The Output®

Spring 2024

Special Issue

Competition Law in Labour Markets
Featuring a Q&A with
Fevzi Toksoy and Bahadır Balkı

CONTRIBUTORS

BAHADIR BALKI, LL.M., Managing Partner

ÖZLEM BAŞIBÖYÜK COŞKUN, LL.M., Senior Associate

ERTUĞRUL CAN CANBOLAT, LL.M., Counsel

CANER K. ÇEŞİT, LL.M., Counsel

ŞAMİL EMİRHAN, Mid-Level Associate

BURÇE E.GÖÇER, Associate

ALPER KARAFİL, Senior Associate

CAN SARIÇİÇEK, LL.M., Counsel

HANNA STAKHEYEVA, PhD, Of Counsel

FEVZİ M. TOKSOY, PhD, Managing Partner

BERKAY ÜNLÜSOY, Associate

SAFA UYGUR, LL.M., Counsel

SERA ERZENE YILDIZ, LL.M., Counsel

Fevzi Toksoy, PhD
Managing Partner

Bahadır Balkı, LL.M.
Managing Partner

Dear reader,

Just as surfers scan the horizon for waves, companies must stay updated on the latest competition law trends and developments to be fully compliant. We feel compelled to compile this special issue of The Output® dedicated to a relatively new but important topic: competition law issues within labour markets.

The labour sector indeed has been on the radar of competition authorities in various jurisdictions, including in Türkiye. The Turkish Competition Authority ('**TCA**') has noticed that the labour market seems to be a vulnerable area for companies in terms of competition law compliance. Several investigations are currently underway; some cases have concluded with fines imposed. We expect more investigation in Türkiye related to no-poaching and wage-fixing agreements.

Based on the TCA's decisions thus far, we have witnessed that violations in the labour markets are treated as object-based, obviating the need for effect assessments. Going further, they rather fall within the hard-core cartel category, leaving no room for commitments. Since the relevant market is the 'labour market,' each undertaking competes with one another, regardless of their main activities. The majority of the investigated parties have settled with the TCA. Concerning vertical relationships, supplier-buyer, no-poaching/non-compete clauses in procurement contracts are normally allowed, provided they are documented, limited in time, and applicable solely to the project teams responsible for the specific outsourcing.

We recommend paying attention to the usage of expressions such as 'off-limit,' 'benchmark,' 'untargeted,' 'blacklist,' 'grey list,' 'gentlemen,' 'no-poach,' and 'no-solicit' if you are active in the labour markets. The TCA has identified collusion by searching undertakings' messaging applications like WhatsApp, Teams, Telegram, Slack, and e-mails based on such keywords. We hope you find this brief guidance helpful.

Stay compliant!

Sincerely,

ACTECON Team

ISSN 2687-3702

Published by
© ACTECON, 2024
Çamlıca Köşkü Tekkeci Sk.
No:3-5 Arnavutköy Beşiktaş
34345 Tel: 90 212 211 50 11

Editor in Chief
Mahmut Reşat Eraksoy

Editor
Hanna Stakheyeva

Type of Publication
Periodical

Graphic Design
BARAS MEDYA
barasmedya.com
Tel: +90 212 801 72 18

Table of Contents

Labour Markets and Competition Law in Türkiye: A Coffee Chat with Bahadır Balkı & Fevzi Toksoy

The TCA recently has intensified its focus on competition law enforcement in the labour markets. What was the triggering point for this recent enforcement?

Indeed, the TCA recently has declared competition for talent an under-enforced area and is now dedicating attention to this issue. What was the trigger point? The main reason in my mind is macroeconomic developments. First the pandemic and then monetary fluctuations affected labour markets significantly, increasing labour costs and changing job descriptions and working conditions globally.

Competition authorities in various jurisdictions, as a part of economic policy, have begun to monitor this issue closely as a policy focus. The US has been a pioneer in this matter with the Silicon Valley case, which essentially was about a gentlemen's agreement preventing the hiring of each other's employees or engineers. Now, I also see that the European competition authorities have started to intervene in this matter. First, the Lithuanian and Polish authorities concluded no-poaching cases and now I have seen that the European Commission, French, and Portuguese Authorities have initiated no-poaching cases as well. As far as I remember, in 2016, the French Authority also fined floor-covering companies for no-poaching and wage-fixing agreements. I took note of Ms. Vestager's words when she defined no-poaching agreements as 'an indicated way to keep wages down by restricting talent from moving where it serves the economy best.'

The President of the Turkish Competition Authority also made a public statement on no-poaching agreements and defined them as a barrier in terms of the free movement of labour sources and individual welfare. Obviously, these messages are beyond competition law. Considering these emphasized messages, we will see powerful competition in law enforcement in the labour markets. And, after some recent cases, I think the authorities have started thinking that the labour market is not a field in which strong competition compliance practices have been established. This approach has also heightened the attention specifically on labour markets.

