supreme Court / DHL. The Supreme Court upholds EUR 5 million fine against DHL: non-aggression pacts between competitors are not exempt vertical agreements (Judgment No 245/2026 of the Supreme Court of 3 March 2026, appeal number 1747/2023, ECLI:ES:TS:2026:1082).

The Supreme Court (Judgment No 245/2026) has dismissed the appeal brought by DHL Parcel Iberia, S.L.U. and DHL Parcel Madrid Spain, S.L.U. (**DHL**) and upheld the High Court judgment of 5 December 2022 confirming the CNMC decision of 8 March 2018 (file S/DC/0578/16, *MENSAJERÍA Y PAQUETERÍA EMPRESARIAL*), including a EUR 5,090,000 fine.

DHL and International Courier Solutions (**ICS**) had maintained a commercial relationship since 2011, formalised in 2015, in which DHL acted as a provider of domestic and international transport services for ICS (which operated only locally in Madrid).

However, the Court considers it proven through email correspondence that, in parallel with that vertical relationship, there existed a hidden non-aggression (customer-allocation) pact. This agreement implied that neither company would make commercial offers to the other's customers, affecting even customers outside the subcontracting relationship.

The central issue in the judgment is whether a reciprocal agreement to respect each other's customers between companies that have a vertical relationship (supplier-buyer) may be covered by the exemption under Commission Regulation (EU) No 330/2010 of 20 April 2010, on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (**Regulation 330/2010**), applicable *ratione temporis* and since replaced by Regulation (EU) 2022/720. Article 2(4) of Regulation 330/2010 provides that the block exemption does not apply to vertical agreements entered into between competing undertakings. By way of exception, under Article 2(4)(b), the exemption does apply when the agreement is not reciprocal and the following conditions are met:

- The supplier is a service provider operating at multiple levels of the supply chain (in the wording of Article 2(4)(b), it is a provider of services at several levels of trade).
- The buyer only provides services at the retail level and does not compete with the supplier at the level where it

purchases the services (the wholesale level or the national logistics network).

DHL argued that the agreement is vertical and non-reciprocal (only DHL provides the underlying service to ICS) and that its market shares are below 30%. Therefore, the customer allocation should be exempted or, at the very least, not classified as a cartel. On the other hand, the CNMC and the State Attorney consider that the non-aggression pact is a disguised horizontal restriction among competitors in the retail market, unrelated to and unnecessary for the performance of the transport contract.

The Supreme Court dismisses the appeal based on the following:

- Inapplicability of the vertical exemption. Article 2(4) of Regulation 330/2010 expressly excludes agreements between competing companies. Although there are exceptions for non-reciprocal agreements, here the non-aggression pact is considered bilateral and reciprocal (both parties commit to not poaching the other's customers).
- Autonomy of the unlawful conduct. The Court distinguishes between the "good faith" clauses necessary to protect the information of the subcontracted client and the general non-aggression pact that covers the entire clientele of both companies. The latter is unrelated to the economic logic of the initial commercial relationship.
- Classification as a cartel. As a secret agreement between competitors to divide up the market, this constitutes an infringement by object. No proof of actual effects is therefore required.

Reiterating its judgment No 580/2024 of 8 April 2024 (appeal 1981/2023, *ICS/Tourline*), the Court holds that Article 2(4) of Regulation 330/2010 (now Article 2(4) of Regulation (EU) 2022/720) does not cover reciprocal customer-allocation pacts between competitors that are unrelated to their vertical relationship; such pacts are horizontal market-sharing restrictions caught by Article 1 LDC and Article 101(1) TFEU. The Court applied the same doctrine a few weeks later in the same file, upholding the EUR 19.23 million fine imposed on UPS for its non-aggression pact

with MBE (Judgment No 648/2026 of the Supreme Court of 27 May 2026, appeal number 2930/2023).

10 Supreme Court case-law / Competition inspections. The Spanish Supreme Court admits for cassation the question of whether a Competition Authority inspection order must justify, individually, a direct connection between each inspected group company and the facts under investigation (Order of the Supreme Court of 28 May 2026, appeal number 1203/2026, Endesa).

