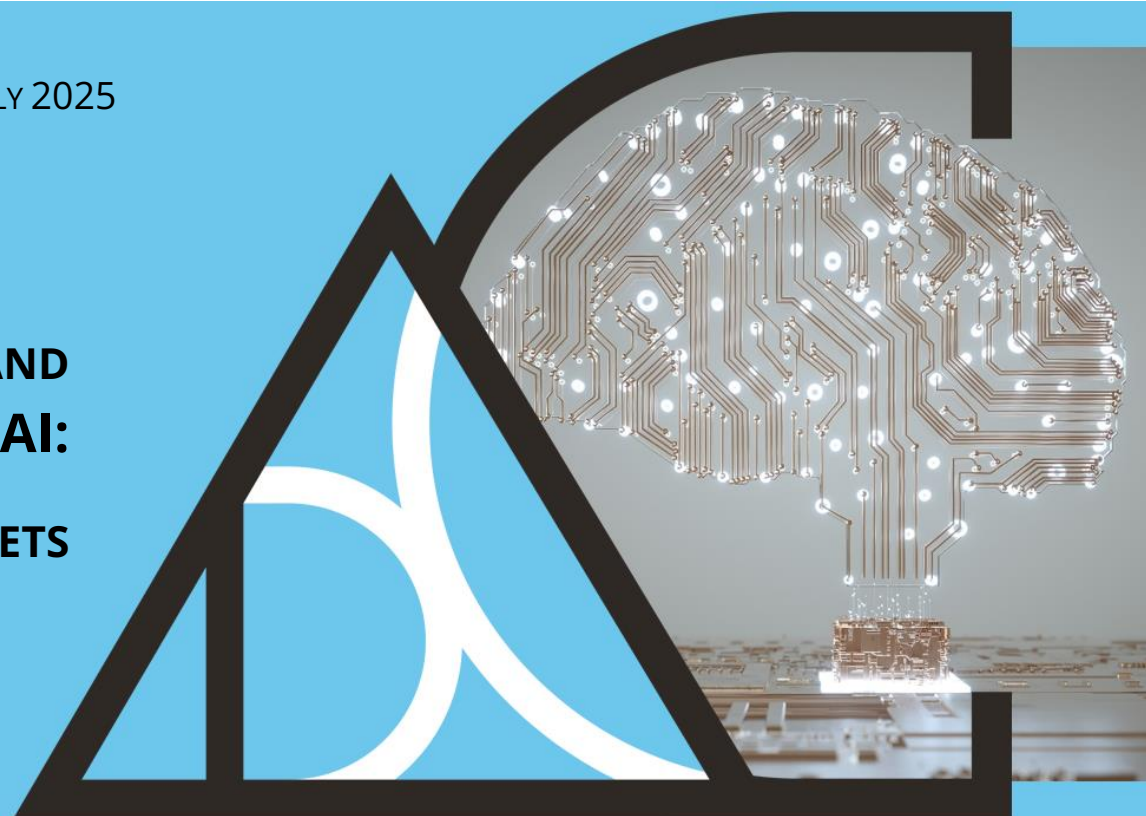


COMPETITION AND GENERATIVE AI: LABOUR MARKETS



The Portuguese Competition Authority (AdC) has been following the developments of the generative artificial intelligence (AI) sector since late-2022. The AdC has published an issues paper on AI in November 2023¹ and initiated a short paper series on AI in 2024. So far, two short papers have been published². The first short paper, from September 2024, focused on the access and use of data in generative AI and its implications for competition. The second paper, from December 2024, covered issues related to access to AI models by downstream third-party AI developers and the role of openness of AI models in promoting competition and innovation.

This is the third short paper of the series and focuses on competition issues related to access to talent³ in the generative AI sector.

I. Introduction

One of the key inputs in the development of generative AI is know-how. This includes the knowledge and skills that employees may have, and the tacit knowledge embedded in networks of individual developers, such as firms, research groups or open-source communities.

Achieving state-of-the-art performance and efficiency in AI systems requires access to specialised know-how. Having better access to know-how gives AI developers a competitive edge over rivals, allowing them to offer more performant and efficient AI systems. These systems are complex and composed of multiple parts. They result from many small decisions by the developers, which are guided by the know-how at their disposal⁴.

To access know-how, AI developers must hire and build teams of employees, do plenty of

¹ Available [here](#).

² The two short papers are available [here](#) and [here](#).

³ The issues raised in this short paper apply to employees (also addressed as workers) and to “false self-employed” workers, in line with European decisional practice and jurisprudence. See, e.g., the judgements of the CJEU, in [cases C-67/96 – Albany](#) from 1999, [C-309/99 – Wouters](#) from 2002, and [C-413/13 – Dutch Musicians](#) from 2014. “True self-employed” are treated as “undertakings” for Competition Law purposes.

⁴ See more in section III.3 of the Issues Paper on generative AI, available [here](#).

experimentation and learn from other developers.