Wasn't the TCA already active in the labour sector long before this became a global trend?

Indeed, back in 2005, the TCA investigated allegations of no-poaching among TV producers for not transferring actors or actresses. It emphasized that wage-fixing was similar to fixing purchase prices.

In 2011, the TCA examined private schools for not hiring teachers from each other. The Board stated that information exchange on main competitive parameters (such as tuition fees, salaries, and scholarships) might restrict competition. The same year, the TCA also launched an inquiry into the chemicals market. The TCA expressed that no-poaching obligations might be eligible for the exemption in sectors where technical knowledge, expertise, and innovation are of paramount importance.

In 2019, the Sports Center Chain Decision and, in 2020, the Container Carriers Decision were delivered as clear signals that the labour sector was a top enforcement priority on the agenda of the TCA. Both were preliminary investigations that concluded with warnings issued to the relevant undertakings.

Can you name some of the most recent prominent cases and maybe ongoing investigations?

Since the beginning of 2022, we have witnessed several notable actions in Türkiye. To provide a brief overview:

• 16 hospitals were fined for wage-fixing and no-poaching

agreements related to the renumeration of doctors.
• 27 undertakings, mostly digital platforms, were fined for no-poaching agreements.
• Eight companies operating in the telecommunications and information technologies sectors were fined for a gentlemen's agreement in the labour market.

We also have several ongoing investigations:
• In November 2023, an investigation was launched into construction admixtures producers for alleged wage-fixing and no-poaching practices. This investigation is quite important since we were informed by the EC announcement that the dawn raids had been conducted jointly by the CMA, the EC, and the TCA.
• The pharmaceuticals sector, along with other companies, came under scrutiny in November 2023 for similar allegations.
• Ready-mixed concrete producers are also being investigated as of October 2023 for allegedly restricting competition in the labour market.

The number of cases indicates that the TCA prioritizes competition in the labour markets. This landscape also reveals a broad spectrum, from tech-related industries like digital platforms and pharmaceuticals to conventional industries like ready-mixed concrete or construction admixtures.

While we are indeed discussing numerous cases, each investigation reveals many undertakings, seemingly from different sectors. Why is that? What is the dynamic behind this?
This is because the TCA interprets being a competitor in terms of labour markets as widely as possible. For example, the Authority may deem a start-up game developer and a large, traditional undertaking as competitors on the labour side simply because both need computer engineers. The main operating field is irrelevant for the labour side of the competition since the same talent, let's say a front-end developer, may be of good use for both a car manufacturer and a start-up gaming app.

How does the TCA handle such infringements? Does it consider them as by-object restrictions, or does it require establishing the anti-competitive effects of the conduct?
In its recent enforcement, the TCA has adopted a strict approach towards no-poaching as well as wage-fixing conduct. For example, the authority has rejected several commitment proposals from the investigated undertakings, citing that the conduct falls into the category of a 'hardcore restriction.' Recent enforcement clearly shows that the TCA deems both restrictions as by object-violations. The authority deems no-poaching and wage-fixing arrangements as comparable to buyer cartels or market-sharing agreements.

What about vertical settings? For example, a service provider may have the incentive to enter a non-compete setting vis-à-vis the receiver of the service in terms of personnel. Is this something that can be justified before the TCA?
This aspect was addressed by the TCA in its Sports Center Chain decision. The guidance from the decision indicates strict conditions for such a setting. First, there must be a legitimate interest, such as the protection of know-how. Thus, non-compete clauses for positions that do not require specific know-how are not justified. Second, the non-compete clause must be limited to a specific project team and the duration of the contract or project. It also must not extend beyond one year after the termination of the specific engagement between the parties. In short, the TCA also recognizes the need for non-compete agreements in vertical settings for a healthy flow of projects. However, it also expects the undertakings to be precise about it.

Non-compete clauses are currently under discussion in various jurisdictions. For example, the UK is planning to legislate to limit post-term non-competes to three months in the UK, while the FTC is seeking to ban such clauses on the basis that they constitute 'unfair methods of competition.'

Are there any Guidelines from the TCA available on competition in labour markets?
No, currently there are no such guidelines available, but we know that the TCA has been working on some, drawing inspiration from other jurisdictions such as the CMA, the Nordic countries, and the FTC.

So where is the antitrust heading?
A growing body of evidence shows that labour markets are not perfectly competitive, with employers exhibiting monopsony power. Workers are a critical part of business; they are the business. There is a reason for concern about the lack of fair competition in the labour market due to no-poaching, non-compete, NDAs, and/or any other kinds of workers' agreements or covenants. Competition authorities certainly will be scrutinizing these aspects in more detail with more caution. They take them seriously—just look at the prevailing per se approach to such violations, as well as even potential criminal prosecution (in the USA).