The Admissions Section (Section One) of the Administrative Chamber of the Supreme Court (ECLI:ES:TS:2026:5127A) has admitted for cassation review an appeal brought by six entities of the Endesa group against the judicial authorisation of a CNMC dawn raid, identifying as a question of objective cassational interest whether, for the purposes of granting or refusing the judicial authorisation provided for in Article 40.8 of the LDC to enter the premises of several companies belonging to the same corporate group, the inspection order referred to in Article 40.2 LDC must justify, on an individualised basis, the existence of a direct connection between those companies and the facts under investigation. The provisions to be interpreted are Article 18.2 of the Spanish Constitution and Article 40 LDC, and the case has been remitted to the Third Section of the Chamber, which has jurisdiction in competition matters.

The case originates in an Inspection Order of 8 June 2023 issued by the CNMC's Director of Competition, on the basis of which the State Attorney applied, under Article 8.6 in fine of the Administrative Jurisdiction Act (LJCA) and Article 40.8 LDC, for authorisation to enter the premises of Endesa, S.A. and seven of its subsidiaries, in relation to possible infringements of Articles 2 and 3 LDC and Article 102 TFEU. As the group operates across several Spanish cities, simultaneous inspections were required and the entry authorisations had to be sought before a number of different administrative courts.

The outcome was not uniform. The Administrative Court No 5 of Zaragoza granted

the authorisation,¹ holding that the confidential and internal nature of the suspected practices justified inspecting the premises of the Endesa group companies in order to obtain evidence that the CNMC could hardly secure by other means; the Administrative Court No 10 of Madrid had granted it two days earlier, and its decision was upheld by the Superior Court of Justice of Madrid on 29 November 2024. By contrast, the Administrative Court No 11 of Seville refused the authorisation on 15 June 2023, citing the lack of sufficient information on the involvement of most of the subsidiaries and a breach of the proportionality principle, since no investigative activity had been carried out beyond the receipt of the complaints. That refusal was confirmed by the Superior Court of Justice of Andalucía (Judgment No 850/2024, 24 July 2024), whereas the Superior Court of Justice of Aragón dismissed the group's appeal against the Zaragoza authorisation,² expressly declining to follow the Seville decisions and finding the measure suitable, necessary and proportionate.

Before the Supreme Court, the appellants rely on Articles 18.2 of the Constitution and 40.7 LDC: the mere fact that a company belongs to the same group as the entity against which there is circumstantial evidence does not bring it within the scope of the inspection, as a direct connection with the facts under investigation is required and must be expressly and individually stated by the CNMC in the inspection order, so that it can be reviewed by the court called upon to authorise entry. In this case, the Inspection Order of 8 June 2023 focused the suspected infringements solely on Edistribución Redes Digitales, S.L.U., and referred to the remaining companies only to delimit the subjective scope of the inspection, without any explanation of how each of them was implicated. A second ground alleged that the reasoning on proportionality was generic and that the standard applied by the Second Section of the Chamber in tax matters differs from that applied by the Third Section in competition matters.

The Court admitted the appeal on the first issue only, treating the proportionality ground as covered by settled case-law. It recalled that it has consistently declined to admit appeals concerning entry authorisations under Article 40 LDC, most recently by its Order of 10 December 2025 (appeal No 6530/2025), on the ground that

¹ Order No 28/2023, 15 June 2023, proceedings No 158/2023

² Judgment No 402/2025, 9 December 2025, appeal No 387/2023

there is already sufficient case law on the degree of specificity required in applications for entry authorisation, on the scope and extent of judicial review, and on the reasoning of authorisation orders issued in the context of preliminary investigations under Article 49.2 LDC. That case law does not, however, resolve the interpretation of the “*direct connection*” requirement of Article 40.7 LDC in respect of group companies, for two reasons: first, there is prior contradictory case law; and, second, the earlier judgment STS No 1783/2017 of 22 November (appeal No 2121/2015, ECLI:ES:TS:2017:4194) concerned different and only partially coincident facts, so that a fresh pronouncement is warranted.

The forthcoming judgment will have structural implications for multi-site dawn raids on corporate groups. Until it is handed down, undertakings facing group-wide inspections should examine closely whether the inspection order addresses the alleged involvement of each entity individually, since identical inspection exercises have already produced diametrically opposed outcomes at appellate level. What is not expected to change is the proportionality standard itself, which the Supreme Court has confirmed to be settled.