Labour mobility is, therefore, key to promote innovation and the dissemination of knowledge in the sector (Box 1), in addition to ensuring that labour is efficiently allocated to where it is most productive.

Labour mobility promotes innovation

Labour mobility is key to promote innovation and to disseminate knowledge in the AI sector and in the digital sector more broadly. Many highly innovative and successful companies have been founded by former employees in these sectors.

Box 1 – The role of labour mobility in promoting innovation

Companies are learning environments for employees. They can acquire much tacit and granular knowledge on-the-job, such as technical and organization skills to develop products, as well as information on new markets, their potential and on innovation opportunities.

When leaving a company, employees bring this knowledge with them, which may be used to compete with or to complement the products and services of their previous employer, either in an existing company or in a new one founded by the worker. If a former employee founds a new company, there is a reasonably high probability that it will be innovative in some capacity. If so, labour mobility can intensify competition, namely by pursuing innovation paths not explored by the original company, introducing new products and services in the market or making some production processes more efficient.

Labour mobility is key in promoting innovation in the generative AI sector. For example, in 2017, Google published a paper on transformers, an AI technique at the cornerstone of current Large Language Models⁵. All the authors of this seminal paper left Google at some point. Many of them went to found companies in the sector, such as Adept AI, Essential AI, Character.ai, Inception, Sakana.ai, Cohere, OpenAI or Near. The workers at these firms, in turn, have founded their own innovative AI developers, such as the case of Anthropic founded by a group of former OpenAI employees.

This finding generalises to the tech sector more broadly⁶. For instance, the founder of Instagram was a former Google employee, the founder of TSMC worked previously at Texas Instruments, and the founder of Nvidia left Sun before founding his company.

Besides anecdotal evidence, a rich strand of economic literature finds that labour mobility is a key channel for knowledge spillovers throughout the economy, as former employees from highly productive and innovative firms boost the productivity and innovation output of the firms that hire them.⁷

⁵ See the original paper [here](#).

⁶ Indeed, the tech sector in California exhibits particularly high rates of labour mobility. This has been attributed to a mix of modular design of tech products and the unenforceability of non-compete agreements in California. See, e.g., Fallick, Fleischman & Rebitzer (2006).

⁷ See, for example, Saxenian (1994); Almeida & Kogut (1999); Rao & Drazin (2002); Moen (2005); Balsvik (2011); Castillo, Garone, Maffioli, Rojo & Stucchi (2019); or Braunerhjelm, Din & Thulin (2020). See also section 2.1.2.2. on the effects of no-poach agreements on innovation in the AdC's Issues Paper on labour market agreements, [here](#).

II. Talent shortage in the AI sector

There is currently a talent shortage in the AI sector, especially highly specialised talent able to make critical contributions in AI model development⁸. A mix of demand and supply factors likely explain this. There has been a surge in demand for AI expertise, driven by an industry-wide race to develop AI capabilities. In 2023 and 2024, AI job postings in the EU have more than doubled⁹, and they increased close to 80% in the US¹⁰. Tech incumbents have been making significant investments to hire and attract know-how, and AI positions have been commanding significantly higher compensation relative to other software engineers¹¹. In addition, the sector is relatively recent and rapidly growing. As such, there is a limited availability of specialised personnel with the necessary expertise, and existing skills may be quickly rendered obsolete.

Know-how in AI is concentrated within leading AI development teams¹². These AI developers often have the financial means to handle the talent shortage more easily, so they may be in a better position to hire more and the best talent¹³. On the other hand, academia or smaller developers may not have the means to hire or retain this talent.

Building know-how also relies on experimentation, which is expensive and subject to scale effects, furthering the

concentration of know-how. This is particularly the case in state-of-the-art foundation models, as AI developers are at the frontier of current knowledge on AI, trying to discover what is optimal in terms of performance and cost¹⁴. Much of the know-how is generated on-the-job as developers experiment and gain intuition over the many ways AI systems can be built. Experimentation is thus a form of R&D and may be expensive, in terms of compute and work hours. Given these costs, few AI developers can invest in experimentation to consistently remain at the technological frontier. In addition, there may be little incentive to share the knowledge learned via experimentation with other AI developers, even though there is a large ecosystem of open model developers.¹⁵

Faced with a shortage of talent specialised on AI, developers have resorted to several strategies to access talent.

The most straightforward way for an AI developer to acquire talent is to directly participate in the talent war, namely by poaching staff from competitors and other companies, or by hiring from academia. This is pro-competitive and expected of a well-functioning labour market. Apple, for instance, has hired a significant proportion of its AI talent from Google, Amazon, Microsoft, Netflix or Meta¹⁶. In addition, out of the 14 authors at Meta of the original Llama paper, published in 2023, 11 are at competitors (5 at Mistral¹⁷, 1 at Microsoft,

⁸ It has been reported that the number of individuals able to make these critical contributions ranges from a few dozen to a thousand. See, e.g., the following articles [from the Economist](#), [from Fortune](#) or [from Reuters](#).