That's clear. What should the undertakings do to minimise risk?
Well, in my opinion, constant targeted education in HR departments is a must. Providing HR departments with a list of red flags is a good idea in this regard. Generally speaking,
• Be careful while using jargon such as 'off-limits,' 'untargeted,' 'no-target,' and 'no-go,' which might create doubts for no-poach collusions. Provide clear reasons for rejecting a particular candidate.
• Avoid sharing information on salaries, side benefits, or entering into no-poaching agreements.
• Examine contracts that might contain no-poach articles (for example, supply or outsource contracts) and revise them, if necessary, by limiting the scope and the duration as previously discussed.
• Consult independent third-party market intelligence firms like WTW and Korn Ferry for benchmarks. Avoid using benchmarks with other employers. Remember, in this market, every firm competes with everyone.
• Never engage in fixing workers' pay or allocating labour markets.
• Engage competition law specialists while making employment decisions.
Overall, the TCA's recent emphasis on competition law enforcement in labour markets stems from the recognition of talent competition as an under-enforced area. This proactive approach by the TCA will contribute to ensuring fair competition and addressing emerging challenges in labour market dynamics.

The TCA's Approach to Competition Law Issues in Labour Markets from Past to Present

The prominence of the labour market gradually has increased on the TCA's agenda, especially in recent years, as it has for the other competition authorities across the world. No-poaching and wage-fixing agreements come first among the elements that constitute the subject of competition law enforcement in the labour market. The TCA has examined such anti-competitive practices in the labour markets in various decisions. Here we provide highlights of the most relevant decisions in this regard.

I. Landmark Cases on Wage-Fixing Agreementsi.

i.TV Series Producers, 2005

Anticompetitive concerns in the labour markets first came before the TCA in 2005 with the TV Series Producers decision. The allegations within this case were based mainly on the statement of one of the TV producers to the effect that some television series producers had agreed not to transfer actors and to keep actor's wages at a certain level with the following statement:

> We are the five friends who produce 90% of this sector. Without each other's knowledge, we will not offer jobs to each other's artists, and we adjust their prices by asking each other. At the beginning of the season, they ask, 'Brother, what did you pay for this, what did you pay for that?' and we fix this industry.

The focus of the assessment was on wage-fixing allegations rather than no-poaching agreements. The TCA emphasised that if the producers determined the actors' wages through an agreement, this action would constitute price fixing regarding purchase prices and this aimed to prevent competition. However, the TCA was unable to substantiate the statement of the concerned producer and decided that an investigation was unwarranted. It sent a written opinion to the undertakings that were party to the preliminary inquiry regarding the need to avoid such behaviour, emphasizing that the prevention of actors' transfer and the fixing of actors' wages may restrict competition. Also noteworthy is the one dissenting vote in this decision, which argued that the statements of the relevant producers demonstrated that they had made an agreement with the aim of restricting competition, thus warranting an investigation.

i.ii. Denizli Engineering Chambers, 2013

In the Denizli Engineering Chambers decision, the TCA decided to conduct a preliminary inquiry based on the allegation that a protocol arranged among certain engineering chambers in Denizli had set the minimum wages for engineers to be employed in food production facilities.

However, the TCA considered that determining the minimum wages of the profession members was a regulation directed towards the labour market and thus outside the scope of the application of the competition law. It also should be noted that in the early stages of its enforcement, the TCA considered such actions by professional associations as legal regulatory actions and preferred not to interfere by referring to the principle that special law prevails over general laws.

[1] TCA decision, 28 July 2005, No. 05-49/710-195.