11 Supreme Court case-law / Unfair competition. The Supreme Court clarifies which limitation regime governs civil damages claims based on acts of unfair competition that also affect the public interest (Judgment No 1189/2026 of the Supreme Court, Civil Chamber, of 17 July 2026, appeal number 5576/2022, *Fremap/Diconsal*).

Between 2002 and 2005, several workers’ compensation mutual insurers engaged in joint conduct that distorted competition in the market for occupational risk-prevention services, using resources of the Social Security system, privileged information and below-cost pricing. In a judgment of 4 March 2014, the Supreme Court’s Administrative Chamber held that this conduct infringed Article 7 of the former Competition Act of 1989 (Law 16/1989, LDC 1989), which allowed competition authorities to apply unfair competition law to company conduct that, by distorting free competition, affects the public interest.

On 29 February 2016, one of the affected companies, Diconsal, brought a civil action against Fremap claiming EUR 953,410.79 in damages arising from that infringement. The Commercial Court dismissed the claim as time-barred, applying the one-year/three-year limitation periods of the LCD. The Court of Appeal of Madrid overturned that ruling: in its view, the claim fell under Article 13 LDC 1989, which postponed the start of the limitation period until the infringement had been finally declared in administrative or judicial proceedings, *i.e.*, until the 2014 judgment, and upheld the claim in full.

On further appeal, the Supreme Court had to determine the legal nature of conduct caught by (former) Article 7 LDC 1989, now Article 3 LDC: whether it should be treated as an antitrust infringement subject to the administrative pre-condition of Article 13 LDC 1989, or as an act of unfair competition governed by the LCD’s own limitation regime.

The Supreme Court holds that these acts retain their nature as acts of unfair competition: the LDC merely extends the role of competition authorities to this type of conduct because of its impact in the market, without converting it into an antitrust infringement in the strict sense, unlike the collusive conduct and abuse of dominance addressed in Articles 1 and 2 LDC. Civil damages claims arising from such conduct are therefore governed by the LCD and not by the LDC’s specific regime.

Applying the LCD’s one-year/three-year limitation periods (Article 21 LCD, now Article 35 LCD) and taking 4 March 2014, at the latest, as the date on which Diconsal knew of the infringement and the infringer, the Supreme Court finds that the claim was already time-barred when filed on 29 February 2016, and that the three-year long-stop had in any event expired in 2008, the conduct having ended in 2005. It therefore upholds Fremap’s appeal, sets aside the Court of Appeal’s judgment and reinstates the dismissal of Diconsal’s claim (STS 1189/2026, ECLI:ES:TS:2026:3187). The judgment confirms that the administrative pre-condition of Article 13 LDC 1989, and the successor damages regime introduced by Royal Decree-Law 9/2017, are confined to collusive conduct and abuse of dominance, and do not extend the limitation period applicable to unfair-competition claims that merely have a public-interest dimension.

Claimants harmed by conduct caught by Article 3 LDC therefore cannot rely on the five-year limitation period of Article 74 LDC, nor wait for the infringement to be declared with final effect: the one-year period runs from the moment they know of the conduct and its author.

12 Supreme Court / *Top Cable v CNMC*. The Supreme Court holds that the “participation share in the conduct” used by the CNMC to individualise fines has no basis in Article 64 LDC and orders the recalculation of the cable cartel fines imposed on Top Cable (Judgment No 368/2026 of the Supreme Court of 24 March 2026, *TOP CABLE*, appeal number 5782/2023).

The case comes from the CNMC’s decision of 21 November 2017 (file S/DC/0562/15, *CABLES BT/MT*), which found several cartels in the market for low and medium voltage cables and fined Top Cable, S.A. (Top Cable) in four of them, including EUR 4,909,440 in the manufacturers’ cartel. The High Court partially upheld Top Cable’s appeal in May 2023: it found the overcharge parameter used to quantify the fine in the manufacturers’ cartel unproven, and it annulled the finding in the so-called “*PEISA* and manufacturers” cartel on the basis that three isolated episodes separated by long intervals could not constitute a single and continuous infringement. Both the CNMC and Top Cable appealed on a point of law, and the Supreme Court admitted two questions by order of 15 November 2023: whether gaps between proven episodes defeat the classification of the infringement as continuous where a common plan is established, and whether the “participation share in the conduct” falls within the criteria of Article 64 LDC.