⁹ See [the presentation by Lightcast](#) to the European Centre for the Development of Vocational Training (Cedefop) from December 2024.

¹⁰ See p. 11 of [the report by Lightcast](#), from January 2025.

¹¹ Forms of compensation include salaries, equity, signing bonuses or retention bonuses. It has been reported that the annual compensation of top talent may easily surpass a \$1 million. See more, e.g., [here](#), [here](#), [here](#) and [here](#).

¹² E.g., it has been reported that firms like Apple, Meta or Microsoft have recently hired more than 1000 employees for AI-related roles. See more [here](#) and [here](#).

¹³ E.g., Meta has been reportedly offering up to \$100 million packages to some people. See more [here](#).

¹⁴ See, e.g., the experiments described in the [paper presenting Llama 3](#).

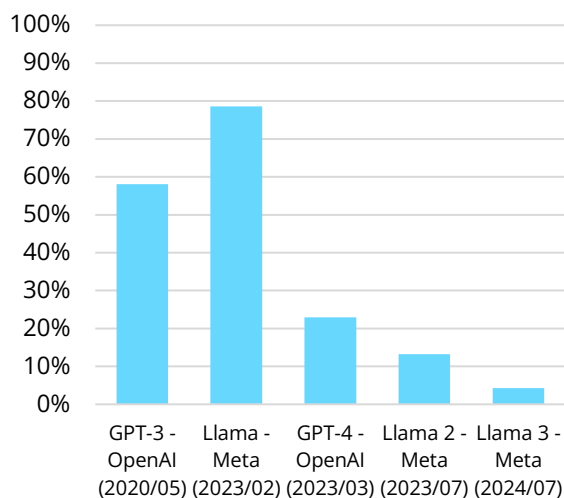
¹⁵ See more in the second Short Paper on generative AI by the AdC focusing on access to AI models, available [here](#).

¹⁶ In 2024, the Financial Times made an analysis of 310 Apple employees' LinkedIn profiles. Around 23% of these came from Google, Amazon, Microsoft, Netflix or Meta, the top 5 sources of AI talent for Apple. See more [here](#).

¹⁷ Florian Bressand, the Chief Business Officer of Mistral, also said in January 2024 that more than half of the team that developed LLaMa 1 are now at Mistral. See statement [here](#).

Google, Cohere and Anthropic each, and 2 in smaller developers) – see figure below.

Share of authors of some key AI models who have left to work for competitors



Source: Data collected by the AdC in April 2025 based on an automated analysis of LinkedIn profiles. The figures report the proportion of authors found to be employed at other AI companies. When the current place of work was not found, it was assumed employees stayed at the original company. The authors are from the following papers: [GPT-3](#), [Llama](#), [GPT-4](#), [Llama 2](#) and [Llama 3](#).

There are several strategies employed by AI developers regarding labour that may have relevant implications from a competition policy point of a view. These include acquihires, clauses in employment contracts that restrict labour mobility and inter-firm agreements. These are discussed in the following sections.

III. Acquihires in the AI sector

A strategy AI developers may adopt is to poach some or all employees from their competitors, via the so-called acquihires. This strategy has recently received attention as it blurs the distinction between traditional poaching and mergers. Acquihires are mergers aimed at hiring the key set of employees from the target company. Traditionally, in acquihires, one company bought another as a way of hiring its workers. More recently, instead companies have been hiring all (or almost all) employees and/or key staff from another business without directly buying the target firm. They may also license technologies and intellectual property from the target company, which may then change its line of business. For this reason, they have also been called “reverse acquihires”. Some have dubbed these deals “Nadella variation”, following Satya Nadella’s strategy, from Microsoft, to acquire Inflection this way.¹⁸

It has been reported that “reverse acquihires” are regarded in the sector as a way to evade merger control from competition authorities¹⁹.

The most notable example of a “reverse acquihire” has been the Microsoft/Inflection transaction, where Microsoft announced the hiring of the two co-founders of Inflection and almost all of Inflection’s employees, together with a non-exclusive intellectual property license and a waiver and release agreement regarding Inflection’s employees²⁰. Other examples that have been reported as possible acquihires include Amazon and Adept AI, Google and Character.ai, or Meta and Scale AI.²¹

Deals where key personnel are hired *en masse* from another company may amount to a

¹⁸ This strategy is described in more detail [here](#).

¹⁹ See, e.g., [here](#), [here](#) and [here](#).

²⁰ See more about the Microsoft/Inflection transaction, [from the European Commission](#), [from the CMA](#) and from the [German Competition Authority \(Bundeskartellamt\)](#).