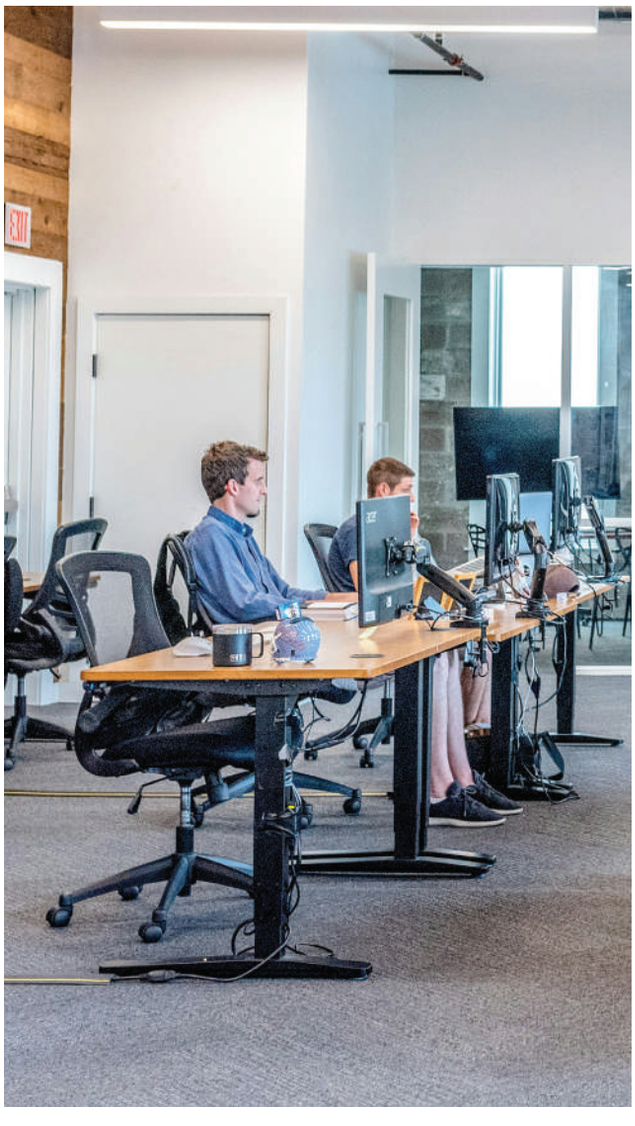
i.iii. Container Carriers, 2020

The TCA's Container Carriers decision is also of importance since it was the first decision to provide detailed theoretical evaluations and determinations regarding the labour market. Here, the TCA examined allegations that container carrier undertakings had agreed to fix the wages of drivers and not to allow them to transfer between the undertakings. During the on-site inspections, the TCA experts found many correspondences regarding no-poaching and wage-fixing agreements, some of which were as follows:

> 'Hello, good morning. Friends, please do not hire the person mentioned (...) You can call me for more details.'
>
> 'Friends, I wonder if we have any work on driver salaries and allowances for the new year. Again, if we make a joint decision on this matter, I believe that our driver friends will not switch jobs.'

The TCA decided that agreements made to fix the wages of the employees or restrict their transfer did not differ from the cartels established on the buying side of the market. In this context, it was underlined that there was no fundamental difference between (i) no-poaching and customer/market-sharing agreements and (ii) wage-fixing and price-fixing agreements. Moreover, the TCA considered engaging either in a wage-fixing agreement or a no-poaching agreement to be a restriction of competition by object.

However, the TCA decided to send a written opinion to the undertakings to put an end to their conduct that infringed the Turkish Competition Law. It saw no need to initiate an investigation as the effect of the agreement was limited due to procedural economy reasons. This decision reveals that the TCA adopted a more moderate approach to the labour markets at the early stage.



II. Landmark Cases on No-Poaching Agreements

ii.i. Private Schools, 2011

As stated above, no-poaching agreements first came before the TCA in 2005 with the TV Series Producers decision. Although it did not provide a detailed evaluation, the decision was the first indicator of a possible enforcement area. The first decision that included comprehensive evaluations regarding no-poaching agreements was the Private Schools decision.

The decision highlights the provisions related to teacher employment outlined in Principles of Private Schools, prepared by the Turkish Private Schools Association, an association of undertakings formed by private schools. The provisions include a ban on teacher transfers to other private schools along with their students as well as on directly offering transfers to teachers working in another private school.

The TCA emphasized that these principles did not benefit consumers and hindered the employment and mobility of teachers. It is also significant that the TCA assessed whether the Principles of Private Schools, including provisions on no-poaching, could benefit from an individual exemption. Considering that the TCA does not conduct individual exemption reviews for agreements that are deemed to restrict competition by object, it can be concluded that the TCA adopted an effect-based approach to no-poaching agreements in the relevant decision. On the other hand, concerning the opinions of the parties to the preliminary inquiry that the Principles of Private Schools was not binding on members, it was asserted that any decision with the intent or effect of restricting competition would be considered contrary to Turkish Competition Law irrespective of its binding nature. Thus, from this decision, it remains unclear whether the TCA adopted an effect-based or object-based approach.

Consequently, although the relevant principles were found to be a restriction of competition, the decision was made not to initiate an investigation and to send a written opinion to the relevant undertakings.

ii.ii. Chemical Producers, 2011

In its Chemical Producers decision, the TCA examined the allegation that a gentlemen's agreement existed between undertakings. This agreement purportedly restricted the hiring of employees from other undertakings during the non-compete period which had been agreed upon with their employer. Here, the TCA stated that the non-compete obligation under consideration was not solely between two undertakings, but rather between the undertaking and its employees. It also was stressed that the non-compete restrictions imposed on employees by the undertakings did not fall within the scope of the Turkish Competition Law. Furthermore, the claim in question was based solely on hearsay and could not be proven. Thus, the TCA decided not to initiate an investigation.

