COMMISSION CARTEL DECISION DELIVERS IMPORTANT TAKEAWAY:

MINORITY SHAREHOLDINGS CAN TRIGGER SIGNIFICANT COMPETITION LAW RISKS

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Introduction

A decision of the European Commission ("**Commission**") published in July 2025 ("**Decision**") imposing a penalty of EUR 329m on online food delivery companies Delivery Hero and Glovo (the "**Parties**") has sent an important reminder to businesses who have minority shareholdings in competitors: the risk of falling foul of competition rules prohibiting restrictive behaviour is real and can result in significant fines.

To date, the Commission and national competition authorities ("**NCAs**") across Europe have faced difficulties when trying to characterise behaviour between a minority shareholder and the company in which it holds a stake as anticompetitive. In the context of a corporate transaction, acquiring a minority shareholding does not seem to fit neatly within the legal framework requiring an agreement or concerted practice having the object or effect of restricting competition.

Indeed the Commission has for many years recognised that the prohibition on anticompetitive agreements "may not be suitable to deal effectively with anti-competitive minority shareholdings" although it insists that this route is still possible, particularly when merger rules are difficult to apply.

For joint ventures ("JVs"), the Commission's Horizontal Guidelines note that "in general", it will not apply the prohibition on anticompetitive agreements / concerted practices between parent companies and their JV at least to some aspects of their relationships (para. 12).

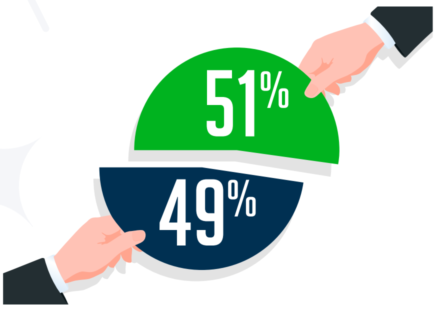
In terms of merger control, since the acquisition of a minority shareholding does not normally entail the acquisition of "control" or "decisive influence" (with the clue being in the name – minority and so no controlling rights), the Commission cannot normally investigate or intervene against it on the basis of the EU Merger Regulation which only applies to "concentrations": in a minority shareholding context, the two parties remain independent.

Minority shareholdings could therefore be seen as possibly falling through the crack of EU competition rules. The Decision makes clear that this is not the case, and there is no safe gap to take advantage of: if there is no acquisition of control for EU merger purposes, the risk of infringing competition behavioural rules remains. In fact, arguably the Decision makes this risk particularly high, given the possibilities under the relevant corporate laws to receive information from the target or even influence its business strategy through the relevant corporate bodies which might then infringe competition rules on information exchange. For businesses with minority stakes in competitors, appropriate safeguards must therefore be put in place.

The Decision is particularly tricky for minority shareholders to navigate as it makes the line between acceptable and restrictive behaviour in the decisions and discussions that take place on an everyday basis by shareholders unclear. A shareholder necessarily has an influence even in minority cases. Ordinarily it will intuitively avoid damaging its investment by for example poaching key personnel / competing aggressively with its investment etc. However, it may not always be obvious when shareholders go too far and venture into illegally restricting competition. For example, the Decision notes in para.22 that the minority stake

"notably gave Delivery Hero the right to participate in Glovo's shareholders' meetings and in Glovo's board"

– behaviour which is normally considered routine. Moreover, the Decision characterises the behaviour of the Parties not only as an infringement of competition rules, but as a serious one "by object" (para. 69). Businesses with minority shareholdings in competitors are therefore on notice of competition law risks, albeit with points of potential confusion outstanding over what is / is not allowed. The Commission has made clear that any shareholding below the level of control entails significant risks. For parties intending to coordinate closely, contrary to what might seem intuitive, a greater shareholding passing the threshold of control might, in some circumstances, be a more pragmatic route to achieving commercial objectives whilst reducing competition law risks than pursuing a minority shareholding.



Misuse of minority shareholding

Due to the settlement reached between the Parties and the Commission in this case, the level of details on the facts as well as on the rationale of the Commission are less than in a fully contested investigation. The Decision nevertheless emphasises that the infringement in this case did not arise from Delivery Hero's stake in Glovo per se, but the "misuse" of that stake to refrain from competing with each other. The Commission found and fined conduct which is clearly anticompetitive, and which could likely have been penalized without the shareholding, although much of the Commission's emphasis is on how in this case, the shareholding facilitated the wrongdoing.

Delivery Hero first purchased a 15% non-controlling stake in Glovo in July 2018. This progressively increased until it finally acquired sole control of Glovo in 2022, with a 94% shareholding making Glovo its subsidiary. The Commission's investigation centred on the period from July 2018 to July 2022 when Delivery Hero was increasing its shareholding in Glovo but according to para. 139 of the Commission's Decision

"Glovo was an independent undertaking during the whole infringement period".