On the first question the CNMC has prevailed. The LDC contains no definition of a continuous infringement, so the Court takes the definition in Article 29.6 of Act 40/2015 and identifies the decisive element as the single intent or preconceived plan. Where that plan is established it confers legal unity on all the episodes, however far apart, and time runs for limitation purposes from the end of the conduct as a whole (in this particular case December 2013) rather than from each episode. The Court adds two limits. A gap longer than the limitation period for the infringement taken individually (four years for very serious

infringements under Article 68.1 LDC) does time-bar the earlier episode; proof of a common plan does not revive an imputation that time has already extinguished. And, for sanctioning purposes, where the episodes are separated by significant intervals of inactivity the fine must be calculated by reference to the time of proven execution, excluding the periods in which no conduct attributable to the plan is established. On the facts, the gaps were three years and eight months and three years and four months, both under four years, so the High Court had been wrong to find the earliest conduct time-barred.

On the second question, which has the wider consequences, Top Cable wins. The “participation share in the conduct” is a parameter the CNMC already used in this 2017 decision and later formalised in its provisional indications of 10 October 2018 and has since applied in substantially all of its fining decisions. It measures each undertaking’s proportional weight in the combined turnover of the undertakings investigated, and it operates to increase the sanctioning rate. The Court holds that it has no basis in Article 64.1 LDC: it is not market share under paragraph (b), and it is not the size and characteristics of the affected market under paragraph (a), which looks to the objective properties of the market and not to the relative position of one infringer among the others. Critically, the Court refuses to read the words “among others” in Article 64.1 as a blank authorisation to add sanctioning criteria unrelated to those the legislature laid down, because that would breach the principle of legality in the exercise of the power to punish under Article 25.1 of the Spanish Constitution. The High Court’s judgment is set aside, Top Cable’s appeal is partly upheld (ECLI:ES:TS:2026:1875), and the decision is annulled solely as to the quantification of the fines, which the CNMC must now recalculate without taking into account the participation share and the periods of inactivity, and without the 10% overcharge the High Court had already found unproven. The infringement, its classification and the attribution of liability stand. The Court later applied the same doctrine to a co-defendant in the same file by judgment of 4 June 2026 (appeal number 5957/2023, *Productos Eléctricos Industriales*).

The comparison the judgment invites is with the Supreme Court’s judgment of 29 January 2015, which struck down the fining methodology then in force and triggered the recalculation of a long

tail of decisions. The exposure this time is of the same order. The participation share has been a standing feature of CNMC fining practice since 2018, it always pushes the rate upwards, and any decision still under appeal that used it is now vulnerable on quantification alone. The CNMC's new indications on the determination of fines of March 2026 do not solve the problem: they preserve the possibility of including other criteria reflecting undertakings' participation in the infringement in a different way, and the reasoning of this judgment is not confined to the participation share. On its reasoning, any quantification criterion that is not materially connected to those set out in Article 64.1 is exposed.

For companies with fines under appeal, the immediate step is to check whether the decision used the participation share, or any equivalent weighting of the undertaking's share of the sanctioned group's turnover, and to plead Article 25.1 of the Constitution rather than proportionality alone. The second step is less obvious and matters more: what follows a successful challenge is not a reduction ordered by the Court, but a recalculation performed by the CNMC. In that recalculation the CNMC cannot exceed the fine originally imposed (prohibition of *reformatio in peius*).

13 General Court / Booking Holdings v Commission. The General Court upholds the prohibition of Booking's acquisition of Etraveli and endorses the entrenchment of an existing dominant position as a theory of harm, notwithstanding errors in the Commission's quantitative assessment (Judgment of the General Court of 9 September 2026, Booking Holdings v Commission, case T-1139/23).