[2] *TCA decision, 28 March 2013, No. 13-17/245-120.*

[3] *TCA decision, 2 January 2020, No. 20-01/3-2.*

[4] *TCA decision, 3 March 2011, No. 11-12/226-76.*

In addition, the TCA highlighted that the said agreements on non-compete between undertakings could be exempted for certain periods. For example, this could involve restrictions on employee transfers, especially in sectors where technical knowledge, skills, and innovation are crucial.

ii.iii. B-Fit, 2019

The TCA's B-fit decision involved the evaluation of the agreement provisions of the B-Fit franchise. It stated that the franchise was not allowed to hire any personnel currently or formerly employed by B-Fit and/or another franchisee of B-Fit or who previously had worked for competitor undertakings due to the potential effect they could create in the labour market, even indirectly. Furthermore, they could not benefit from the group exemption. The restrictions also were deemed to limit competition beyond what was necessary for obtaining the benefits asserted by B-Fit, and thus an individual exemption could not be granted.

On the other hand, it was emphasized that the relevant provision did not prohibit recruitment entirely but rather necessitated the prior written consent of the franchisor. Consequently, the relevant agreement was deemed not a conventional no-poaching agreement. Furthermore, since the information and documents showed that the transfer of personnel between franchisees was possible, it was concluded the provision of the agreement did not restrict personnel transfer.

Moreover, considering B-Fit's market share was low, and there are many players in the market, the potential effects of the violation were deemed to be limited, it was decided an investigation was unwarranted. However, it was decided that the relevant provision imposed on the franchisee would be restricted to the term of the agreement and the rationale for obtaining written approval should be specified.

ii.iv. Private Hospitals, 2022

As seen, in the earlier decisions regarding no-poaching agreements, the TCA decided not to investigate for various reasons. The Private Hospitals decision can be regarded as the first case in which this trend shifted. Here, the allegations were that private health institutions and an association of undertakings had (i) jointly determined the operating room service fees charged to freelance physicians, (ii) restricted competition by preventing employee transfers and jointly determining the salary scales of employees, and (iii) exchanged competitively sensitive information.

In this context, the TCA concluded that 18 private health institutions and one association of undertakings had violated the Turkish Competition Law for various reasons, including limiting competition in the labour markets. A fine of TRY 58 million (approximately USD 2.4 million) was imposed on the undertakings. Among these, the TCA determined that 16 of the undertakings had limited competition in the labour markets, resulting in a total of approximately TRY 45 million (approximately USD 1.9 million).

III. A New Era for Labour Markets under Turkish Competition Law

Since the Private Hospitals' decision, the TCA's policy towards competition law issues in the labour markets has moved to a new (more serious and comprehensive) level. In this regard, we provide some analysis of the main decisions to clarify the TCA's approach to such practices.

iii.i. Labour Decision, 2023 – 49 Undertakings from Various Sectors

The TCA launched a much more comprehensive investigation into the labour markets in April 2021, shortly after the investigation into private hospitals had been initiated. Although the investigation initially was launched into 32 undertakings, the TCA expanded the scope of the investigation in the process and the number of undertakings concerned increased to 49. Among the parties to the investigation were leading undertakings from many sectors, including those of e-commerce, food, communication, media, and retail. The subject of the investigation was the allegation that these undertakings had made a gentleman's agreement not to make job offers or job interviews with each other's employees, essentially forming a no-poaching agreement.

The investigation was concluded with a total administrative fine of approximately TRY 151 million (approximately USD 6.4 million) imposed on 16 out of the 49 undertakings concerned. In addition, the investigation was concluded with a settlement process for 11 undertakings upon their request for settlement.

Since the TCA's reasoned decision has not been published yet, the detailed assessments constituting the basis for the violation are unknown. However, from a general perspective, these are the main findings determined within this case:

- Correspondence found among undertakings concerned demonstrated that employee transfers between them were not possible since a gentlemen's agreement was in effect.
- In (i) the internal correspondences of the relevant undertakings under investigation and (ii) the correspondences carried out between the undertakings and head-hunters were found to contain phrases such as 'untarget,' 'blacklist,' and 'grey-list,' indicating that the parties did not transfer employees under any conditions (imposing black-lists). No-poaching might also have been implemented flexibly, under a mutual permission system (imposing grey-lists).
- Some internal correspondence found identified certain competitor companies as 'off-limits,' indicating that employee transfers from these companies could not be made.

[5] *TCA decision, 26 May 2011, No. 11-32/650-201.*

[6] *TCA decision, 7 February 2019, No. 19-06/64-27.*

[7] *TCA decision, 24 February 2022, No. 22-10/152-62.*

[8] *The USD figures are converted using the exchange rate of USD 1 = TRY 23.74 based on the applicable Central Bank of the Republic of Türkiye average buying rate for January-December 2023.*

The TCA evaluated no-poaching agreements, which it equated to cartels, as restricting competition unless prior written approval was obtained from B-fit. This was the first decision in which no-poaching agreements were discussed within the scope of a vertical relationship.