²¹ Probes by competition authorities over these possible acquihires have been reported, for example, [here](#), [here](#) and [here](#).

concentration, under EU Merger Regulation (EUMR)^{22,23} and Portuguese Competition Act²⁴

(as well as under National Competition Laws at the Member State level), **as they may involve the transfer of control over critical assets** from the target company to the incumbent. Key personnel may be a critical part of the know-how accumulated in the target company, without which it may not be able to pursue the same line of business. This has been confirmed in the recent merger assessments by the European Commission²⁵, the CMA²⁶ and the Bundeskartellamt²⁷ in the Microsoft/Inflection transaction²⁸.

The broader challenge of below threshold mergers in the digital sector also extends to acquire transactions. In many cases, the target firms are small and have limited business turnover, such that traditional notification criteria may fail to capture mergers with significant competition implications.

To a certain extent, this gap may currently be addressed by alternative notification criteria,

including market share thresholds (e.g., Portugal and Spain), transaction value thresholds (e.g., Austria and Germany) and call-in powers that allow review for mergers below typical thresholds (e.g., Italy). Member States and the Commission also work closely to assess whether certain transactions will be able to be reviewed under national merger control regimes or referred to the Commission in line with the legal requirements for such referrals as clarified in the recent *Illumina/GRAIL* judgment of the Court of Justice²⁹. In this judgment, the Court of Justice concludes that the European Commission could not accept the referral of a concentration under Article 22 of the EUMR in a situation where the Member State requesting the referral is not competent, under its national merger control legislation, to review the concentration (e.g.

²² See Council Regulation (EC) No 139/2004 of 20.01.2004 on the control of concentrations between undertakings (the [EU Merger Regulation](#)). According to Article 3(1)(2) of the EUMR, the criteria to consider the existence of a concentration involves “a change of [direct or indirect] control on a lasting basis” of the “whole or parts of one or more other undertakings”, resulting the control over “rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, [that] confer the possibility of exercising decisive influence on an undertaking, in particular by: (a) ownership or the right to use all or part of the assets of an undertaking; (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.”

²³ See, also, para. 26 in [Commission Consolidated Jurisdictional Notice](#) of 16.04.2008, referring to the transfer of “assets and/or personnel” and it also mentions personnel as an example of assets: “(...) As regards the provision of services, the assets transferred should include the required know-how (e.g. the relevant personnel and intellectual property) (...)”.

²⁴ See Article 36 of the [Portuguese Competition Act](#) (in Portuguese) in line with Article 3 of the EUMR.

²⁵ The [European Commission](#) highlights, in its Press Release of 18.09.2024, that “(...) the transaction involves all assets necessary to transfer Inflection's position in the markets for generative AI foundation models and for AI chatbots to Microsoft. (...) the Commission regards the agreements entered into between Microsoft and Inflection as a structural change in the market that amounts to a concentration (...)”. The EU (Article 1 EUMR) and national thresholds were, however, not met.

²⁶ The [CMA](#) highlights, in its Decision, that “(...) Following the Transaction, the vast majority of this team was employed by Microsoft, and with them, Microsoft acquired the team's collective know-how of Inflection's activities pre-Transaction to support and grow Microsoft's AI activities (...)”, concluding then that “acquiring a team with relevant know-how – even without further assets – may fall within the CMA's merger control jurisdiction” (para. 12). The CMA also concluded that that the share of supply test was met.

²⁷ The [Bundeskartellamt](#) highlights, in its Press Release of 29.11.2024, that “the takeover of the workforce and the terms governing the use of Inflection's key intellectual property rights by Microsoft amounted to a de facto takeover of Inflection by Microsoft and as such they were subject to German merger control.”. The national thresholds were, however, not met.

²⁸ See reference 20. See also the Competition Policy Brief on Competition in Generative AI and Virtual Worlds by the European Commission, from September 2024, [here](#).

²⁹ See the judgement of the Court of Justice in joined cases C-611/22 P and C-625/22 P – *Illumina and Grail v. Commission*, from September 2024, [here](#).

meeting the notification thresholds)³⁰. This judgement led to the withdrawal of the seven referrals requests made to the European Commission regarding the Microsoft/Inflection transaction³¹.

Acquihires, as well as other partnerships between firms in the AI sector, may also be assessed under the residual role of Article 102 of the TFEU. As established in the recent *Towercast* judgement, a transaction amounting to a concentration of undertakings under Article 3 of the EUMR, but lacks EU dimension or does not meet the EU notification thresholds under Article 1 of the EUMR, and also falls below the national thresholds for mandatory ex-ante control, may still be subject to ex-post scrutiny. In such cases, and where the transaction has not been referred to the European Commission under Article 22 of the EUMR, national competition authorities remain empowered to assess whether the concentration is an abuse of dominance prohibited under Article 102 of the TFEU.³²

Acquihires may amount to a merger

Hiring employees from a competitor *en masse* may amount to a concentration, under competition law, as they may involve the transfer of control over assets. Acquihires are not an instrument to avoid scrutiny by competition authorities. Such strategies may be fined as part of a gun jumping strategy.

IV. Employment clauses that may restrict labour mobility

Faced with a talent shortage, AI developers may seek to restrict labour mobility, limiting how employees may leave the company to work for competitors or to start their own businesses. This may be done by adding clauses to employment contracts that limit what workers can do outside the company.

