Recent Developments in Labor Market Antitrust Enforcement in the United States, Europe, Canada, and China

by Jee-Yeon Kim Lehmann, Olivia Althans, Yeseul Hyun, and Federico Mantovanelli; Analysis Group, Inc.

ABA Antitrust Law Section (January 6, 2025)


Jee-Yeon Kim Lehmann


Olivia Althans


Yeseul Hyun


Federico Mantovanelli

Citing concerns about the growing monopsony power of employers and imbalance in bargaining power between employers and workers, antitrust enforcers around the globe are increasingly scrutinizing competitive conditions in the labor market. In the U.S., antitrust regulators have pointed to historically low unionization rates as a contributor to bargaining power imbalances.[1] Even in Europe, with its higher unionization rates and stronger labor protection laws, antitrust enforcers are raising potential concerns about growing monopsony power resulting from increasing concentration in the private sector.[2]

Competition authorities have shown a growing commitment to protecting competition in the labor market through a variety of enforcement efforts and new regulatory guidelines and policies. In the U.S., recent concerns about labor market competition have led to enforcement efforts in multiple areas, including criminal prosecutions of no-poach and wage-fixing agreements, non-compete rulemaking, and merger challenges claiming potential harm to labor markets. Over the past three years, regulators in Europe, the U.K., Canada, and China, for example, have also taken steps to prioritize antitrust enforcement in the labor market. These steps have included releasing public statements that highlight practices potentially harmful to labor market competition, developing new policies and regulatory guidelines aimed at addressing

perceived gaps in enforcement, and launching investigations into wage-fixing and no-poach agreements.

In this article, we examine these recent developments in labor market antitrust enforcement around the globe and report on the status of key enforcement and litigation matters.

U.S.

In October 2016, the U.S. Department of Justice (DOJ) and Federal Trade Commission (FTC) jointly issued the Antitrust Guidance for Human Resource Professionals. The Guidance affirmed the agencies' view that the antitrust laws apply with equal force to labor markets and clarified their intent to criminally prosecute employers and individuals who entered into an "agreement among competing employers to limit or fix the terms of employment for potential hires… [or that] constrains individual firm decision-making with regard to wages, salaries, benefits; terms of employment; or even job opportunities."[3] In December 2020, the DOJ brought its first wage-fixing criminal indictment charges against the former owner of a physical therapist staffing company, alleging that he violated Section 1 of the Sherman Act by conspiring with competitors to fix wages for physical therapists and assistants in Texas *(U.S. v. Jindal)*.[4] In January and July 2021, respectively, the DOJ brought its first two no-poach criminal indictment charges against Surgical Care Affiliates, a company that operates outpatient medical centers *(U.S. v. Surgical Care Affiliates, LLC, et al.)*[5] and DaVita Inc., a dialysis and kidney care provider, and its CEO (*U.S. v. DaVita Inc. and Kent Thiry*).[6] From 2021 to 2023, the U.S. government brought four other criminal indictments, alleging wage-fixing or no-poach agreements in health care staffing *(U.S. v. Hee et al., U.S. v. Manahe et al., and U.S. v. Lopez)*[7] and aerospace engineering *(U.S. v. Patel)*.[8] These criminal enforcement efforts have been largely unsuccessful. Juries acquitted defendants of all anticompetitive conduct in *Jindal*, *DaVita*, and *Manahe*, and a Connecticut federal court ordered the acquittal of all defendants before the case went to the jury in *Patel*.[9] The government voluntarily dismissed the indictment in *Surgical Care Affiliates* in November 2023. *Lopez* is still pending.[10]

Despite these unfavorable outcomes, the DOJ and FTC have maintained their focus on competition in the labor market. In April 2024, the FTC issued a final rule to ban non-compete agreements nationwide.[11] However, the proposal has faced significant legal challenges. On August 20, 2024, a federal court ruled against the FTC in a case brought by Ryan, a tax services provider *(Ryan LLC v. FTC)*.[12] The court determined that the FTC "exceeded its statutory authority," temporarily invalidating its proposed ban on non-compete agreements.[13]

Additionally, the DOJ and FTC are increasingly examining labor market impacts in merger investigations.[14] For example, the FTC's successful challenge of Kroger's proposed acquisition of Albertsons alleged that, in addition to downstream effects on the prices and product quality, the "combined Kroger and Albertsons would have more leverage

to impose subpar terms on union grocery workers that slow improvements in wages, worsen benefits, and potentially degrade working conditions."[15] An Oregon federal court that sided with the FTC's challenge, however, concluded that, while the FTC presented "a compelling and logical case for applying traditional antitrust analysis to labor markets," there was "limited evidence presented" and it "lack[s] sufficient guidance" in the form of economic modeling to block the merger based on labor concerns.[16]

To bolster efforts to investigate labor market impacts of mergers, the DOJ and FTC announced, in August 2024, a new agreement with the Department of Labor and the National Labor Relations Board outlining measures to enhance information sharing protocols among the four agencies to support the FTC and DOJ in their merger reviews.[17]

EU

In the EU, antitrust law regarding joint conduct is governed by Article 101 of the Treaty on the Functioning of the European Union (TFEU), which prohibits "concerted practices" that may restrict or distort competition within member states.[18] Recent developments in antitrust enforcement in the EU have addressed anticompetitive practices in labor markets.