Here, the provisions imposing such obligations fall within the scope of Article 4 of the Turkish Competition Law by their nature and being per se violations. It has stated that there was no need for making an effect-based analysis in identifying these violations.

The TCA also addressed that non-compete agreements regarding employees cover the sharing of labour/input, which constitutes one of the most important input items/assets. These agreements aim to restrict competition in the labour markets. Therefore, the implementation or effect of these agreements is not necessary. From the perspective of this type of violation occurring on the buying side of the market, when looking at violations on the purchasing side, the TCA's approach is to consider that actions contrary to competition on the buying side of the market have serious consequences and violate Turkish Competition Law in terms of purpose. These violations can be considered of the same nature as other types of violations such as price-fixing and customer/territory allocation.

iii.ii. Labour decision, 2024 – IT & Telecom

The TCA investigated undertakings operating in the field of technology to determine whether the undertakings had violated Article 4 of Turkish Competition Law by means of gentlemen's agreements in the labour market. The TCA imposed a fine of approximately TRY 92 million (approximately USD 3.9 million) on eight of the undertakings party to the investigation.

The TCA furthermore concluded that 12 of the undertakings had not conducted the alleged anticompetitive practices and thus did not impose administrative fines on them.

Concluding remarks

Economic literature does not differentiate between cartels in the output markets and cartels in the input markets. Both types of cartels aim to achieve the possibility of artificially using monopolistic power, and to seize the consumer surplus (for buying cartels, the producers/in the context of the case, the labour suppliers), enabling cartel members to obtain a surplus higher than the perfect competition market at the expense of the other players in the market.

Considering the adverse effects of no-poaching agreements on both the labour markets and the output market, the effects of these agreements are regarded by the TCA as identical to territory/ customer allocation in the market and should be evaluated under the same category.

In this direction, considering the nature and effects of no-poaching agreements, it is thought that these agreements constitute a cartel, as they are equivalent to anti-competitive practices/ agreements in product/ service markets that involve the allocation of markets/ customers/ regions. Specifically, no-poaching agreements imply the sharing of employees, who are a critical input for the final product/ service in labour markets, analogous to the anti-competitive behaviour of market/ customer/ region sharing on the buying side of labour markets. The TCA remains vigilant regarding competition law issues in the labour markets, refining its practice and approach accordingly. It is highly probable that the TCA will retain its strict approach to such violations.

[9] Arvato Lojistik Dış Ticaret ve E-Ticaret Hizmetleri A.Ş., Bilge Adam Bilgisayar ve Eğitim Hizmetleri Sanayi Ticaret A.Ş., Binovist Bilişim Danışmanlık A.Ş., Çiçeksepeti İnternet Hizmetleri A.Ş., D-Market Elektronik Hizmetler ve Ticaret A.Ş., Flo Mağazacılık ve Pazarlama A.Ş., Koçsistem Bilgi ve İletişim Hizmetleri A.Ş, LC Waikiki Mağazacılık Hizmetleri A.Ş., Sosyo Plus Bilgi Bilişim Teknoloji Danışmanlık Hizmetleri ve Ticaret A.Ş., TAB Gıda Sanayi ve Ticaret A.Ş., Türk Telekomünikasyon A.Ş., Veripark Yazılım A.Ş., Vivense Teknoloji Hizmetleri ve Ticaret A.Ş., Vodafone Telekomünikasyon A.Ş., Zeplin Yazılım Sistemler ve Bilgi Teknolojileri A.Ş., Zomato İnternet Hizmetleri Ticaret A.Ş..

[10] ADEO Bilişim Danışmanlık Hizmetleri San. ve Tic. A.Ş., Dsm Grup Danışmanlık İletişim ve Satış Ticaret A.Ş., Getir Perakende Lojistik A.Ş., Bitaksi Mobil Teknoloji A.Ş., Beymen Perakende ve Tekstil Yatırımları A.Ş., oBilet Bilişim Sistemleri A.Ş., Garanti Bilişim Teknolojisi ve Ticaret Türk A.Ş., Doğuş Bilgi İşlem ve Teknoloji Hizmetleri A.Ş., Commencis Teknoloji A.Ş., Future Teknoloji Ticaret A.Ş., Yemek Sepeti Elektronik İletişim Perakende Gıda Lojistik A.Ş.

[11] 'Investigation which was conducted about Certain Undertakings Due To Gentlemen's Agreements in the Labor Market Concluded,' Republic of Turkey Ministry of Trade, March 4, 2024, https://www.rekabet.gov.tr/en/Guncel/investigation-which-was-conducted-about–c212853a05daee1193c80050568585c9.

[12] 'Egem Bilgi İletişim Ticaret A.Ş., Etiya Bilgi Teknolojileri Yazılım Sanayi ve Ticaret A.Ş., Innova Bilişim Çözümleri A.Ş., i2i Bilişim Danışmanlık Teknoloji Hiz. ve Paz. Tic. A.Ş., Pia Bilişim Hizmetleri A.Ş., Erricson Telekomünikasyon A.Ş., Netaş Telekomünikasyon A.Ş., Turkcell İletişim Hizmetleri A.Ş.