Non-compete clauses, for instance, may restrict labour mobility by preventing former employees, after termination, and for a period, from working for competitors or establishing competing businesses. Non-competes may also limit former employees from soliciting or accepting clients and business partners from the former employer.³³

Invention assignment, intellectual property and confidentiality clauses may also be critical in preventing former employees from developing similar services at competitors or in their own businesses. These agreements grant the employer ownership over the intellectual property, inventions and innovations by the employee during their employment. As such, much of the know-how accumulated by the employee may not be used elsewhere, which can limit opportunities outside the company, notwithstanding the potential impact of such clauses on incentives for investment.³⁴

Non-solicitation and non-recruitment agreements of colleagues limit former

³⁰ National competition authorities without a merger control regime may, nonetheless, use the referral mechanism. At the moment, this is only applicable to Luxembourg. See, e.g., the judgement of the Court of Justice in joined cases C-611/22 P and C-625/22 P – Illumina and Grail v. Commission (para 147, 164 and 199) and the judgement of the General Court T-289/24, Brasserie Nationale and Munhoven v. Commission, [here](#).

³¹ See the European Commission Press Release of 18.09.2024, [here](#). See also the Statement by Executive Vice-President Margrethe Vestager of 3.09.2024 ([here](#)).

³² See the judgement of the Court of Justice in case C-449/21 – Towercast, from March 2023, [here](#), §§ 41, 52.

³³ See, e.g., Marx, Strumsky & Fleming (2009) and Jeffers (2023), which find that the enforceability of non-compete agreements is related to lower labour mobility, namely in firm-specific skills, narrow technical domains and knowledge intensive occupations.

³⁴ See, e.g., Armstrong, Glaeser, Park & Timmermans (2024) which find that, following a court's decision in the US that shifted the assignment of intellectual property rights from inventors to their employers, the mobility of inventors decreased by 15% and they became more likely to move to noncorporate jobs.

employees from making spontaneous offers, hiring former colleagues or establishing a company with them, and may further decrease labour mobility.

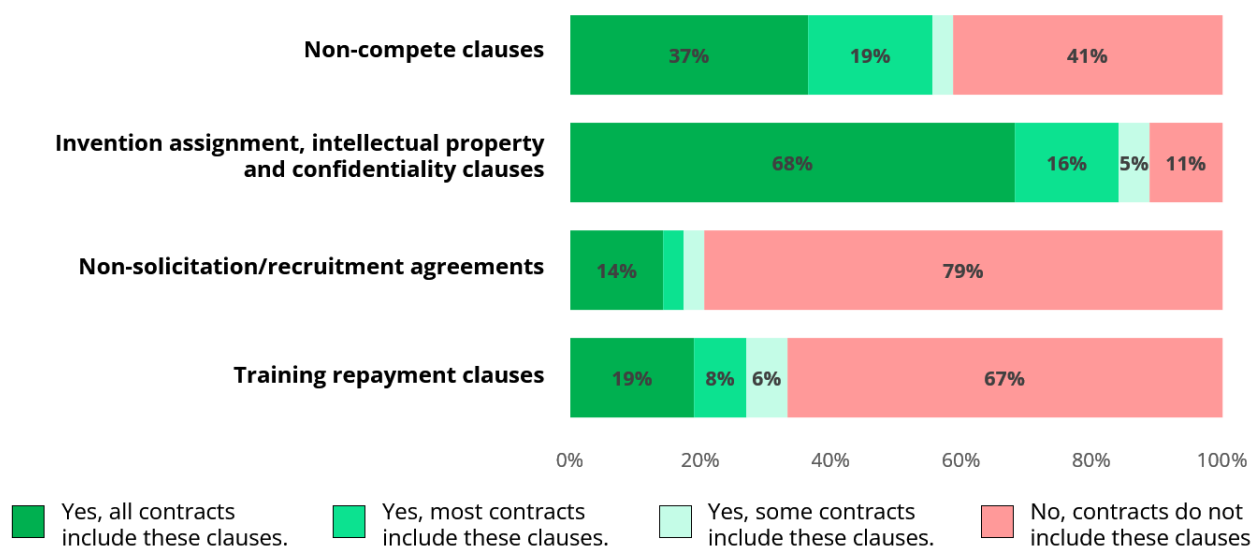
Finally, training repayment clauses require workers to repay the training paid by former employers if they leave earlier than agreed, thereby introducing a financial penalty to leaving.

Clauses relating to invention assignment, intellectual property, and confidentiality seem to be particularly prevalent in the employment contracts of AI developers. The AdC conducted a survey among a set of key AI developers, and the findings indicate that most employment contracts of AI developers include

such clauses. Non-compete clauses are also commonly included, whereas non-solicitation/recruitment clauses are less used.