The full acquisition did not trigger EU merger control rules, but the Spanish Competition Authority reviewed it in late 2021 under national merger rules, clearing the transaction in early 2022.

Subsequently, but still in 2022, in a separate cartel investigation which included two dawn raids as well as various requests for information, the Commission found that the initial minority shareholding had created structural conditions which allowed for illegal collusion. In the words of Commissioner Ribera:

"The relationship created by a minority stake provided the two companies with a channel to coordinate their operations and strategies".

In particular, Delivery Hero had the right to name one, and then two members of Glovo's board. The discussions and documents from board meetings were routinely passed on to Delivery Hero's management team, who thereby gained access to competitively sensitive information about Glovo, which the Commission found was used to reduce competition.

Whilst the Commission emphasised that owning a stake in a competitor is not in and of itself illegal, in this case, Delivery Hero's minority stake facilitated anticompetitive practices:

- **No-Poach Agreement:** at the outset, the parties only agreed limited reciprocal no-hire clauses which might well have been unproblematic and indeed quite routine for this type of transaction. However, these evolved over time to include wider non-solicitation of each other's employees and "this happened in a legal and economic context in which Delivery Hero and Glovo competed to attract talent which Glovo saw as scarce and in high demand" (para. 33).
- **Exchange of Commercially Sensitive Information:** the minority shareholding gave Delivery Hero a member on Glovo's board, which, according to the Commission, provided access to sensitive information and ultimately allowed the two players to align their respective business strategies and "remain in their comfort zones with no incentives to improve the quality or prices of their services".
- **Geographic Market Allocation:** using the powers which came from its minority stake, the Commission found that Delivery Hero convinced Glovo to share markets in the EEA and divide national markets for online food delivery, removing overlaps and coordinating market entry across the EEA.

The Commission considered that these practices were individual standalone infringements, but "interlinked" and therefore treated them as all part of an agreement / concerted practice between the Parties, facilitated by the minority shareholding. In this sense it is notable that the information exchange and the no poach agreements worked in both directions between the Parties including not only the top management, but also other employees via different channels, with the board documents being only one of several routes employed.

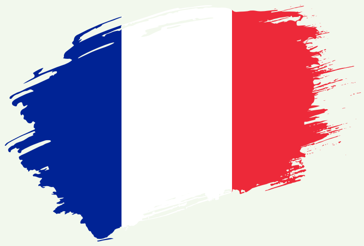
Furthermore, the Commission characterised these behaviours as by object infringements, removing the need to look at their impact on competition as this was for the Commission, obvious from the conduct in question. This was taken into account in setting the fine as

"the proportion of the value of sales taken into account for such infringements is set at the higher end of the scale".

(para.127). Whilst the Commission's case law on information exchange and market allocation is well established, this was the first time that the Commission analysed labour market restrictions in the context of competition law. In line with its policy brief in this area, the object characterisation is not surprising, and indicates future enforcement in this area is likely to be hard hitting.

Wider context – Commission takes a stand

The Decision stands out as an unusual example of a competition authority finding cartel-like behaviour in a minority shareholding context. Even though the Commission's Horizontal Merger Guidelines flag the risk of minority shareholdings causing competition concerns, in practice in Europe, this kind of theory of harm is rarely evoked especially in the context of behavioural investigations:



- In France, in a recent case in the meat cutting sector, the French Competition Authority ("**FCA**") was clear that the prohibition on anticompetitive agreements (Article 101 of the Treaty on the Functioning of the European Union) can be applied to transactions between competitors which were not subject to review under merger rules and have the object of sharing the market between competitors. There are however not many precedents and to the contrary, earlier decisions have shown the difficulties finding an infringement in a JV context. In 2007, the FCA had fined a full-function JV and one of its controlling parents for anticompetitive behaviour, arguing that the JV was autonomous vis à vis its parents companies and cartel rules therefore applied. The Paris Court of Appeal however overturned the FCA decision holding that on the facts, the JV was not sufficiently autonomous enough to enter into cartel like arrangements with its one of its parent shareholders. Whilst this French example concerned a full-function JV, this is different from the Commission's Decision, but serves as a useful illustration of the difficulties of applying behavioural rules to these kinds of corporate structures, and how enforcement has been very limited;

- In the UK, the Competition and Markets Authority ("**CMA**") can look at acquisitions of minority shareholdings on the basis of merger rules when considered to confer material influence, a less demanding standard than control. This is typically in cases where the shareholding is in the 15 – 25% bracket, with the lowest shareholding to date which has been found to confer material influence being 16%. Indeed, the CMA's guidance states that acquisitions of less than 15% might be assessed but only when other factors indicate the ability to exercise material influence. So far, minority shareholdings have not triggered cartel investigations even though in principle, the CMA could legally do this. Arguably, the closest it has got to this kind of intervention was eight years ago when it fined two JV parents for breaking competition law by agreeing not to compete for territories and customers;