By decision of 25 September 2023 (case M.10615), the EC declared incompatible with the internal market the acquisition by Booking Holdings (Booking) of sole control of Etraveli Group (Etraveli). Booking is dominant in the EEA market for online travel agency services in the hotel sector. Etraveli is Europe's leading online flight booking operator, active through Gotogate and Mytrip, and had supplied flight search to Booking under a commercial agreement since 2019. The Commission's concern was neither the loss of head-to-head competition nor control of an input, but that flights are an important channel for acquiring

travel customers, and that acquiring Etraveli would let Booking grow its flight offering quickly and cross-sell hotel accommodation to those customers as part of its "Connected Trip" strategy; and that the resulting reinforcement of network effects and customer loyalty would raise barriers to entry and expansion and make an already weakly contested position in hotel online travel agency services less contestable still.

The General Court dismissed the action in its entirety. On the legal framework, it held that the 2008 Non-Horizontal Merger Guidelines do not confine the Commission to a closed list of theories of harm, particularly in digital markets that presented concerns not anticipated when the guidelines were adopted, and that leverage is a broad concept whose competitive effect may be the same irrespective of its direction. The Commission was therefore entitled to rely on a reverse leveraging theory: the use of a position in an adjacent market where the acquirer is not dominant to reinforce a dominant position in another market. The Court also rejected Booking's argument that offering customers a one-stop shop is competition on the merits, holding that in merger control the question is the effect of the transaction on the structure of competition.

What makes the judgment uncomfortable is that the Court accepted a good deal of Booking's criticism of the evidence and upheld the prohibition anyway. It found errors in the Commission's estimate of the market-share increment, which on its analysis could be limited to a few tenths of a percentage point. It found it not established that hotels would reallocate inventory to Booking, end relationships with rival agencies, or face higher commissions. It nonetheless held that a significant impediment to effective competition was made out, on two grounds: network effects such that even a modest increment reinforces a dominant position, and the creation of a travel ecosystem that rival agencies would struggle to replicate. Harm, on this reasoning, may consist in the consolidation and perpetuation of an already low level of competition, rather than in competition becoming worse. The Court was careful to say that strengthening a dominant position does not of itself establish a significant impediment, which the Commission must still prove; but the case shows how little quantitative support that proof now requires. The efficiency defence failed on the orthodox grounds: cost savings not shown to

be passed on, benefits to flight customers unable to offset harm to hotels and hotel customers given the limited overlap between the two groups of users, and arguments not properly raised in the administrative procedure held inadmissible.

Three consequences follow. First, the entrenchment theory that the EC's draft revised Merger Guidelines propose to codify as a standalone head of harm now has judicial backing before the text is final (the draft was published on 30 April 2026 and the public consultation closed on 26 June 2026). The argument that it exceeds the significant-impediment standard has been answered. The debate ahead of the adoption of the final text will be about limiting principles (whether strong network effects, a wide gap between the leader and its rivals, and scarcity of the acquired customer-acquisition channel are cumulative preconditions or merely illustrations). Second, a small market-share increment is no longer a safe harbour for an acquirer with a strong position, and the record that decides these cases is qualitative and is built during the administrative phase, not on appeal: Booking's inadmissible efficiency arguments are the cautionary detail. Third, and closest to home, the CNMC's decision in *ATRESMEDIA/CLEAR CHANNEL ESPAÑA* discussed in item 1 above rests on analogous reasoning (a complementary acquisition, no meaningful overlap, and a theory built on the assembly of a portfolio that rivals cannot match). The CNMC and the General Court reached the same analytical place within seven weeks of each other, the General Court by upholding a prohibition, the CNMC through eight years of separation commitments. Parties to complementary acquisitions in concentrated markets with strong network effects should bear both in mind.

Booking may appeal to the Court of Justice on points of law within two months and ten days of notification and has said it is considering doing so.

- 14 **Court of Justice / *Imagens Médicas Integradas*. The Court of Justice (Grand Chamber) rules that Articles 7 and 8 of the Charter of Fundamental Rights do not preclude a national competition authority from seizing professional emails exchanged between a company's employees and**

managers, without prior judicial authorisation, during an inspection into suspected antitrust infringements (Judgment of the Court of Justice of 16 July 2026, *Imagens Médicas Integradas and Others*, Joined Cases C-258/23 to C-260/23).