These findings are also reflected in the digital sector more broadly³⁵ (see figure below). The AdC conducted a survey among 68 firms active in the digital sector in Portugal, which revealed that the majority include both non-compete and invention assignment, intellectual property and confidentiality clauses in their employment contracts. Indeed, a significant number reported having these clauses in most or all their employment contracts. Most of the surveyed firms do not include non-solicitation/recruitment and training repayment clauses in their contracts.

Prevalence of clauses in employment contracts that may limit labour mobility among firms active in the digital sector in Portugal, 2025



Source: Survey of 68 firms active in the digital sector in Portugal conducted by the AdC.

Clauses in employment contracts that restrict labour mobility are not inherently anticompetitive. Several jurisdictions govern these clauses in employment contracts using legal

frameworks such as labour, civil or commercial codes and national jurisprudence. These frameworks recognise and regulate such clauses by setting their scope and duration (see Box 2).

³⁵³⁵ With regards to the rest of the economy (and outside of Portugal), non-compete and related clauses are most prevalent in knowledge intensive industries, in firms where workers have access to trade secrets, receive more training, and have higher pay and education. However, non-compete and related clauses are also commonly found among workers with lower wages and where access to trade secrets is unlikely, such as entry-level workers at fast food restaurants, personal service workers, or clerical and administrative workers. For a comprehensive survey on the available evidence regarding the prevalence of non-compete and related clauses, see Andrews & Garner (2025). See also Starr, Prescott & Bishara (2021) for detailed evidence on the prevalence of non-competes in the US.

These clauses may be instrumental in creating incentives for employers to invest in training and upskilling their workforce, and to innovate³⁶. Still, the ultimate effects of such clauses are ambiguous. By restricting labour mobility, they may also reduce competition in labour markets, decrease wages, inhibit efficient matching in labour markets and stifle knowledge spillovers, which may have a negative impact on innovation.³⁷

From an antitrust perspective, at the EU level, these clauses in employment contracts fall outside the scope for potential anticompetitive agreements, under Article 101 of the TFEU (as they are not agreements between undertakings).³⁸

Employment clauses that restrict labour mobility may nonetheless raise competition concerns when instrumental in a strategy by a dominant firm to limit competitors from accessing workers. While these clauses may constitute a legal right, they may be part of a deliberate exclusionary strategy by a firm with dominant position in a relevant labour market. This may be the case, for example, where a

company employs most of a particular category of specialised worker that is hard to train. As such, and without prejudice of the possibility of objective justification or efficiency claims³⁹, when employment clauses without a legitimate business interest produce a likely negative effect in the relevant product market, via restricting access to key labour input and excluding existing or potential competitors, they may attract scrutiny from competition authorities.⁴⁰

Dominant firms have a special responsibility to ensure their conduct does not distort competition, as they may have an outsized negative influence in the relevant market where they are dominant, as well as in related markets.

National labour laws or other frameworks have a concurrent application with Competition Law, as is the case with geo-blocking regulation, sectoral regulations, intellectual property regulation or the Digital Markets Act. Compliance with concurrent legislation does not preclude competition authorities from examining the conduct under Competition Law.⁴¹

³⁶ Non-compete and related clauses are often identified as a possible solution to the hold-up problem, which arises when firms hesitate to invest in training or R&D because employees may leave before firms get a return on investment, taking skills, knowledge and trade secrets with them, often to competitors. See, e.g., Rubin & Shedd (1981); Acemoglu & Pischke (1999); Barron, Berger, & Black (1999); Posner, Triantis, & Triantis (2004); Meccheri (2009); or Garmaise (2011).

³⁷ Johnson, Lipsitz & Pei (2024) compare explicitly the opposite effects via which non-competes may increase or decrease innovation. They suggest that while firms may privately benefit from using non-compete clauses to protect their investments in knowledge and talent, their broader social impact may be negative because of negative externalities related to reduced job mobility, limited inventor interactions and slower knowledge diffusion.

³⁸ As addressed by the AdC in its 2021 [Issues Paper](#), and the by European Commission in its 2024 [Competition Policy Brief on Antitrust in Labour Markets](#).

³⁹ In line with the application of Article 102 of the TFEU. See the Draft Guidelines of the European Commission on exclusionary abuses of dominance [here](#).

⁴⁰ This principle may apply more generally to other conduct in labour markets regarding the employer-employee relationship. For example, Naidu, Posner & Weyl (2018) and Lianos, Countouris & De Stefano (2019) discuss the possibility of “predatory hiring” as a parallel of predatory pricing, where a dominant firm in a relevant labour market temporarily raises wages to prevent competitors from accessing this input and thereby exclude them from the market.

⁴¹ In particular, these abuse of dominance strategies may be a form of “abuse of rights”. For example, the European Commission fined AstraZeneca in 2005 for abusing its dominant position by withholding information and exploiting the patent system in several Member States to exclude competitors, a decision which was upheld by the General Court (see more [here](#) and [here](#)).

