Competition law and labour markets – looking beyond no-poach and wage-fixing agreements

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In recent years, competition authorities worldwide have turned their attention to labour markets. They now treat agreements between employers not to hire each other's staff (no-poach), or not to pay workers with particular qualifications and experience above a set level (wage-fixing) as cartels. Some authorities have also examined labour-market effects during merger control proceedings (for example the US Department of Justice's (DOJ) challenge to Kroger's acquisition of Albertsons). Most recently, authorities have classified certain 'acqui-hire' deals – buying a company mainly to secure its employees, along with related finance or intellectual property agreements – as concentrations (see the UK Competition and Markets Authority (CMA) and German *Bundeskartellamt* in Microsoft/Inflection AI).

The focus on labour markets coincides with labour shortages in many Western economies, and the rising importance of skilled labour in innovative sectors. The 2021 Nobel Memorial Prize in Economic Sciences, awarded to David Card for his work on labour economics, further raised the subject's profile. Although still new, this field already shows a considerable number of investigations across jurisdictions (see our previous blog posts (here and here), briefing and podcast for an overview). Report by the OECD in 2020, the US Department of the Treasury in 2022 and the CMA in 2024 reach a similar conclusion: market power over workers amounts to 'monopsony power' (purchasing power), and competition law should address it.

This briefing paper first surveys patterns that emerge from existing investigations. It then outlines issues companies must consider to stay compliant in labour markets beyond the current focus on no-poach and wage-fixing. These include (i) collective bargaining, including with self-employed workers; (ii) non-solicitation clauses in M&A, confidentiality, R&D or distribution agreements; and (iii) the implications for M&A more broadly.

Patterns

Recent investigations reveal four recurring themes that any compliance review should address in full.

1. **Transparent labour markets**: Most investigations across jurisdictions focus on no-poach or wage-fixing agreements, while 'mere' information exchange has rarely been investigated in isolation. Labour markets are transparent: job adverts in many jurisdictions must state at least a minimum salary, minimum-wage statutes exist in many countries and numerous sectors and people often discuss pay openly. Because so much data is already public, authorities see less scope for anti-competitive information exchange – yet any sharing of granular, forward-looking remuneration data, especially within trade bodies, still poses serious risks, and should be considered in any screening.
2. **Investigations across diverse sectors**: Enforcement is not confined to technology giants. Cases span sport (Portugal, Poland and Lithuania), healthcare (US), food delivery platforms and security services (EU) and media (UK). The breadth underscores that any company – regardless of its product market – may find itself under scrutiny.
3. **Cross-sector rivalry for talent**: Employers often overlook that a company in a different industry can still be a 'competitor' for talent. Several concluded investigations involved companies operating in different sectors competing for workers with the same skills. Compliance training should highlight this point so managers do not dismiss antitrust limits when dealing with ostensibly unrelated businesses.
4. **Employees with different functions and roles**: Authorities have pursued conduct affecting highly skilled software engineers, healthcare workers (US) and self-employed athletes (Portugal), as well as cameramen (UK) and blue-collar staff such as delivery drivers

(EU). Antitrust limitations apply equally to all employees, making it essential for policies to cover the whole workforce, not just senior or 'highly skilled' roles.

The global surge in enforcement – cutting across sectors, geographies and job categories – shows that labour market compliance is no longer optional. HR, legal and business teams must treat hiring, pay setting and staff-mobility clauses with the same antitrust care traditionally reserved for product pricing and customer allocation.

Competition risks in collective bargaining?

The legal framework differs by country, so firms must review local rules carefully to ensure competition law compliance.

- **Collective bargaining by business associations with workers' representatives**: In Germany and Austria, worker representatives or unions negotiate binding wage deals with business associations, not with individual firms. When companies are not at the table, they cannot be exposed to direct competition law risks, though business associations remain subject to antitrust rules and should ensure they are compliant.
- **Collective bargaining between companies and workers representatives**: In the UK and Poland, worker representatives negotiate directly with one or more employers. Agreeing a minimum wage through such talks is not normally viewed as 'wage fixing'. The European Court of Justice (ECJ) concluded in its Albany judgment (C-67/96) that collective bargaining agreements aimed at improving working conditions, including pay, fall outside article 101 of the Treaty on the Functioning of the European Union. Similarly, in the UK, Sarah Cardell, Chief Executive of the CMA, in a speech at the launch of the report on 'Competition and market power in UK labour markets' noted that collective bargaining is 'outside the scope of competition law enforced by the CMA.' In the US, certain labour activities relating to organising and collective bargaining are explicitly exempted from the antitrust laws.