Sitting as a Grand Chamber, the Court of Justice has ruled on three references from the Portuguese Competition, Regulation and Supervision Court concerning the seizure of employees' business emails during dawn raids carried out by the Autoridade da Concorrência. The judgment delivers two findings: professional emails exchanged through a company's own mail system are "communications" protected by Article 7 of the Charter of Fundamental Rights, but Articles 7 and 8 of the Charter do not preclude their seizure without prior authorisation from a judge, provided that the authority's powers are subject to a strict legal framework and to adequate and sufficient safeguards against abuse and arbitrariness, such as effective ex post judicial review.

The references arose from investigations opened by the Portuguese authority into a suspected concerted practice raising the price of teleradiology services supplied to national health service hospitals (Case C-258/23), a suspected cartel on the prices of COVID-19 tests supplied to the public health authorities (Case C-259/23) and a suspected abuse of dominance in payment processing (Case C-260/23). The inspections, carried out between January 2021 and March 2022, had been authorised not by a judge but by the Portuguese Public Prosecutor, which qualifies as the competent judicial authority under Articles 18 to 21 of the Portuguese Competition Act; under that Act, prior authorisation by a judge is required only for inspections of private homes, banks, law firms and medical practices. The inspectors examined the corporate email accounts of the companies' employees and seized 1,405, 731 and 10,797 electronic files respectively.

On the first question, the Court holds that business emails fall within the notion of "communications" in Article 7 of the Charter. Drawing on the case-law of the European Court of Human Rights, it confirms that this classification does not depend on whether the messages have been read or deleted, whether they were sent from professional premises or equipment or through a corporate mail system, or whether their content is private. An internal rule

limiting the mail system to functional use and prohibiting personal use, the very argument relied on by the referring court, is irrelevant for these purposes. The protection extends to the personal data generated by the traffic of such emails, which are also covered by Article 8 of the Charter.

The Court reformulated the second and third questions to bring Article 8 of the Charter into the analysis. Seizures of emails carried out on business premises restrict the exercise of both rights, but those rights are not absolute and may be limited under Article 52(1) of the Charter. The legality requirement was satisfied, as the measures were based on Articles 18 to 21 of the Competition Act. The essential content of the rights was not impaired: the measures seek access only to email content related to the subject matter of the inspection as defined in the inspection decision, they concern professional accounts and, in principle, aspects of the employees' working lives, and they entail neither unlimited collection of personal data nor generalised access to it, provided that national law circumscribes the purposes of processing and lays down rules on retention and transfer consistent with the GDPR. Finally, ensuring undistorted competition in the internal market, Articles 101 and 102 TFEU being provisions of public policy, is an objective of general interest recognised by the Union.

On proportionality, the Court finds that email is one of the principal sources available to competition authorities for detecting anticompetitive conduct, that Article 32 of Directive 2019/1 admits electronic messages as evidence, and that no equally effective and less intrusive alternative exists, so that depriving authorities of that power as a matter of principle would undermine the effective enforcement of Articles 101 and 102 TFEU. The interference is also framed by procedural safeguards: the inspection must rest on a duly reasoned decision supported by reasonable suspicion of an infringement, and where forensic IT tools are used, indexing must be carried out by means of keywords defined by reference to the predetermined object of the investigation. Public authorities may, moreover, go further when interfering with professional or business premises than with private homes. Neither Article 20(6) and (7) of Regulation No 1/2003 nor Article 6(3) of Directive 2019/1 requires prior judicial authorisation for inspections of

business premises; the matter is left to national law. Where such authorisation is not granted by a judge, however, the absence of a warrant must be offset by a full ex post judicial review, effective in fact and in law, capable of affording appropriate redress and of assessing the admissibility of the evidence obtained, a requirement to which authorisation by a body such as the Public Prosecutor contributes but which it does not replace.

The judgment contains one significant reservation. Where, in the course of an inspection of business premises, investigators seize mobile telephones, computers or other IT media belonging not to the undertaking but to its directors or employees, access to the data they contain, if necessary after those devices have been sealed, must be subject to prior review by a court or an independent administrative body. Since such devices may be used for both private and professional purposes, access may allow very precise inferences to be drawn about the private life of the person concerned and may involve special categories of data under Article 9 of the GDPR, giving rise to a serious, or even particularly serious, interference. For competition authorities across the Union, including the CNMC, the judgment therefore confirms the legality of seizing corporate email during dawn raids without a judge's warrant, subject to effective ex post judicial review, while marking out personal devices as the boundary at which prior independent control becomes mandatory. In Spain, where the CNMC needs judicial authorisation to enter premises if the undertaking does not consent (Article 40 LDC; see item 10 above), the practical significance of the judgment lies mainly in that limit on access to devices used for both private and professional purposes.