Box 2 – Legal frameworks governing employment clauses

Several jurisdictions govern clauses in employment contracts that may restrict labour mobility using legal frameworks such as labour, civil or commercial codes and national jurisprudence. These may set the scope of employees that may be covered by such clauses, define maximum periods or require due proportional compensation to covered employees.

The Portuguese Labour Code, for instance, governs non-compete clauses in Article 136. It establishes they are only valid if they are set out in writing, concern an activity likely to cause damage to the employer, do not exceed 2 or 3 years (depending on the type of worker or access to sensitive information) and award proportional compensation to employees (although with no clear criteria for assessing the compensation which may ultimately be set at a judicial level).

In addition, Article 137 of the Portuguese Labour Code regulates training repayment provisions and exit fees, according to which parties may agree that the employee shall not terminate the contract, for a maximum period of 3 years, if the employer incurred in significant expenses in professional training. The employee may release himself by paying the corresponding amount.⁴²

This type of regulations is also common in other EU jurisdictions but subject to country-specific variations in implementation. For instance, under the Spanish Labour Code, non-compete clauses may not exceed 2 years to specialised workers and 6 months for the remaining workers, and training repayment clauses may not exceed 2 years⁴³. Moreover, in Germany, non-compete clauses may not exceed 2 years for all workers, and training repayment clauses are regulated by general principles of law in the German Civil Code and case-law of the Germany Federal Labour Court, which, among other principles, establish a time limitation of 1 to 5 years depending on the training's cost and scope.⁴⁴

Competition authorities have recently begun publishing guidelines on strategies where employment clauses are instrumental in abuses of dominance. In its guidelines concerning business activities affecting workers from January 2025, the DOJ/FTC have considered non-compete provisions, non-disclosure agreements, training repayment provisions, non-solicitation agreement, exit fees and liquidated damages may be considered anticompetitive, depending on the facts and the circumstances, if they impede worker mobility or undermine competition under the Sherman Act.⁴⁵ In addition, the Polish Competition Authority has issued in September 2024 guidance on the use of non-competes by dominant firms, stating they

may attract scrutiny if used to pursue exclusionary strategies.⁴⁶

Non-compete and IP clauses in the AI sector

Employment contracts with non-compete, invention assignment, intellectual property and confidentiality clauses seem to be particularly prevalent in generative AI and in the digital sector more broadly. These clauses may reduce labour mobility.

⁴² See Articles 136 and 137 of the [Portuguese Labour Code](#).

⁴³ See Articles 21(2) and 21(4) of the [Spanish Labour Code](#).

⁴⁴ See § 74(a)(1) of the [German Commercial Code](#), the [German Civil Code](#) and the [German Federal Labour Court](#), namely the following rulings: [9 AZR 187/22](#); [9 AZR 144/21](#); [9 AZR 260/21](#); [3 AZR 791/09](#).

⁴⁵ See the DOJ/FTC's Antitrust Guidelines for Business Activities Affecting Workers from January 2025, [here](#). The 2025 DOJ/FTC Antitrust Guidelines replace the 2016 DOJ/FTC Antitrust Guidance for Human Resource Professionals, [here](#), going beyond the 2016 *Guidance*, by addressing new practices that may constitute antitrust violations.

⁴⁶ See the guidelines on collusion and abuses on the labour market by the Polish Competition Authority from 2024, [here](#).

Employment clauses may be instrumental in abuse of dominance strategies

Clauses in employment contracts should not be used with the intent of limiting access to key labour input and ultimately excluding existing or potential competitors in the market, with a likely negative effect in the relevant product market.

V. Agreements between firms that restrict labour mobility

Agreements between firms that restrict labour mobility, such as no-poach or wage-fixing agreements, are liable to violate Competition Law, under Article 9 of the Portuguese Competition Act⁴⁷ and, if applicable, Article 101 of the TFEU⁴⁸, aimed at traditional cartels.

In 2021, the AdC published an Issues Paper and guidelines on best practices regarding inter-firm anticompetitive agreements in labour markets. The AdC highlights the potential negative effects of these agreements on competition, workers and consumers. In particular, they distort the allocation of labour and may introduce inefficiencies in downstream markets by artificially limiting production and

reducing quality, variety and innovation. They may also dampen investment in human capital and be instrumental in other cartelization strategies, such as market sharing.⁴⁹

The European Commission has also qualified no-poach and wage fixing agreements as restrictions by object under Article 101(1) of the TFEU, as they are akin to a buyers' cartel (where labour is the input) and they are **unlikely to meet the requirements for an exemption under Article 101(3) TFEU**⁵⁰.

At the EU level, there have already been several decisions regarding anticompetitive agreements in labour markets. In 2022, the AdC adopted the first decision at the EU level fining a standalone no-poach agreement in the sports sector. The AdC also issued three settlement decisions regarding no-poach agreements in the IT sector, in 2023 and 2024.⁵¹ Other European competition authorities have also been pursuing such agreements, namely in Belgium, Spain, Lithuania, Poland, as well as the European Commission.⁵²

⁴⁷ See Article 9 of the [Portuguese Competition Act](#) (in Portuguese).