In May 2024, the European Commission (EC) issued a new policy brief outlining its updated view on anticompetitive conduct in labor markets.[19] The policy brief categorized wage-fixing agreements as "detrimental" to employees and outlined the EC's views on the potential effects of no-poach agreements, which included reduced compensation, inefficient allocation of workers, and stifled productivity.[20] The updated guidelines also clarified that the EC considers wage-fixing and no-poach agreements to be "by object" violations of antitrust law.[21] The "by object" standard in the EU is akin to per se violations in the U.S., meaning that the EC considers these agreements to be anticompetitive by nature and, as such, assessment of actual effects on competition is not necessary to establish a violation. The policy brief noted that any pro-competitive benefits achieved from wage-fixing and no-poach agreements can typically be achieved through less restrictive means, including non-compete clauses, non-disclosure agreements, and gardening leaves.[22]

In this new policy, the EC also clarified that wage-fixing agreements, consistent with other price-fixing arrangements, are unlikely to avoid classification as a "by object" violation.[23] The EC, however, distinguished no-poach agreements from wage-fixing agreements, acknowledging that no-poach agreements are "likely to be restrictions of competition by object." Its policy update also offers examples of situations where there could be pro-competitive effects, including in the case of a research joint venture or a vertical supply relationship.[24] The guidelines provided a set of four criteria that must be met to exempt wage-fixing or no-poach agreements from the "by object" standard: whether the agreement (i) contributes to improving distribution or economic progress, (ii) benefits consumers as a result of the agreements, (iii) is the only method by which a transaction can take place, and (iv) does not eliminate competition.[25]

Although the updated policy guidelines note that national competition authorities may be better-positioned to investigate potential antitrust violations in the labor market, several recent investigations have been initiated by the Court of Justice of the European Union (CJEU). As detailed below, the CJEU has also engaged in a number of investigations, including against the Fédération Internationale de Football Association (FIFA), online food ordering and delivery companies, and data center construction firms.

FIFA Player Transfer Restrictions

On October 4, 2024, the CJEU ruled that certain provisions of FIFA's player transfer regulations violated EU competition law under Article 101 of the TFEU.[26] An investigation into FIFA's player transfer provisions was initiated after a former French soccer player, Lassana Diarra, faced significant financial penalties and sporting sanctions for prematurely terminating his contract with his team.[27] In terminating his contract without "just cause," Diarra was subject to potential financial liabilities, bans, and other penalties under FIFA's Regulations on the Status and Transfer of Players (RSTP).[28]

The CJEU ruled that specific elements of FIFA's RSTP, particularly those pertaining to financial compensation and sporting sanctions, infringed on the guarantee of freedom of movement and therefore restricted competition. The CJEU additionally noted that FIFA's transfer rules "'impose considerable legal risks, unforeseeable and potentially very high financial risks as well as major sporting risks on those players and clubs wishing to employ them which, taken together, are such as to impede international transfers of those players.'"[29] In light of the ruling, FIFA has recognized the need to update its RSTP to comply with updated EU competition law.[30]

No-Poach Agreements in Market for Delivery Drivers

In July 2024, the EC launched a formal antitrust investigation into Delivery Hero and Glovo, two of the EU's leading delivery platforms, for allegedly breaching competition rules.[31] The investigation stems from allegations that these companies engaged in collusive behavior such as allocating geographic markets, sharing commercially sensitive information, and agreeing not to poach each other's employees prior to Delivery Hero's acquisition of Glovo in July 2022.[32]

The EC has noted that this investigation is of particular concern because it is strongly interested in fostering competition and protecting consumer interests in the rapidly growing online food and grocery delivery sector. The EC expressed concern that the alleged anticompetitive practices related to market allocation and the exchange of commercially sensitive information may have resulted in hidden market consolidation, thereby reducing consumer choices and raising prices.[33] The investigation also marks the EC's priority of addressing alleged anticompetitive practices in labor markets as "the first investigation on no-poach agreement formally initiated by the Commission."[34]

Collusion Among Data Center Construction Companies

On November 18, 2024, the EC released a statement that it had initiated unannounced inspections at companies in the data center construction industry following concerns of a "possible collusion in the form of no-poach agreements."[35] While the EC has not identified the companies it is investigating or details of the alleged no-poach agreements, the investigation underscores its commitment to identifying instances of potentially anticompetitive conduct in labor markets, particularly in the rapidly growing market for data center construction spurred by advances in AI.[36]

U.K.

Antitrust enforcement in the U.K. has undergone significant developments in recent years. Consistent with efforts of competition authorities globally to deter anticompetitive conduct in labor markets, the U.K.'s Competition and Markets Authority (CMA) has increased its focus on labor market practices.

