

Newsletter, 25 August 2025

EU Commission delivers food for thought for non-controlling minority shareholders

The EU Commission fined Delivery Hero and Glovo for agreeing on no-poach agreements, exchanging information and allocating markets. The cartel was facilitated through Delivery Hero's non-controlling minority shareholding in its competitor Glovo

In June 2025, the EU Commission ("Commission") issued fines against Delivery Hero (€ 223 million) and Glovo (€ 106 million) for participating in an online food delivery cartel.¹ The decision not only provides helpful insights on the Commission's assessment of no-poach agreements, a topic high on the authority's recent agenda. It also stresses the risks accompanied with non-controlling minority shareholdings in a competitor, in particular concerning the exchange of commercially sensitive information.

Factual background

In 2018, online food delivery service provider Delivery Hero acquired a non-controlling 15% minority shareholding in its competitor Glovo and progressively increased this stake through subsequent investments. In July 2022, Delivery Hero notified the acquisition of sole control over Glovo, *inter alia*, to the Commission.

The minority shareholding entailed formal shareholder agreements (SHAs) and granted Delivery Hero a position on Glovo's board of directors (BoD) along with certain rights to participate in Glovo's decision-making process.

The Commission found that Delivery Hero's minority shareholding in Glovo provided a "*forum [...] to coordinate their business behaviour*" which enabled a multi-layered anti-competitive coordination between the two competitors. In June 2025, following a settlement procedure, the Commission fined both companies for (i) agreeing not to poach each other's employees; (ii) exchanging commercially sensitive information; and (iii) allocating geographic markets.

No-poach agreements

The SHAs included reciprocal no-hire clauses prohibiting each company from (i) reaching out

to the other's key employees (as defined in the SHAs) and (ii) hiring such key employees even if they actively applied for an open position with the other party.

In addition, Delivery Hero and Glovo agreed on a general non-solicitation agreement to not actively poach each other's employees. According to the Commission, the parties' clear intention to distort competition for talent was shown by emails shared between top managers of the companies with suggestions such as "*let's not kill the relationship with poaching*".

The Commission found that both the no-hire clauses and the general non-solicitation agreement constituted restrictions of competition by object. Given the non-controlling nature of Delivery Hero's minority shareholding, the SHAs' no-hire clauses were not subject to the Commission notice on ancillary restraints applicable to concentrations.² Moreover, the no-hire obligations were neither necessary for nor proportionate to the SHAs and did not qualify as ancillary agreements as they were (i) unlimited in terms of duration and territory, (ii) reciprocal and (iii) did not equally apply to all investors.

Information exchange

According to the decision, the parties exchanged commercially sensitive information either via direct exchanges, through BoD documents (e.g., board presentations, meeting minutes) or through meetings/discussions between the parties' management that were reported about within the respective company. The information exchanged concerned key parameters of competition such as current pricing and future pricing intentions, current and future production capacities and commercial strategy, forecasts of future demand and/or sales, and cost structure/elements.

¹ Decision of 2 June 2025 – [AT.40795](#).

² [Commission Notice on restrictions directly related and necessary to concentrations \(2005/C 56/03\)](#).

The Commission considered the information exchange a **restriction of competition by object** that was **not justified by the need to protect Delivery Hero's investment** in Glovo. The investment could have been protected by Delivery Hero's representative(s) in Glovo's BoD without passing-on the commercially sensitive information within Delivery Hero's organization. In addition, the Commission found that **no appropriate antitrust safeguards** were put in place when acquiring control in 2022.

Market allocation

Delivery Hero **used its position as a minority shareholder to influence Glovo's geographical footprint** in the EEA. The two companies agreed to divide among themselves the national markets for online food delivery in the EEA by (i) removing all existing geographic overlaps between them, (ii) avoiding entry into their respective national markets, and (iii) coordinating which of them should enter in markets where neither was present yet.

Comment and key take-aways

It is the first time the Commission is sanctioning no-poach agreements. The Commission's legal assessment follows its Competition Policy Brief of May 2024.³ Parties that want to include no-poach agreements in transactional documents need to keep in mind that the no-poach clauses – as non-compete clauses – must be **limited in terms of duration, personal and geographical scope** and to what is **objectively necessary** for and **proportionate** to the transaction.

The decision contains several important take-aways for companies and M&A colleagues when structuring – and exercising – non-controlling minority investments in competitors:

- Ancillary agreements to the non-controlling investments (such as non-solicitation clauses) are **not subject to the Commission's notice on ancillary restraints**.
- Non-solicitation and non-compete clauses can (with very few exceptions) only be imposed on controlling shareholders.
- Participation in the BoD of the target and fiduciary duties to act in its interest do not alter the fact **that investor and target are two independent undertakings**.
- **Competition law applies** between the non-controlling minority shareholder and the target.
- Non-controlling investments can be protected through a representative in the

targets BoD but **internal firewalls** must guarantee that commercially sensitive information is not shared beyond that representative within his or her company.

- **Clean documentation** of the nature and exercise of the non-controlling interest is required – internal documents may need to be provided to competition authorities when increasing the shareholding to a controlling stake.

The Commission's decision provides a list of information that is considered commercially sensitive and must not be shared freely between a non-controlling investor and the target. The decision furthermore serves as a reminder that for competitor acquisitions **antitrust safeguards, i.e., clean teams**, are required before closing.

Minority shareholdings are on the Commission's radar: On 11 August 2025, the Commission conditionally approved the proposed acquisition of Just Eat Takeaway.com ("JET"), in Germany known as Lieferando, by Naspers through its subsidiary Prosus.⁴ Since Prosus holds a minority shareholding of 27.4% in JET's competitor Delivery Hero, the Commission had concerns that the proposed structural link between JET and Delivery Hero could have reduced incentives to compete and facilitated tacit coordination. The transaction was thus only cleared with Nasper's commitment to decrease its stake in Delivery Hero to a very low percentage without influence over nor material interest in Delivery Hero's commercial decisions or strategy.



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³ [Competition Policy Brief of May 2024 – Antitrust in Labour Markets](#).

⁴ [Press Release of 11 August 2025](#).