- 15 Court of Justice / CD Tondela. The Court of Justice rules that no-poach agreements between professional football clubs are, in principle, by-object restrictions under Article 101 TFEU, but that an exceptional context and a pro-competitive aim may justify a different characterisation (Judgment of the Court of Justice of 30 April 2026, *CD Tondela and Others*, Case C-133/24).**

The reference, from the Portuguese Competition, Regulation and Supervision Court (Tribunal da Concorrência, Regulação e Supervisão) and decided by the Fifth Chamber

(ECLI:EU:C:2026:361), concerns a no-poach agreement concluded in the context of the COVID-19 pandemic. After the Portuguese Professional Football League (LPFP) suspended the 2019/2020 season in March 2020, the presidents of the First and Second Division clubs agreed, by videoconference on 7 and 8 April 2020 and in collaboration with the LPFP, that no club would sign a player who had unilaterally terminated his employment contract citing the pandemic or the resulting extension of the season. The Portuguese Competition Authority (Autoridade da Concorrência) found that the agreement had as its object the restriction of competition on the market for recruiting players, in breach of Article 101(1) TFEU, and the LPFP and the clubs appealed.

The referring court asked, in essence, (i) whether such an agreement must be categorised as a restriction of competition by object under Article 101(1) TFEU and (ii) whether, applying the case-law on ancillary restraints (*Wouters*, C-309/99; *Meca-Medina*, C-519/04 P) and Article 165 TFEU on sport, the prohibition in Article 101(1) TFEU may nonetheless not apply to it.

Addressing the first issue, the Court holds that a no-poach agreement of this kind must, in principle, be categorised as a by-object restriction. Such agreements are equivalent to the horizontal sharing of “sources of supply” within the meaning of Article 101(1)(c) TFEU: they partition among the participating clubs the “resource” constituted by the players, restrict a competitive parameter that is essential in high-level sport, the recruitment of players already employed, and curtail the players’ professional mobility and bargaining power. That categorisation is not automatic, however: it must be confirmed by a specific examination of the agreement’s content, its objective aims and the particular economic and legal context in which it was concluded.

In that connection, the Court underlines the ambivalent nature of the agreement. Alongside its anticompetitive aim of restricting recruitment competition, it also pursued an objectively pro-competitive aim—preserving the stability of the clubs’ player rosters and the integrity of the competitions during the indefinite, pandemic-driven suspension of the season. Unlike merely legitimate but

competition-neutral objectives, that circumstance may lead the referring court to conclude that the agreement is not sufficiently harmful to be treated as a by-object restriction. The mere occurrence of the pandemic, and Article 165 TFEU, do not in themselves exempt the conduct from Article 101(1) TFEU; the assessment remains for the national court, which must state the specific reasons for its conclusion.

As to the second issue, the Court confirms that the prohibition in Article 101(1) TFEU does not apply where, first, the agreement cannot be categorised as a by-object restriction and, second, it is justified by the pursuit of a legitimate public-interest objective (ensuring the regularity of competitions and a degree of stability in player rosters qualifies as such), in view of which it appears suitable, necessary and proportionate in the strict sense. That ancillary-restraints case-law applies to any coordination between an association and its member undertakings, whatever its form; where, however, the agreement does have an anticompetitive object, it can escape the prohibition only under the exemption in Article 101(3) TFEU. It falls to the referring court to examine the agreement’s suitability, necessity and proportionality.

The judgment extends the framework developed in *FIFA* (C-650/22) and *European Superleague* (C-333/21) to labour-market no-poach agreements in sport, treating them as presumptive by-object restrictions while acknowledging that an exceptional context and a genuine pro-competitive objective may justify a different characterisation, and confirming that the *Meca-Medina and Majcen v Commission* (C-519/04 P) route remains available only for agreements that are not restrictive by object.

Selected European Commission (EC) activity.