Following the completion of the U.K.'s transition out of the EU in 2020, Article 101 of the TFEU "cease[d] to apply."[37] As a result, anticompetitive practices in the U.K. are now governed by Chapter I of the Competition Act of 1998, which explicitly prohibits "agreements, decisions, or practices" that restrict, distort, or prevent competition and/or "directly or indirectly fix purchase or selling prices."[38]

Since 2023, the CMA has issued several policy updates underscoring an increased focus on enforcing antitrust law in labor markets. First, in February 2023, the CMA released a brief guide for employers to promote compliance with labor market competition laws.[39] The guide identified three practices in the labor market as their focus – no-poach agreements, wage-fixing agreements, and information sharing – and highlighted the CMA's views on their potential harm to labor markets, including lower employee earnings, restricted worker mobility, and limited opportunities for business growth.[40]

Then, in January 2024, the CMA's Microeconomics Unit published a report examining employer market power and labor market concentration.[41] The authors concluded that, in contrast to trends reported in the U.S., overall employer market power and labor market concentration reported in the U.K. have remained stable over the previous two decades. The report highlighted that there are "large and persistent differences" across regions, occupations, and firms.[42]

Finally, the CMA reinforced its focus on labor markets in its annual plan for 2024 to 2025, issued in March 2024.[43] The annual plan describes the CMA's new strategic approach to competition and consumer protection, which includes competition in labour markets as an "important area of focus for the CMA."[44] In addition to these policy efforts, the CMA launched a series of investigations targeting labor market practices in the TV broadcasting and fragrance industries, as detailed below.

TV Broadcasting

On July 12, 2022, the CMA initiated its first investigation into hiring practices by five different entities of freelance professionals for the production and broadcasting of sports content in the U.K.[45] At this stage of the investigation, the CMA has noted that it has "reasonable grounds to suspect one or more breaches of competition law," but has not yet determined whether there is sufficient evidence to issue a statement of objections to any of the parties involved.[46]

On October 23, 2023, the CMA launched a similar investigation focusing on potential anticompetitive behavior in the hiring and recruiting of freelance providers and staff in the production, creation, and broadcasting of TV content, excluding sports, targeting seven production entities.[47] In this investigation, the CMA is examining whether these organizations engaged in collusive practices via restrictive agreements in their hiring practices.[48] As of November 2024, the investigation is ongoing and the CMA expects to provide an update on the progress of the investigation by March 2025.[49]

Fragrance Suppliers

On March 7, 2023, the CMA initiated an investigation into potential anticompetitive practices involving price fixing and market allocation among four suppliers of fragrances and fragrance ingredients used to manufacture household and personal care products.[50]

In January 2024, the investigation was extended to include allegations of "suspected unlawful coordination" among these companies, particularly concerning "reciprocal arrangements related to the hiring or recruitment of certain staff involved in the supply of fragrances and/or fragrance ingredients."[51] The CMA has expressed concerns that such no-poach agreements among major competitors may have significant adverse effects on workers and industry growth.[52]

Canada

Recent regulatory changes in Canada similarly reflect growing scrutiny over potentially anticompetitive behavior by employers. In 2022, the Canadian Competition Act was amended to criminalize wage-fixing and no-poach agreements.[53] After a one-year grace period, these updates went into effect on June 23, 2023,[54] giving the Competition Bureau (CB), an "independent law enforcement agency that protects and promotes competition,"[55] the authority to investigate no-poach and wage-fixing agreements as per se illegal. The new regulations apply to agreements formalized after the June 23 deadline, as well as "conduct that reaffirms or implements agreements that were made before that date."[56]

These new amendments are consistent with a larger trend in the U.S. and the EU to address concerns about an increasing imbalance in bargaining power between employers and workers, as well as about agreements that may impact worker mobility

or wages. Some commentators have suggested that these new amendments are responses to public criticisms following the decisions of three Canadian grocery stores (Loblaws, Sobeys, and Metro) to all cut their pandemic hazard pay on the same day in 2020.[57] The CB indicated that, despite evidence that the companies did not act independently and, instead, coordinated the move, it could not take action against the grocers under then-existing legislation.[58] The 2022 amendments acted as an effort to empower the CB to investigate and take action against such behavior if they are determined to be anticompetitive.[59]

Under the new guidelines, employers are prohibited from making agreements to "fix, maintain, decrease or control salaries, wages, and terms and conditions of employment."[60] In addition, companies are prohibited from engaging in practices "to not solicit or hire each other's employees," and any agreement that "limits an employee's job opportunities."[61]

In its final version of the guidelines, released on May 30, 2023,[62] the CB offered further clarification of what falls within the scope of the new standard. According to the CB, the new regulations apply to agreements between "unaffiliated employers," meaning that subsidiaries of a larger company may enter into agreements with one another.[63] Relatedly, the guidelines only prohibit reciprocal agreements – that is, "agreements between two or more employers that result in reciprocating promises to not poach each other's employees.[64] "One-way" agreements, or agreements in which only one employer is bound by no-poach or no-solicitation clause, are explicitly exempt and do not constitute a violation of the guidelines.[65]

The CB also outlined exceptions to the new standards in instances where such agreements are permitted or necessary. In particular, through an "ancillary restraints" defense, the guidelines recognize that certain labor-related restraints may be necessary to achieve pro-competitive objectives, as in the case of ancillary agreements aimed at "stabilizing and protecting parties' business interests" in the context of merger transactions and joint ventures or in certain business arrangements, such as franchising and IT service contracts.[66]

Similarly, under the "regulated conduct" defense, an agreement is exempted from the guidelines' prohibition if it is required or authorized by provincial or federal law. Finally, a third exemption is extended to agreements between employers that relate to collective bargaining with their employees.[67] In each of these cases, when a company relies on any of these exclusions, the CB has the authority to investigate the legitimacy of the claim and may still bring charges against the employers if they do not meet the standards for exemption.