- In Germany, competition law provides for a possibility to intervene earlier on the basis of merger rules compared to other regimes and in particular irrespective of whether control is acquired. A recent case of June 2025 is a good example for this when the German Federal Cartel Office ("**FCO**") concluded merger control proceedings concerning the acquisition of a non-controlling 10% shareholding by Lufthansa of airBaltic. This minority acquisition was notifiable in Germany as an acquisition of "significant competitive influence" (which is less than the acquisition of sole or joint control). The FCO emphasized that, though it cleared the concentration and also assessed market share increments, the two airlines remain separate legal entities and warned that they may not coordinate prices or conclude other direct anticompetitive agreements which may otherwise be investigated by the FCO as cartel agreements. This shows that the FCO is currently focusing on the risk of coordination associated with minority acquisitions, even if it has conducted a merger control review. Moreover, the fact that the FCO emphasizes in its press release that the clearance does not change the fact that they parties are competitors, and that behavioural competition rules remain fully applicable in the future is especially striking - the FCO has not included such "warnings" in press releases concerning minority shareholdings prior to the Decision and may indeed have been motivated by the Commission's approach in this regard; and

- The 2023 U.S. Department of Justice (“**DOJ**”) and Federal Trade Commission (“**FTC**”) Merger Guidelines contemplate these very same risks connected with minority stakes with a notable emphasis on information exchange in such a context: “a partial acquisition can lessen competition by giving the acquiring firm access to non- public, competitively sensitive information from the target firm. Even absent any ability to influence the conduct of the target firm, access to competitively sensitive information can substantially lessen competition through other mechanism”. Furthermore, the US position outside of the merger review context suggests that the behavior of parties in minority investment scenarios is subject to antitrust scrutiny. For example, as recently as 1 August 2025 a U.S. federal court refused to dismiss Clayton Act Section 7 claims against a consortium minority private equity investors, concluding that the Plaintiffs, a coalition of U.S. States through their Attorneys General, had plausibly alleged that these previously passive investors had later used their minority stock holdings to collude to restrict the coal output of horizontal competitors they held overlapping ownership interests in. Of note, the U.S. DOJ and FTC had previously filed a Statement of Interest in the case, largely supporting the Plaintiffs’ legal position.

Against this backdrop, the Decision comes as a rare but clear reminder of the antitrust risks associated with minority shareholdings in competitors. Minority shareholdings which bring in board representation may require particular consideration, as they can often lead to increased information exchange risks given the topics typically discussed in a board level context.

Key takeaways – don’t let minority shareholdings become sources of anticompetitive behaviour

The Commission referred to the need for “appropriate antitrust safeguards” (para. 79) to be in place when a business has a minority shareholding in a competitor. Steps to consider include:

- Before acquiring a shareholding, however small in a competitor or potential competitor (including for workers), it is imperative to consider all relevant competition law risks and incorporate appropriate safeguards. **Right from the start, the rationale for the investment should be clearly stated and proper guidelines set to assist with day-to-day compliance.**
- **Careful assessment should be given to the level of shareholding and resulting risk profile: larger shareholdings do not necessarily result in greater risk.** Whilst the Decision makes clear that the Parties’ agreements and co-ordinated behaviour increased over time, with the increase of Delivery Hero’s stake, even with a small shareholding, if parties “substitute practical cooperation between them for the risks of competition” (para. 57), they risk breaching competition law. In so doing, the Commission has made clear that any shareholding below the level of control entails significant risks. If the parties intend to coordinate closely, a greater shareholding which passes the threshold of control might bring greater legal certainty.
- Particular care should be given to board representation. Minority shareholders must limit obtaining and using information about investments to what is required for monitoring its financial investment. **Discussions about pricing intentions and future commercial strategies should be avoided.** If such discussions must take place on a board level, the representative of the competitor holding the minority must leave the room for that topic and other safeguards should be put in place to prevent anticompetitive information exchange. Director and fiduciary duties cannot be used to cover up or excuse illegal information sharing between two independent undertakings. Guidelines and trainings are also very relevant in this respect, extending to all staff (e.g. HR, legal, finance etc.) who might be involved in discussions with or about the integration of the minority investment.
- Whilst some cooperation might be allowed between a minority shareholder and the target business, **the two entities must remain separate and make their own decisions.** The Decision refers to “ties between staff at different levels and across functions of the two undertakings that went beyond what was required in view of the (then) existing financial investment” (para. 23). Layers of integration like this should normally be avoided.

The Decision focuses on the practical effects of a minority shareholding on the behaviour of competitors. In the light of this there is a risk that going forward, proper and appropriate probing by investors is closed down too quickly on the basis of competition law. A delicate balance needs to be found: whilst on the one hand, investors must be accurately informed about the companies in which they hold even minority stakes, on the other hand, they need to be mindful of the entailing risks and plan accordingly.