

Boundaries of Competition in Labor Markets: An Analysis in Terms of No-Poaching Agreements and Ancillary Restraints Defense

The consecutive investigations initiated by the Competition Board ("Board") due to competition violations in labor markets, with the first one in 2021, have stirred significant attention. Following the investigations concerning 32 undertakings, primarily consisting of innovation-based technology companies, which resulted in substantial administrative fines imposed on some of the undertakings within the scope of the investigation, the investigations initiated against 19 undertakings operating mainly in the pharmaceutical sector and the recently concluded investigation targeting enterprises operating in the information technology sector indicate that the Board will continue to maintain the hot topic of competition issues in labor markets and support the anticipation that numerous inspections will be conducted to ensure competition in labor markets by scrutinizing different sectors.

What are No-Poaching Agreements?

No-poaching agreements are agreements, either directly or indirectly established, where an undertaking refrains from offering jobs to, or hiring, the employees of another undertaking. These agreements are commonly made between employers, although they can also occur between employers and labor providers. Such agreements, where businesses mutually refrain from competing for limited labor resources, can be deemed as a violation of competition law since they have the potential to restrict competition in the labor market.

These types of agreements can take different forms between employers or between employers and labor providers. Among two or more employers, an agreement can be reached regarding not poaching or hiring certain employees, or employers can reach an agreement with labor providers (such as recruitment firms) not to hire or poach specific employees. It is possible to say that such agreements can be strictly enforced or implemented in a more flexible manner with mutual consent. For example, the agreement may include provisions for the parties not to poach each other's employees and not to make any exceptions to this rule. In another scenario, undertakings can limit employee transfers flexibly based on a mutual approval mechanism. In this case, the parties do not completely prohibit employee transfers, but only allow transfers that they mutually approve.

No-poaching agreements can negatively impact competition in the labor market and restrict employees' freedom to find new jobs or switch jobs. Consequently, competition