Despite the lack of enforcement activities since the amendments went into effect in June 2023, legal practitioners and scholars have debated the policy's potential effects on the labor market. Legal experts argue that these new guidelines will place heightened scrutiny on employers, given the risk of criminal indictment.[68] As a result of the potential criminal consequences of no-poach/no-hire agreements, employers will likely be more cautious in their relationships with other businesses, particularly in regards to

hiring practices. Employers have been encouraged to review existing agreements and update their guidelines for communicating hiring information with other employers to ensure that ongoing and future arrangements are compliant with the guidelines.[69] Meanwhile, employers are expected to review human resources hiring practices to identify behaviors that may leave the company at risk of investigation.[70]

China

China's antitrust legal framework is governed primarily by the Anti-Monopoly Law (AML), which was enacted in 2008 and updated in 2022.[71] The AML addresses three categories of anticompetitive conduct: monopolies, abuse of dominance, and anticompetitive concentrations.[72] While the law does not refer to anticompetitive conduct in labor markets explicitly, Article 17 of the AML refers generally to the prohibition of monopoly agreements that, among other conduct, fix the prices or allocate markets.[73]

As of 2018, the State Administration for Market Regulation (SAMR) has become China's competition authority to enforce the AML.[74] Unlike in the U.S., the U.K., and the EU, where certain anticompetitive practices – including wage-fixing and no-poach agreements – are considered inherently illegal, the SAMR does not apply a per se or "by object" standard to any form of anticompetitive conduct under the AML. Instead, in China, harm from anticompetitive conduct is weighed against benefits from the alleged conduct.[75]

Chinese authorities have been investigating and prosecuting cases involving anticompetitive conduct in labor markets since 2011, predating the more recent heightened interest in such efforts among U.S., European, U.K. and Canadian authorities. High-profile investigations have addressed wage-fixing and no-poach agreements in labor markets ranging from brick manufacturers to driving school instructors and pig farmers.

Shale Brick Manufacturers

In June 2015, prior to the update of the AML in 2022, China addressed anticompetitive labor market practices by investigating shale brick manufacturers. The investigation, triggered by public complaints in July 2013, was conducted by the Administration for Industry and Commerce (AIC) of Hunan Province. The AIC reviewed a series of agreements facilitated by the Mayang County Shale Brick Industry Association, which was established by nearly 30 local shale brick companies in March 2011. For over two years, these companies engaged in a series of agreements facilitated by the industry association, including limiting production output and capacity, fixing prices, allocating geographic markets, and agreeing not to poach employees from other companies in the association.

The AIC found that these practices "eliminated and restricted competition" in the local shale brick market, "raised the costs for construction and related industries," and

ultimately "harmed consumer interest."[76] As a result, the AIC imposed fines totaling RMB 1,389,400 (approximately $223,800 US) on the participating companies for infringing Article 13 of the AML.[77] Although the AIC focused mainly on product market agreements related to output restrictions and price fixing, the authority acknowledged the existence of no-poach agreements in its ruling, noting that the manufacturers agreed to "not take any other measures to poach labor forces from each other."[78] This acknowledgment highlighted the Chinese authorities' interest in investigating potentially anticompetitive practices in the labor market.[79]

Joint Venture Among Driving Schools

In December 2021, the Chinese Supreme People's Court (SPC) issued a landmark ruling in a case involving a joint venture established by 15 local driving schools, stating that the joint venture was involved in no-poach and compensation-fixing agreements.[80] The case was prompted by the withdrawal of two driving schools and their lawsuit against the remaining 13 schools one year after the establishment of the joint venture. They alleged that "the JVA and its associated agreements constituted unlawful horizontal agreements that restricted competition in the local market for driver training services."[81]

Initially, a lower court ruled that certain provisions of the joint venture were illegal under the AML. The lower court found that these provisions fixed the wages of driving coaches, limited additional benefits, and restricted lateral movements to participating schools, ultimately reducing the availability of driving services and amplifying the anticompetitive effects of price fixing.[82] On appeal, however, the SPC overturned the lower court decision and ruled the joint venture unlawful in its entirety under the AML.[83]

No-Poach Initiative by Hog-Farming Companies

In June 2023, four leading hog-farming companies announced an initiative in which they agreed not to hire each other's employees.[84] The initiative received "overwhelming public criticism," with commentators highlighting concerns over restricted worker mobility and legal professionals warning of potential antitrust violations.[85]

