

Kluwer Competition Law Blog

Cartels in Labour Markets on the Radar in 2022: Recent Investigations in Europe and Practical Tips for Businesses

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A new era of cartel enforcement

Competition authorities worldwide have historically focused on investigating classic cartel practices, such as price fixing, market sharing, and exchanging commercially sensitive information. These practices are primarily investigated in traditional markets, such as pharmaceuticals, technology, and retail. However, in recent years, an increasing number of antitrust agencies have been focusing closely on the labour market and scrutinizing the so-called wage-fixing and no-poaching agreements.

What are wage-fixing and no-poaching agreements? According to antitrust enforcement worldwide, a wage-fixing agreement occurs when employers collude to fix, decrease, or cap salaries, wages, and/or other forms of compensation. In a no-poaching agreement, employers agree not to solicit or hire one another's employees.

Labour market cartels on the agenda worldwide

The enforcement of labour market cartels is gaining attention from competition authorities all around the globe. The US antitrust agencies – the Antitrust Division of the Department of Justice (**DoJ**) and the Federal Trade Commission (**FTC**) – are widely recognized as pioneers in this field. It was the DOJ that first investigated a wage-fixing agreement back in 2007, making it the first antitrust regulator in the world to do so. In 2016, both the DoJ and the FTC issued the first-ever guidance on the application of antitrust laws to wage-fixing and no-poaching agreements.

Several countries, including Brazil, Colombia, Mexico, Peru, Turkey, and the UK, have since followed the example set by the US and investigated labour market cartels. Some countries have even amended their competition acts to specifically ban such cartels. For instance, in 2022, Canada's Competition Act was amended to criminally prohibit "naked" wage-fixing and no-poaching agreements, only six years after a similar amendment was made to the US Sherman Antitrust Act.

European Commission to probe labour market cartels?

In 2021, the European Commission (**Commission**) Executive Vice-President and Commissioner for Competition Margarethe Vestager delivered a speech on “A New Era of Cartel Enforcement”. Ms Vestager sent a strong signal that the Commission intends to focus on competition matters in labour markets, including no-poaching agreements, which, according to the Commissioner, “*keep wages down, restricting talent from moving where it serves the economy best.*”

Later, in 2022, at one of the International Bar Association’s conferences, the Commission’s Directorate-General for Competition Olivier Guersent pointed out that antitrust enforcement in labour markets is “*something we should think about.*” While the Commission has not yet investigated or fined labour market cartels, it is expected to probe them in the near future. Meanwhile, competition authorities in various European countries have already investigated and some even punished such cartels.

Is the market for labour relevant under competition law?

Under both competition law and economics, one can conclude that the labour market is like any other product market with buyers and sellers. *Buyers* are employers operating in the labour market and buying services (professional knowledge, experience, skills, etc.) from specific types of employees. *Sellers*, in turn, are employees who enter the labour market, offering their services to employers.

In perfect market conditions, employers compete with each other for labour force by offering different incentives such as higher salaries and bonuses, better work environments, and social packages. Healthy competition between employers means that they make independent decisions about employment payment and recruitment.

However, if employers engage in a wage-fixing agreement, employees will undoubtedly suffer from wage stagnation or unfavourable labour conditions. Jumping into a no-poaching agreement can limit employee mobility and career growth. Apart from the negative effects on employees, these violations may restrict competition in labour markets, adversely affect consumers, and even hinder innovations.

Labour market cartels are prohibited under EU law

Article 101(1) of the Treaty on the Functioning of the European Union prohibits agreements and concerted practices between two or more undertakings (or associations of undertakings) which may affect trade between the EU Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market (i.e., cartel agreements).

All EU Member States transposed the equivalent ban on cartels into their domestic competition acts. Although EU law does not explicitly address cartels in the labour market, as the American and Canadian competition acts do, wage-fixing and no-poaching agreements (as well as other anticompetitive agreements between employers) still fall under the general ban and are therefore prohibited.

Recent investigations in Europe

Wage-fixing and no-poaching agreements have been investigated (either as part of broader cartel investigations or on a stand-alone basis) in various European countries, including Croatia, Finland, France, Germany, Greece, Hungary, Lithuania, the Netherlands, Poland, Portugal, and Spain. Below, we will focus on cartel investigations completed/opened by the European competition authorities in 2022 and early 2023.

Completed investigations

Lithuania

In December 2022, the Lithuanian competition authority [imposed fines](#) of EUR 969,060 on the Lithuanian Association of Real Estate Agencies and 39 of its members for various violations. In particular, the authority revealed that the association's ethical code penalized the solicitation of real estate brokers from other real estate agencies. The authority considered this to be a no-poaching agreement.