[13] Akgün Yazılım Pazarlama ve Tic. Ltd. Şti, Amdocs Yazılım Hizmetleri A.Ş., Argela Yazılım ve Bilişim Teknolojileri San. ve Tic. A.Ş., Comodo Yazılım Sanayi ve Ticaret A.Ş., Fonet Bilgi Teknolojileri A.Ş., Inspirit Bilgi Teknolojileri Yazılım Danışmanlık Tic. Ltd. Şti., Kale Yazılım San. ve Tic. A.Ş., Kalitte Profesyonel Bilgi Teknolojileri Basım ve Yayıncılık Ltd. Şti., Magis Teknoloji A.Ş., Netrd Bilgi Teknolojileri ve Telekomünikasyon A.Ş., Vitelco Bilişim Hizmetleri Danışmanlık Ltd. Şti., 4S Bilgi Teknolojileri A.Ş.

Fitting No-Poaching under the Umbrella of Ancillary Restraints

The TCA considers no-poaching agreements as ancillary restraints in some instances. Such ancillary restraints are deemed legitimate if conducted under conditions accepted by the TCA. Since there is yet no legislation or any TCA-established precedent with respect to ancillary no-poaching agreements, it has been questioned whether no-poaching clauses brought within the framework of vertical relationships, in particular, could be considered as ancillary restraints. We suggest delving into the concept of ancillary restraints under the Turkish Competition Law and assessing whether and under what conditions no-poaching may be covered by the umbrella of the ancillary restraints.

I. The Concept of Ancillary Restraints under Turkish Competition Law

In paragraph 48 of the Guidelines on Relevant Undertakings, Turnover, and Ancillary Restraints in Mergers and Acquisitions ('Guidelines'), ancillary restraints are defined as 'restrictions that are directly related to the concentration, and which are necessary to the implementation of the transaction and to fully achieving the efficiencies expected from the concentration.' In this context, ancillary restraints, despite their potentially restrictive nature on competition, are considered legitimate as they enable the full implementation of a merger or an acquisition transaction that requires the TCA's approval. In other words, ancillary restraints are secondary obligations that support the primary obligations in merger and acquisition transactions.

II. The Determinant Criteria for the Validity of Ancillary Restraints

According to the Guidelines, for the evaluation of the validity of ancillary restraints, the following criteria are taken into consideration: (i) the direct relation to a merger or acquisition transaction; (ii) the necessity for the merger or acquisition transaction; (iii) the proportionality in terms of subject, duration, and geography; and (iv) the restrictive application only in relation to the relevant parties:

• Direct Relation: For ancillary restraints to be related directly to a merger or acquisition transaction, they must be closely associated with the merger or acquisition and facilitate the establishment of the contemplated structure after the transaction.

• Necessity: An ancillary restraint must be essential for the completion of the transaction, or without the restraint, the main transaction would be significantly uncertain or costly. In other words, if the absence of the ancillary restraint would result in a more difficult or expensive implementation for the merger or acquisition transaction, then this indicates the necessity of the restraint. Moreover, if there are alternative restraints that could achieve the same outcome with less impact on competition, such alternatives should be preferred.

• Proportionality: An ancillary restraint (i) should not exceed the necessary duration, (ii) should be limited to the goods and services that constitute the activity area of the economic unit being acquired, and (iii) should be limited to the geographic market in which the acquired company's goods are produced or services are provided.

According to the Guidelines, non-compete obligations not exceeding three years are considered reasonable. However, the TCA makes a case-by-case analysis and non-compete obligations exceeding three years also may be considered within the scope of ancillary restraints, provided they do not exceed the necessary extent dictated by the nature of the transaction. For instance, the TCA deemed a five-year non-compete period appropriate in a 2022 decision. In this decision, the ated duration of the non-compete obligation was found quite long and thus considered as of restrictive nature. However, the TCA found this ancillary restraint appropriate provided that its duration was reduced to five years.

In another decision, the TCA determined that a non-compete and no-poaching obligation proposed indefinitely could not be considered an ancillary restraint and limited the duration to 30 months in its decision.

Furthermore, a non-compete obligation extending beyond the geographic markets where the acquired company operates would exceed the purpose of the transaction. For example, in a 2014 decision, the TCA decided that enforcing a nationwide non-compete obligation was excessive, considering that the acquired company's broadest geographic market was Istanbul. Consequently, the TCA opted to limit the geographic scope of the non-compete to Istanbul.

• Restrictive Application Only in Relation to the Parties: Ancillary restraints imposed with a merger or acquisition transaction should restrict only the activities of the undertakings that are parties to the agreement. In other words, the restraint should not impact the activities of third parties not involved in the agreement or contain any elements that could harm these parties.