In response, the SAMR summoned the four companies for a regulatory meeting in July 2023. During the meeting, the SAMR emphasized that the no-poach initiative "violated the spirit of the Anti-Monopoly Law" and required the companies to revoke the agreement and comply with antitrust laws.[86] Following the meeting, the companies issued a joint announcement to "immediately rectify the problem" and rescinded the initiative.[87] The SAMR further released a public statement reaffirming its commitment to monitoring labor market practices and promoting "fair competition" among employers.[88]

Endnotes

1. Mishel, Lawrence, "The Enormous Impact of Eroded Collective Bargaining on Wages" April 8, 2021, *Economic Policy Institute*, *available at* https://www.epi.org/publication/eroded-collective-bargaining/.
2. Hausfeld LLP, "Competition in the Workplace: Global Crackdown by Enforcers on Labour Markets," January 13, 2022, *available at* https://www.hausfeld.com/en-us/what-we-think/perspectives-blogs/competition-in-the-workplace-global-crackdown-by-enforcers-on-labour-markets/.
3. U.S. Department of Justice and Federal Trade Commission, "Antitrust Guidance for Human Resource Professionals," October 2016, *available at* https://www.ftc.gov/system/files/documents/public_statements/992623/ftc-doj_hr_guidance_final_10-20-16.pdf, p. 1.
4. *U.S. v. Jindal,* Case No. 4:20-cr-358 (E.D. Tex. 2020). See also Lent, Karen M., Tara L. Reinhart, Jessica R. Watters, "DOJ Brings First Criminal Challenges to Wage-Fixing and No-Poach Agreements," February 18, 2021, *Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates*, *available at* https://www.skadden.com/insights/publications/2021/02/doj-brings-first-criminal-challenges ("Lent et al. (2012)").
5. *U.S. v. Surgical Care Affiliates, LLC, et al.,* Case No. 3:21-cr-00011 (N.D. Tex. 2021). See also Lent et al. (2021).
6. *U.S. v. DaVita Inc.,* Case No. 1:21-cr-00229-RBJ (D. Colo 2021).
7. *U.S. v. Hee, et al.*, Case No. 2:21-cr-00098 (D. Nev. 2021); *U.S. v. Manahe, et al.*, Case No. 2:22-cr-00013 (D. Me. 2022); *U.S. v. Lopez*, Case No. 23-cr-00055 (D. Nev. 2023).
8. *U.S. v. Patel, et al.*, Case No. 3:21-cr-00220 (D. Conn. 2021).
9. Donahue, Lauren Norris, Erinn L. Rigney, Brian J. Smith, "DOJ Jettisons Its Last Criminal No-Poach Prosecution, but Antitrust Scrutiny of Labor is Here to Stay," December 21, 2023, *K&L Gates LLP*, *available at* https://www.klgates.com/DOJ-Jettisons-Its-Last-Criminal-No-Poach-Prosecution-but-Antitrust-Scrutiny-of-Labor-Markets-is-Here-to-Stay-12-21-2023 ("Donahue et al. (2023)").
10. Donahue et al. (2023).
11. FTC, "FTC Announces Rule Banning Noncompetes," April 23, 2024, *available at* https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes.
12. *Ryan LLC, Chamber of Commerce of the United State of America, Business Roundtable, Texas Association of Business, Texas Association of Business, and Longview Chamber of Commerce v. Federal Trade Commission,* Case No. 3:2024-cv-00986. (N.D. Tex. 2024). See also Ryan LLC, "Ryan Lawsuit Succeeds in Striking Down Federal Trade Commission (FTC) Ban on Non-Compete Agreements," August 20, 2024, *available at* https://ryan.com/about-ryan/press-room/2024/ryan-lawsuit-succeeds-in-striking-down-ftc-ban-on-non-compete-agreements/.
13. "Memorandum Opinion and Order," *Ryan LLC v. Federal Trade Commission,* Case No. 3:2024-cv-00986 (N.D. Tex. July 3, 2024), p. 12.
14. Papscun, Dan, "Companies Must Weigh Worker Impact under New Merger Guidelines," July 19, 2023, *Bloomberg Law, available at* https://news.bloomberglaw.com/antitrust/workforce-impact-gets-close-scrutiny-in-new-merger-guidelines. See also U.S. Department of Justice and U.S. Federal Trade Commission, "Merger Guidelines," December 18, 2023, *available at* https://www.justice.gov/atr/2023-merger-guidelines.
15. FTC, "FTC Challenges Kroger's Acquisition of Albertsons," February 26, 2024, *available at* https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-challenges-krogers-acquisition-albertsons.
16. Opinion and Order, *Federal Trade Commission, et al. v. Kroger Company and Albertsons Companies, Inc.*, Case No. 3:24-cv-00347-AN (D. Ore. 2024).
17. FTC, "FTC, DOJ Partner with Labor Agencies to Enhance Antitrust Review of Labor Issues in Merger Investigations," August 28, 2024, *available at* https://www.ftc.gov/news-events/news/press-releases/2024/08/ftc-doj-partner-labor-agencies-enhance-antitrust-review-labor-issues-merger-investigations.
18. European Union, "Consolidated Version of the Treaty on the Functioning of the European Union," October 26, 2012, *Official Journal of the European Union*, C 326, p. 88–89.
19. Aresu, Alessio, Dominik Erharter, and Brigitta Renner-Loquenz, "Antitrust in Labour Markets," May 2024, *Competition Policy Brief*, No. 2, *available at* https://competition-policy.ec.europa.eu/document/download/adb27d8b-3dd8-4202-958d-198cf0740ce3_en ("Aresu et al. (2024").
20. Aresu et al. (2024), p. 2.
21. Aresu et al. (2024), p. 1.
22. Aresu et al. (2024), p. 5.
23. Aresu et al. (2024), pp. 3–6.

