

Labour Markets and Cartels

Berezvai, Zombor

Chief Economist

Hungarian Competition Authority (GVH)

Slovak Competition Conference

May 21, 2024

Agenda

1. Theoretical challenges
2. Approach of competition authorities
3. NCA cases and take aways

Theoretical challenges

Consumer welfare standard: how can wage-fixing and no-poach agreements reduce consumer surplus (on product markets)?

Reduction of output (monopsony effect)

Reduction of productivity

Reduction of innovation

Theoretical challenges

Do these agreements constitute by object or by effect restrictions?

TFEU explicitly prohibits agreements that “directly or indirectly fix purchase or selling prices or any other trading conditions”

And agreements that “share markets or sources of supply”

Theoretical challenges

Which agreements are exactly prohibited?

Agreements involving labour market competitors are generally problematic

Unlikely to be classified as ancillary restraints or exempted under Article 101(3) TFEU

Agreements not involving other companies are generally less problematic (e.g., non-disclosure agreements, repayment of training costs, non-compete agreements)

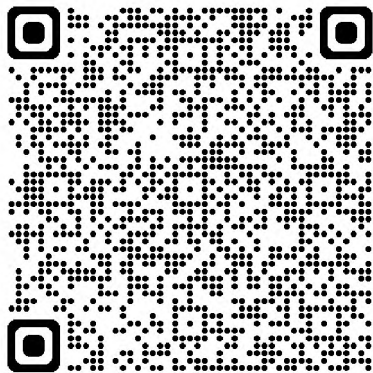
Approach of competition authorities

- Not frequent cases in the EU
- Often investigated by NCAs (and not by DG Comp) due to the geographical scope (low labour mobility)
- However, labour market is getting increasing attention globally

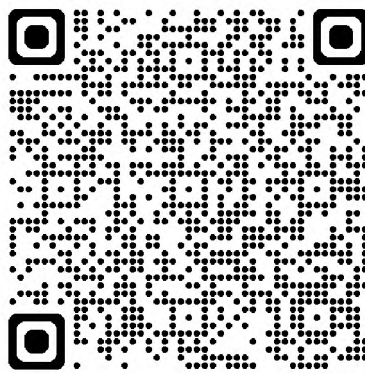
E.g., Guideline 10 of the new US DOJ-FTC Merger Guidelines: “When a Merger Involves Competing Buyers, the Agencies Examine Whether It May Substantially Lessen Competition for Workers, Creators, Suppliers, or Other Providers.”

Approach of competition authorities

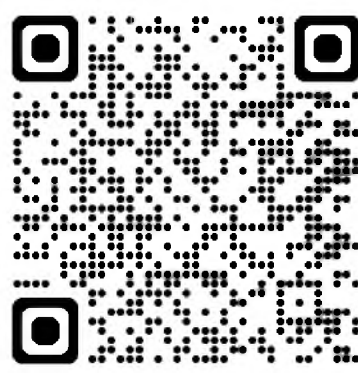
AdC (Portugal)
Issues Paper



Joint Nordic Report



FTC Non-Compete
Clause Rule



Portuguese case: Football clubs

- First decision of the AdC addressing labour market restrictions
- Market: professional football leagues and related companies
- Conduct in question: no-poach agreement among sport companies (clubs) – not to hire players who have unilaterally terminated his contract due to issues caused by the Covid19 pandemic
- By object violation of competition law
- Consumer harm: potential quality decrease of football matches due to less competing environment
- Interim measures were also imposed
- Total fine of EUR 11.3 million
- Currently under appeal

Hungarian case: HR consultant cartel

Basic facts of the case

- Leniency application
- Investigation launched against the Association of Hungarian HR Consulting Agencies and its 13 members
- Infringement of the Hungarian Competition Law (but not TFEU 101)
- The GVH imposed a fine (approx. EUR 2.5 million) on the Association

Hungarian case: HR consultant cartel

The market

The “supply chain” investigated



Hungarian case: HR consultant cartel

Corporate behaviours investigated

- Fixing minimum fees and other conditions with respect to the labour-hire and recruitment services
- No-poach clauses: prevent the free movement of employees
- No-touch clauses: prevent to recruit a person for a client who has been recruited to another client earlier by the same recruiting agency
- Some restrictions regarding public procurement procedures

Hungarian case: HR consultant cartel

No-poach

- Members were restricted to actively recruiting each others' employees
- The GVH found the above provision as a by object infringement, by sharing the markets and sources of supply

Hungarian case: HR consultant cartel

No-touch

- An HR agency cannot offer a job to the formerly recruited person (without time limitation)
- Active and passive ban as well
- Can be justified between the agency and its client, but cannot be agreed upon between the agencies
- Due to the provision, HR agencies restricted competition on the recruitment market, since some of the inputs (previously recruited people) cannot be contacted and recruited
- The GVH found the above provision as a by object infringement, by sharing the markets and sources of supply

Hungarian case: HR consultant cartel

Judicial review

- Fixing minimum fees and other conditions: by object violation of competition law
- No-poach: by object violation of competition law, but not market sharing (only resource sharing agreements)
- No-touch: not by object violation (can be by effect violation) of competition law
- Might be de minimis due to a special change in the Hungarian Competition Law

Thank you for your attention

Berezvai.Zombor@gvh.hu