This is not the first case Lithuania's competition authority investigated. In 2021, the authority [imposed a fine](#) of EUR 40,080 on the Lithuanian Basketball League and its ten members for entering into a wage-fixing agreement. According to the authority, the league and the basketball clubs decided not to pay basketball players for the rest of the season after the termination of the basketball championship season 2019-2020 because of the COVID-19 pandemic.

Portugal

In December 2022, Portugal's competition authority [accused](#) the Portuguese National Association of Clinical Laboratories and seven major private laboratory groups of agreeing not to bind/hire workers from competing laboratory groups, among other things. This collusion took place for at least six years.

Later, in April 2022, the authority [fined](#) the Portuguese Football League and 31 football clubs a total of EUR 11.3 million for making a no-poaching agreement. According to the authority, the sports clubs agreed not to hire one another's football players who had terminated their employment contracts because of the pandemic.

Poland

In October 2022, Poland's competition authority [imposed fines](#) totalling about EUR 200,000 on the Polish Basketball League and 16 of its basketball clubs for engaging in a no-poaching agreement. The authority uncovered that at the onset of the pandemic, the clubs decided not to pay basketball players all the salaries due for the season.

Greece

In March 2022, the Greek competition authority [imposed behavioural remedies](#) on the Association of Elevator Installers and Maintenance Professionals of Northern Greece for setting minimum-wage mechanisms for elevator installers and maintenance personnel. The violation is said to have occurred over 14 years.

Ongoing investigations

Switzerland

In December 2022, Switzerland's authority [opened a preliminary investigation](#) against 34 banks, alleging they might have regularly exchanged information about the salaries paid to each other's employees. Besides, the authority explicitly [stated](#) that, if necessary, the procedure can be extended to other geographical regions and companies.

Poland

In May 2022, the Polish competition authority [commenced an investigation](#) against the Polish Automobile and Motorcycle Federation, speedway competition organizers, as well as speedway clubs. The authority alleged that they set maximum rates of remuneration that sports clubs taking part in speedway league competitions may pay to competitors.

Romania

In January 2022, Romania's competition authority [began investigating](#) an alleged cartel involving seven automotive engineering and technology providers in the skilled/specialized labour force market for motor vehicle production and related activities. The authority suspects that the companies imposed a minimum level of wage rights on each other's employees.

Spain

In February 2022, the Catalan competition authority [began an investigation](#) against the Association of Independent Private Schools of Catalonia for allegedly engaging in no-poaching agreements, which limited the reciprocal hiring of professionals among its members.

Advocacy measures

Competition regulators worldwide are increasingly promoting competition in labour markets by publishing guidelines on how to prevent anticompetitive behaviour in the employment sphere. These guidelines have already been published in Canada ([in draft form](#)), Japan, Hong Kong, the

Netherlands, Portugal, and the US. They serve as a tool for companies, HR professionals, and others involved in the recruitment process to ensure that they are operating in a manner that does not violate competition law.

Conclusions and Practical Tips

Cartels in labour markets are currently receiving increased attention from competition regulators all around the globe. This topic, therefore, must not be ignored by businesses. To recall, engaging in a labour market cartel may lead to severe monetary sanctions and, in some jurisdictions, criminal prosecutions, claims for damages, or class actions.

To avoid violating competition law and to mitigate potential legal and financial risks, businesses should consider the following **practical tips**:

- Do not agree with another company to fix, decrease, or cap salaries, wages, and/or other forms of compensation of each other's employees.
- Do not agree with another company to refrain from hiring and/or soliciting one another's employees.
- Do not exchange sensitive employment information regarding wages, salaries, and/or forms of compensation with other companies operating in the same industry.
- Review your hiring policies and antitrust compliance programs to ensure they comply with competition law in light of this increasing area of scrutiny.
- Regularly train and update your HR and other employees involved in employment matters. Make sure they understand what wage-fixing and no-poaching agreements are and how to report suspected competition law violations.
- When attending meetings of professional associations, and trade organizations, be careful about what you discuss, decide, and vote on.

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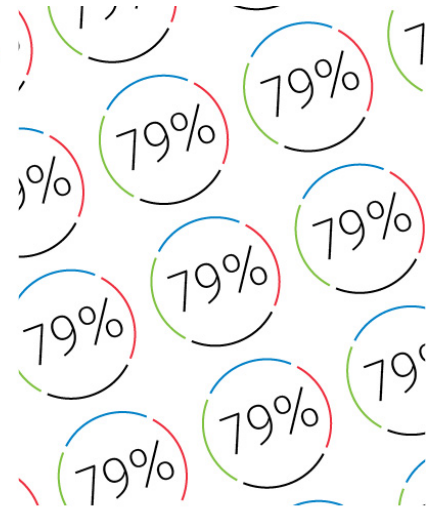
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This entry was posted on Saturday, March 4th, 2023 at 9:00 am and is filed under [Source: OECD](#)“>[Cartels](#), [Labour market](#), [No-poach-agreement](#), [Wage fixing](#)
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