24. Aresu et al. (2024), p. 5.
25. Kuhn, Tilman, Strati Sakellariou-Witt, and Nina Frie, "Labour Related Agreements in the European Commission's Antitrust Spotlight: New Policy Brief on Antitrust in Labour Markets," May 23, 2024, *White & Case LLP*, *available at* https://www.whitecase.com/insight-alert/labour-related-agreements-european-commissions-antitrust-spotlight-new-policy-brief.
26. Daly, Ken, Patrick J. Harrison, Murray Reeve, and Bethany Wise, "Red Card for Competition Breaches in Labour Markets Globally," November 7, 2024, *Sidley Austin LLP*, *available at* https://www.sidley.com/en/insights/newsupdates/2024/11/red-card-for-competition-breaches-in-labour-markets-globally.
27. Wauters, Jasper and Nikolas Hertel, "ECJ Decision in the Diarra Case: Some of FIFA's Players Transfer Rules are Incompatible with EU Law," October 10, 2024, *White & Case LLP*, *available at* https://www.whitecase.com/insight-alert/ecj-decision-diarra-case-some-fifas-players-transfer-rules-are-incompatible-eu-law; Slater, Matt, "Some of FIFA's Transfer Rules Contrary to EU Law in Lassana Diarra Case Ruling, Says European Court of Justice," October 4, 2024, *New York Times*, *available at* https://www.nytimes.com/athletic/5817901/2024/10/04/fifa-transfer-rules-lassana-diarra/. Diarra signed with Lokomotiv Moscow in 2013. In August 2014, the club dismissed Diarra due to alleged contractual breaches and further filed a claim for compensation. Diarra was ordered to pay 10.5 million euros in compensation to the club. Additionally, FIFA imposed a ban on Diarra from participating in professional football for 15 months.
28. FIFA, "Regulations on the Status and Transfer of Players," October 2022, *available at* https://digitalhub.fifa.com/m/620d0240c40944ed/original/Regulations-on-the-Status-and-Transfer-of-Players-October-2022-edition.pdf, pp. 24-26.
29. Pretot, Julien, "EU Top Court Says Some FIFA Player Transfer Rules Breach EU Law," October 4, 2024, *Reuters*, *available at* https://www.reuters.com/sports/soccer/eu-top-court-says-fifa-player-transfer-rules-breach-eu-law-2024-10-04/.
30. FIFA, "FIFA's Position on the Lassana Diarra Case," October 14, 2024, *available at* https://digitalhub.fifa.com/m/3ed083bc1084a958/original/FIFA-s-position-on-the-Lassana-Diarra-case.pdf.
31. European Commission, "Commission Opens Investigation into Possible Anticompetitive Agreements in the Online Food Delivery," July 22, 2024, *available at* https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3908 ("European Commission Food Delivery Case (2024)").
32. European Commission Food Delivery Case (2024). Delivery Hero, a global food ordering and delivery company based in Germany, operates in over 70 countries worldwide and partners with more than 500,000 restaurants. Glovo, a Spanish food ordering and delivery company, serves more than 1,300 cities across 25 countries. In July 2022, Delivery Hero acquired a majority stake in Glovo, which subsequently became its subsidiary.
33. European Commission Food Delivery Case (2024).
34. European Commission Food Delivery Case (2024).
35. European Commission, "Commission Carries Out Unannounced Antitrust Inspections in the Data Centre Construction Sector," November 17, 2024, *available at* https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5926.
36. Krempl, Stefan, "EU Commission Investigates Cartel Formation in Construction of Data Centers," November 19, 2024, *available at* https://www.heise.de/en/news/EU-Commission-investigates-cartel-formation-in-construction-of-data-centers-10065116.html.
37. Seay, Nigel and Stephen Whitfield, "Brexit: UK and EU Competition Law from 2021," December 9, 2020, *Travers Smith LLP*, *available at* https://www.traverssmith.com/knowledge/knowledge-container/brexit-uk-and-eu-competition-law-from-2021.
38. Parliament of the U.K., "Competition Act 1998," 1998, *available at* https://www.legislation.gov.uk/ukpga/1998/41/part/I/chapter/I.
39. U.K. Competition and Markets Authority, "Employers Advice on How to Avoid Anti-Competitive Behaviour," February 9, 2023, *available at* https://www.gov.uk/government/publications/avoid-breaking-competition-law-advice-for-employers/employers-advice-on-how-to-avoid-anti-competitive-behavior ("CMA Employers Advice (2023)").
40. CMA Employers Advice (2023).
41. U.K. Competition and Markets Authority, "Competition and Market Power in UK Labour Markets," January 25, 2024, *available at* https://assets.publishing.service.gov.uk/media/65b2312af2718c000dfb1d13/Competition_and_market_power_in_UK_labour_markets.pdf ("CMA Report (2024)").
42. CMA Report (2024), p. 6.