- 16 European Commission / DMA. The Commission fines Google EUR 890 million for self-preferencing its own services on Google Search and for anti-steering restrictions on Google Play, in breach of the Digital Markets Act (Press release of 23 July 2026).**

The European Commission has adopted two non-compliance decisions against Google, imposing fines totalling EUR 890 million (EUR 460 million for self-preferencing and EUR 430 million for anti-steering practices, in breach of Articles 6(5) and 5(4) of the Digital Markets Act

(Regulation (EU) 2022/1925, DMA) respectively).

The Commission had previously opened non-compliance investigations on 25 March 2024 and informed Google of its preliminary findings on 19 March 2025. Specifically, the Commission is sanctioning two types of conduct:

- Self-preferencing on Google Search: Google gives preferential treatment to its own services, including shopping, hotels, transport and sports results, displaying them more prominently in search results (e.g., at the top of the page or through enhanced visuals and filters), while similar third-party services do not receive the same prominence, in breach of the DMA's obligation to apply fair, transparent and non-discriminatory ranking conditions.
- Anti-steering on Google Play: Google prevents app developers from freely informing users of alternative, often cheaper, offers and from directing them to complete purchases outside Google Play, and the level and duration of the steering-related fees charged by Google exceed what is considered compliant with the DMA.

The Commission considers that these practices harm businesses offering similar services, deprive consumers of access to cheaper offers, and undermine the fairness, choice and innovation that the DMA is designed to protect. The Commission also notes that Google has proposed and started testing changes to how it presents its own services on Google Search and to its steering terms on Google Play, which constitute progress towards compliance and will continue to be assessed as part of the Commission's ongoing dialogue with Google, including with regard to AI Overviews and AI Mode.

Google is required to comply with the Commission's decisions within 60 days, failing which it risks periodic penalty payments of up to 5% of its average daily worldwide turnover (Article 31 DMA), and may appeal the decisions to the General Court.

17 European Commission / Port services. The Commission steps up infringement proceedings against Spain, France and Italy over national flag requirements for towage and mooring vessels (Letters of formal notice of 30 January 2026 and reasoned opinions of 1 October 2026).

In its infringement package of 30 January 2026, the European Commission sent letters of formal notice to Spain (INFR(2025)4021), France and Italy over national rules that, in its view, create disproportionate and discriminatory barriers in the markets for port towage and mooring services. The three Member States had two months to reply. In its October 2026 infringements package (1 October 2026) the Commission moved to the next stage and sent reasoned opinions to the three Member States (France INFR(2025)2180 and Italy INFR(2025)2181), now relying also on the freedom of establishment under Article 49 TFEU. They have two months to comply, failing which the Commission may refer the cases to the Court of Justice.

The case concerns the Port Services Regulation (Regulation (EU) 2017/352), which establishes a framework for the provision of port services and common rules on the financial transparency of ports.

Spain, France and Italy are alleged to have failed to fulfil their obligations under Article 4(3) and (4) of the Regulation by imposing a requirement for vessels used for towage and mooring in their respective ports to fly their respective national flags in order to ensure that national social laws are applied. While Article 4 allows Member States to set minimum requirements for port services, it strictly stipulates that such requirements must be transparent, objective, non-discriminatory, and proportionate. The Commission argues that a blanket national flag requirement introduces a disproportionate market barrier that is not necessary to ensure compliance with social or labour laws, as the Regulation (Article 4(2)(g)) already empowers the Member States to enforce such national social and labour laws regardless of the flag of the vessel subject to an inspection. It adds that, where a Member State does impose a flag requirement, it must be defined as the flag of any EU Member State, not the national flag of a specific Member State.

The focus of the Commission’s action against Spain centres on the national flag requirement established in the Consolidated Text of the State Ports and Merchant Navy Act (Royal Legislative Decree 2/2011, specifically Articles 8 and 256). Under current Spanish legislation, inland navigation for commercial purposes—which includes essential port services—is reserved for vessels flying the Spanish flag and registered in the Spanish Ordinary Register.

This requirement is further reinforced in the specific conditions governing many port service contracts, which mandate that all vessels used for operations must be registered domestically.

In the Commission’s assessment, which we share, the requirement in practice chills competition in tenders for towage and mooring services. By mandating a national flag, the current framework effectively protects incumbent providers and discourages new entrants from other EU Member States.

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