However, this does not give companies carte blanche when engaging in collective bargaining with workers' representatives. When participating in multi-employer collective bargaining agreements with employee representatives, companies should be aware of general antitrust limitations.

- **Discussions beyond minimum wages**: pledging not to exceed a wage ceiling or to fix benefits would lead to significant competition law risks.
- **Information exchange before talks**: Companies should share only what is essential to form a common negotiating position. Any further exchange of sensitive information, for example on a company's specific remuneration strategy, with another company would give rise to significant competition law risks.

What about minimum wages for self-employed workers?

A similar question has arisen as to whether agreements that set a minimum wage for self-employed workers could constitute a 'cartel agreement'.

The ECJ ruled (C-413/13) that collective agreements concluded by self-employed workers, who are in a situation comparable to that of employees, do not fall within the scope of the ban on cartels. The European Commission's subsequent guidelines say it will not intervene where such workers lack bargaining power. Similarly, Sarah Cardell noted that the 'CMA will not prioritise cases where self-employed workers and companies using their services reach a genuine collective bargain.'

In the US, days before the transition to the Trump administration in January 2025, the Federal Trade Commission (FTC) issued a policy statement clarifying that independent contractors, including gig workers, are not automatically outside the labour exemption to the antitrust laws simply because of their status as independent contractors. It has yet to be seen whether the Trump administration's FTC will maintain this position.

Is a stricter assessment of non-solicitation clauses on the horizon?

Non-solicitation clauses bar one party from recruiting another's staff. They appear in many contracts, so firms should review them carefully for antitrust compliance.

In the context of **non-solicitation clauses in M&A agreements**, in the EU, guidelines by the European Commission generally allow restricting the seller from hiring employees of the divested business for up to three years, under certain conditions. In the US, such a clause is permissible only if it is sufficiently narrow in scope to accomplish the purpose of the provision – typically limited to specific roles and lasting just long enough to serve is purpose, with scope set case by case.

Some regulators are tougher. The Competition and Consumer Commission of Singapore and the Turkish Competition Authority now query broad bans that cover 'all staff' or lack clear justification; they say the clause should reach only employees essential to

the target's value, integration or post-closing operation. Other competition authorities (e.g. the German Bundeskartellamt) argue that non-solicitation clauses should include exemptions for cases where employees proactively apply for jobs, or respond to general job advertisements of the seller. Given the different competition law standards applied by competition authorities to non-solicitation clauses, careful consideration should be given to their drafting where different jurisdictions are involved.

Non-solicitation provisions also turn up in confidentiality accords (for due diligence), R&D alliances and distribution contracts. Their aim is to stop a counterparty using privileged access to poach key staff—an objective the European Commission endorsed in its 2024 policy brief: 'parties may argue that they would only assign key personnel to the [R&D] joint venture if they were sure that the other party would not poach the best employees.'

Companies can generally include such non-solicitation clauses in contracts in compliance with EU competition law, if (i) there is a main, non-restrictive transaction (i.e. the M&A, R&D or distribution agreement); (ii) the non-solicitation clause is directly related to this transaction; (iii) it is objectively necessary for the main transaction's implementation; and (iv) it is proportionate to the main transaction. However, the case law in various jurisdictions, notably Germany, has applied stricter criteria, so thoroughly analysing such non-solicitation clauses from a competition law perspective is advisable.

What about M&A?

Labour-market issues now belong on every due-diligence checklist. Even companies that do not compete in product markets may compete for talent, so pay data should be shared only through clean teams or in sufficiently aggregated form. Acquiring 'key employees' – often alongside agreements on intellectual property or financing – may constitute as an 'acqui-hire' that triggers merger-control filings. Authorities have begun to analyse labour effects, as in the DOJ's Kroger/Albertsons challenge focused on unionised grocery workers.

What's next?

The European Commission's forthcoming decisions, including Delivery Hero, will demonstrate how it intends to develop policy in this area. The new Competition Commissioner, Teresa Ribera, is expected to pursue investigations with the same vigour as her predecessor. In the UK, the CMA recently issued its first-ever labour market infringement decision, fining sport broadcasters for colluding on freelancer pay. Likewise, national competition authorities in the EU are likely to continue enforcing in this area.

In the US, the Trump administration has made labour a continued policy priority for antitrust enforcement (see our recent blogpost). In February, the FTC announced the creation of a labour task force, which will require coordinated efforts by the agency's competition, consumer protection, and policy bureaus to investigate corporate labour practices that affect consumers. Although there have been suggestions that the antitrust agencies will take a different approach to antitrust enforcement than under the Biden administration, they have nonetheless made clear that they will continue to aggressively enforce the antitrust laws and that labour will be a priority.