43. U.K. Competition and Markets Authority, "Competition and Markets Authority Annual Plan 2024/25," March 14, 2024, *available at* https://assets.publishing.service.gov.uk/media/65f1a6f5981227a772f61377/CMA_Annual_Plan_2024-25.pdf ("CMA Annual Plan (2024)").
44. CMA Annual Plan (2024).
45. U.K. Competition and Markets Authority, "Suspected Anti-Competitive Behaviour Relating to Freelance Labour in the Production and Broadcasting of Sports Content," July 13, 2022, *available at* https://www.gov.uk/cma-cases/suspected-anti-competitive-behaviour-relating-to-the-purchase-of-freelance-services-in-the-production-and-broadcasting-of-sports-content ("CMA Sports Production Case (2023)").
46. CMA Sports Production Case (2023).
47. U.K. Competition and Markets Authority, "Suspected Anti-Competitive Behaviour Relating to Freelance and Employed Labour in the Production, Creation, and/or Broadcasting of Television Content, Excluding Sport," October 12, 2023, *available at* https://www.gov.uk/cma-cases/suspected-anti-competitive-behaviour-relating-to-freelance-and-employed-labour-in-the-production-creation-and-slash-or-broadcasting-of-television-content-excluding-sport ("CMA Television Production Case (2023)").
48. CMA Television Production Case (2023).
49. CMA Television Production Case (2023).
50. U.K. Competition and Markets Authority, "Suspected Anti-Competitive Conduct in Relation to Fragrances and Fragrance Ingredients (51257)," March 7, 2023, *available at* https://www.gov.uk/cma-cases/suspected-anti-competitive-conduct-in-relation-to-fragrances-and-fragrance-ingredients-51257 ("CMA Fragrance Case (2023)").
51. CMA Fragrance Case (2023).
52. CMA Employers Advice (2023).
53. Government of Canada, "Guide to the 2022 Amendments to the *Competition Act*," June 24, 2022, *available at* https://competition-bureau.canada.ca/how-we-foster-competition/education-and-outreach/publications/guide-2022-amendments-competition-act.
54. Competition Bureau, "Enforcement Guidelines on Wage-Fixing and No Poaching Agreements," May 30, 2023, *available at* https://competition-bureau.canada.ca/how-we-foster-competition/education-and-outreach/enforcement-guidelines-wage-fixing-and-no-poaching-agreements ("CB Guidelines (2023)").
55. Government of Canada, "Competition Bureau Canada," *available at* https://competition-bureau.canada.ca.
56. CB Guidelines (2023), Section 1.2.
57. Hudes, Sammy, "Five Things to Know About Canada's New Wage-Fixing and No-Poaching Prohibitions," June 23, 2023, *Financial Post*, *available at* https://financialpost.com/fp-work/five-things-canadas-wage-fixing-no-poaching-agreements ("Hudes (2023)").
58. Hudes (2023).
59. Hudes (2023).
60. CB Guidelines (2023), Section 2.1.
61. CB Guidelines (2023), Section 2.2.
62. Gates, Arlan and Justine Johnston, "Canada: Competition Bureau Releases Enforcement Guidelines for Wage-Fixing and No-Poach Agreements," June 15, 2023, *Baker McKenzie, available at* https://insightplus.bakermckenzie.com/bm/employment-compensation/canada-competition-bureau-releases-enforcement-guidelines-for-wage-fixing-and-no-poach-agreements ("Gates and Johnston (2023)").
63. CB Guidelines (2023), Section 1.2.2. See also CB Guidelines (2023), Example 4: No-Poaching and Franchise Agreements.
64. CB Guidelines (2023), Section 2.2.
65. CB Guidelines (2023), Sections 1.2.3 and Example 2: Reciprocity and No-Poaching Agreements. Note the term "employer" from the CB Guidelines refers to not only companies and/or corporations at large, but also "directors, officers, as well as agents or employees, such as human resource professionals," so that "an agreement between an officer of a corporation and a director of another company is considered to be an agreement between employers."