⁴⁸ See Article 101 of the [Treaty on the Function of the European Union](#).

⁴⁹ See the AdC's Issues Paper on Labour Market Agreements and Competition Policy, [here](#), and the guidelines on Best Practices, [here](#).

⁵⁰ The European Commission has taken a clear stance in its 2024 [Competition Policy Brief on Antitrust in Labour Markets](#), reaffirming the position in its 2023 revised [Horizontal Guidelines on the applicability of Article 101 TFEU](#) and its 2022 [Guidelines on the application of EU Competition Law to collective agreements regarding the working conditions of solo self-employed people](#).

⁵¹ See more about the no-poach decisions by the AdC [here](#) and [here](#).

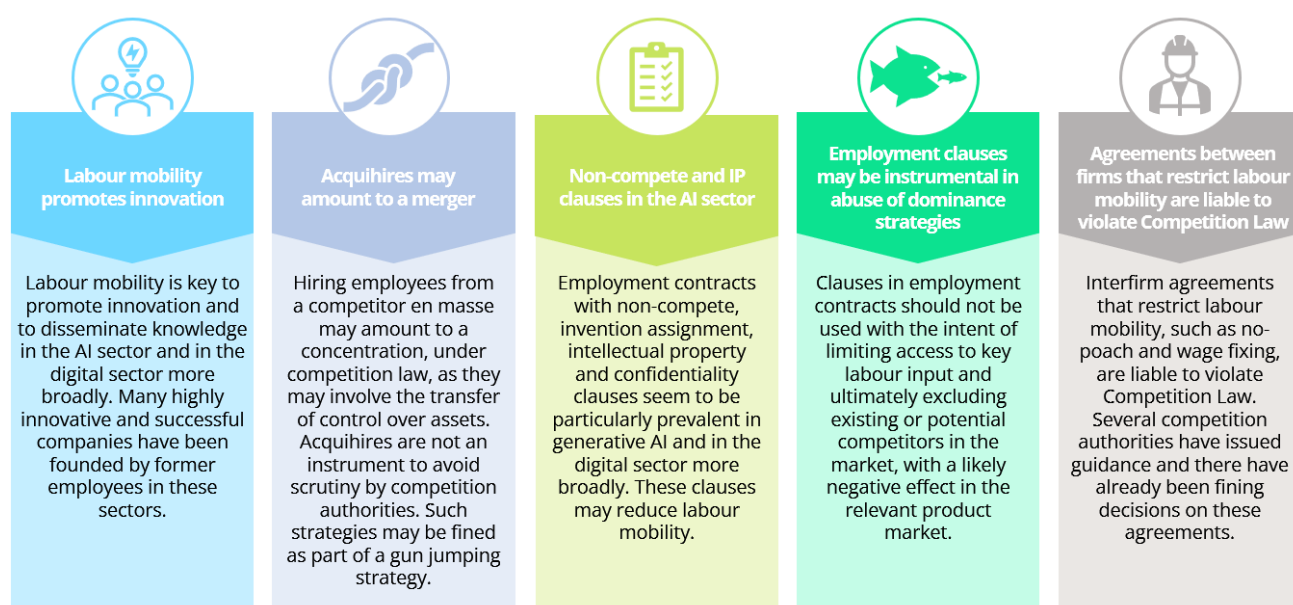
⁵² In Belgium, in July 2024, the [competition authority](#) sanctioned three security companies for price fixing, bid-rigging and no-poach agreements. In Spain, in 2023, the [Catalan competition authority](#) fined the Association of Independent Private Schools of Catalonia for a no-poach agreement regarding teaching staff. In 2022, the [Lithuanian competition authority](#) fined the Lithuanian Association of Real Estate Agencies and its 39 members who had agreed not to poach each other's employees. In 2022, the [Polish competition authority](#) imposed fines on 16 basketball clubs and the Polish Basketball League, for a wage-fixing agreement; later, in 2023, it also [fined](#) the Polish Speedway League, for wage-fixing agreements. In 2025, the European Commission has brought a cartel case including the fining for the first time of a no-poach agreement, in a [settlement decision against Delivery Hero and Glovo](#).

In the US, the DOJ/FTC consider no-poach and wage-fixing agreements as *per se* offences, according to their joint guidelines on labour markets from 2016, and later restated in the guidelines from 2025.⁵³

Agreements between firms that restrict labour mobility are liable to violate Competition Law

Interfirm agreements that restrict labour mobility, such as no-poach and wage fixing, are liable to violate Competition Law. Several competition authorities have issued guidance and there have already been fining decisions on these agreements.

COMPETITION AND GENERATIVE AI: LABOUR MARKETS – KEY HIGHLIGHTS



⁵³ See the DOJ/FTC's guidelines on labour markets from 2016 and from 2025, [here](#) and [here](#).