66. CB Guidelines (2023), Section 3.1 ("[T]he ancillary restraints defence (the ARD) is available when certain desirable business transactions or collaborations require restraints on competition to make them efficient, or even possible...The Bureau recognizes the significance that labour-related restraints can play in many business agreements. Reasonably necessary restraints can play an important role in stabilizing and protecting parties' business interests in the course of advancing legitimate pro-competitive objectives. Consistent with the CCGs, the Bureau will generally not assess wage-fixing or no-poaching clauses that are ancillary to merger transactions, joint ventures or strategic alliances under the criminal provisions. Similarly, it recognizes the role these types of restraints can play in certain business arrangements, for example in franchise agreements and certain service provider-client relationships, such as staffing or IT service contracts. However, the Bureau may start an investigation under subsection 45(1.1), where those clauses are clearly broader than necessary in terms of duration or affected employees, or where the business agreement or arrangement is a sham.").
67. CB Guidelines (2023), Section 3.2.
68. Gates and Johnston (2023); Akman, Davit, Larry M. Weinberg, and Eric Buist, "Competition Bureau's Final Wage-Fixing and No-Poaching Enforcement Guidelines Provide Some Comfort to Franchisors Before the New Criminal Provisions Take Effect on June 23, 2023," June 1, 2023, *Cassels*, *available at* https://cassels.com/insights/competition-bureaus-final-wage-fixing-and-no-poaching-enforcement-guidelines-provide-some-comfort-to-franchisors-before-the-new-criminal-provisions-take-effect-on-june-23-2023 ("Akman et al. (2023)"); Render, Allison, "Unpacking the New Competition Act Provisions in an Employment Law Context," December 4, 2023, *Lexpert*, *available at* https://www.lexpert.ca/news/legal-insights/unpacking-the-new-competition-act-provisions-in-an-employment-law-context/381738 ("Render (2023)").
69. Gates and Johnston (2023); Akman et al. (2023); Render (2023).
70. Gates and Johnston (2023); Akman et al. (2023); Render (2023).
71. Davis Polk, "China Antitrust Review 2022," February 27, 2023, *available at* https://www.davispolk.com/insights/client-update/china-antitrust-review-2022.
72. Wei, Dan, "Antitrust in China: An Overview of Recent Implementation of Anti-Monopoly Law," *European Business Organization Law Review*, Vol. 14, No. 1, 2013, p. 119–139.
73. The State Council, "Anti-Monopoly Law of the People's Republic of China," *available at* https://english.www.gov.cn/services/doingbusiness/202102/24/content_WS6035f1ddc6d0719374af97b6.html.
74. Jin, Meirong and Qian Li, "China's Anti-Monopoly Merger Control and National Security: Interactions with Foreign Investment Law and Beyond," *available at* https://jnslp.com/wp-content/uploads/2023/06/Chinas_Anti-Monopoly_Merger_Control_and_National_Security.pdf, p. 485.
75. Huang, Cunzhen, Yiming Sun, and Huanbing Xu, "The First Chinese Court Decision on Antitrust Issues in Labor Markets," April 19, 2022, *Cleary Antitrust Watch*, *available at* https://www.clearyantitrustwatch.com/2022/04/the-first-chinese-court-decision-on-antitrust-issues-in-labor-markets/ ("Huang et al. (2022)").
76. Fels, Allan, Xiaoye Wang, Adrian Emch, and Wendy Ng, "The Chinese NDRC in Yunnan Fines an Undertaking Cartelisation and for Monopolizing the Market," June 2, 2015, *Concurrences*, p. 1 ("Fels et al. (2015)").
77. Fels et al. (2015), p. 2; Thomson Reuters Practical Law, "SAIC Hunan Branch Fines Shale Brick Manufacturers in Hunan Province for Reaching Anti-Competitive Agreements," July 1, 2015, *available at* https://content.next.westlaw.com/practical-law/document/I0deea8bc1f8a11e598dc8b09b4f043e0/SAIC-Hunan-branch-fines-shale-brick-manufacturers-in-Hunan-Province-for-reaching-anti-competitive-agreements.
78. An, Alex, Stephanie Wu, and Charlotte Monroe, "China Begins Targeting Antitrust Issues in Labor Markets – Chinese Hog Farms Revoke "No-Poach" Initiative After SAMR Action," August 1, 2023, *available at* https://www.winston.com/en/blogs-and-podcasts/competition-corner/china-begins-targeting-antitrust-issues-in-labor-markets-chinese-hog-farms-revoke-no-poach-initiative-after-samr-action ("An et al. (2023)").
79. An et al. (2023).
80. Huang et al. (2022).
81. Huang et al. (2022).
82. Huang et al. (2022).
83. Huang et al. (2022).
84. McConnell, Charles, "Chinese Pig Breeders Scrap No-Poach Agreement After SAMR Sounds Alarm," August 2, 2023, *Global Competition Review*, *available at* https://globalcompetitionreview.com/article/chinese-pig-breeders-scrap-no-poach-agreement-after-samr-sounds-alarm ("McConnell (2023)").
85. An et al. (2023).
86. An et al. (2023).
87. McConnell (2023).
88. An et al. (2023).

Authors

Jee-Yeon Lehmann is a Managing Principal; Olivia Althans and Yeseul Hyun are Managers; and Federico Mantovanelli is a Vice President in the Boston office of Analysis Group. *The authors thank Tim Lee, Josh Kirschner, and Georgina Scoville for their excellent research assistance. The opinions expressed herein are the authors' alone and do not necessarily reflect those of Analysis Group or any of its clients.*