In conclusion, the TCA assesses whether these restraints are directly related and necessary for the structure aimed to be achieved as a result of the merger or acquisition transaction, whether they are proportional in terms of duration and geographic limit, and whether they are restrictive only to the parties involved. If the relevant criteria are met, the TCA authorises the merger or acquisition transaction along with the ancillary restraints.

III. No-Poaching as Ancillary Restraints

Until recently, ancillary restraints were evaluated under the merger control regime. The enforcement within this context is well established. However, no-poaching agreements can exist practically both in horizontal and vertical contexts and agreements. A recent precedent of the TCA shows that no-poaching agreements that have a horizontal extent will be considered a violation of Turkish Competition Law, precisely as a restriction of competition by object. This is because the TCA considers all companies as competitors when they compete for the employment of employees. Alternatively, no-poaching agreements also can come into question when the agreement being considered extends vertically, meaning it involves the procurement of goods or services.

The TCA also has referred to the concept of ancillary restraints in some decisions evaluating contracts between parties of a vertical nature. The provisions of some joint venture agreements that do not fall under the new turnover thresholds and therefore not directly examined under the merger control regime have been assessed as ancillary restraints. It is questioned whether no-poaching clauses brought within the framework of vertical relationships could be considered as ancillary restraints since there is yet no legislation or any TCA established precedent with respect to ancillary no-poaching agreements.

Within the context of US practice, it appears that no-poaching agreements that are related to a legitimate cooperation agreement and determined to be necessary for this cooperation agreement to be fulfilled are not considered per se violations. Nevertheless, in EU practice, no decision has been published addressing the ancillary restraint nature of no-poaching agreements in the labour market. However, the Croatian Competition Authority deals with the issue in a decision examining an agreement between two IT companies regarding the provision of IT services and consultancy. The aforementioned agreement involved no-poaching clauses aiming to enable the implementation of the contract by stipulating that only the employees involved in the execution of that particular work should not be poached during the service provision period. The Authority stated that there is high demand and limited supply in terms of workforce in the IT sector and that the circulation created by employees moving between enterprises is high. Therefore, the Authority indicated that if one party to the contract poaches employees from the other, the contract would become inapplicable. Thus, the non-poaching agreement was considered as directly related, necessary, and reasonable for the execution of the work in the main contract and accepted as an ancillary restraint.

Looking at the practice in Türkiye, it is evident that the TCA has adhered to the Guidelines regarding ancillary restraints. It has adopted the criteria of being directly related and necessary when evaluating such no-poaching agreements with a vertical extent. Yet, as inferred from the practice, such criteria should be evaluated on a case-by-case basis. Therefore, it would be worth to review the criteria from this perspective.

First, as the limits of a verbal agreement between the parties cannot be determined precisely, the condition that such an ancillary no-poaching agreement has been concluded in writing must be sought. Also, in the case of an allegation of a verbal agreement,

[14] *TCA decision, 24 March 2022, No. 22-14/233-101.*
[15] *TCA decision, 4 December 2009, No. 08-69/1124-440.*
[16] *TCA, decision, 26 March 2014, No. 14-12/221-97.*

only the defences of the parties and the statements reflecting the evidence can be taken as a basis, so the legal boundaries of an undefined agreement cannot be clearly determined.

Second, if it is determined that an ancillary no-poaching agreement has been concluded in writing, then the main agreement to which this agreement relates must be identified. If the main agreement cannot be determined definitively, it must be accepted that there is an explicit no-poaching agreement beyond the legitimate relationship boundaries between the parties, which cannot be assessed in terms of relevance and necessity.

Undertakings that seek to conclude an ancillary no-poaching agreement must incorporate these provisions into the main contract. In the event they prefer to make a separate contract related to employees, they must clearly regulate the context of the legitimate relationship under which the ancillary no-poaching provisions are established. Only after this point can the relevant criteria be evaluated. Thus, it will be assessed whether the no-poaching agreement is inseparably bound to the main agreement and subject to its application. If the main element of the agreement made between the parties consists only of no-poaching provisions, it cannot be argued that these provisions are ancillary restraints.

Another important criterion for ancillary no-poaching agreements is the necessity criterion. Provisions against poaching such as scope and duration should be evaluated in terms of necessity. If they are not proportional, they cannot be accepted as an ancillary restraint. Initially, the breadth of the employee group covered by the provisions should be considered. In almost all of the decisions regarding no-poaching agreements being considered as ancillary restraints, this issue is addressed. The general approach is that for no-poach agreements to be accepted as an ancillary restraint, they should not be arranged to cover all employees of the parties and should be designed only as far as necessary for the main agreement between the parties. Additionally, undertakings need to define a group of activities and direct connections to which the essential obligations of no-poaching of employees are subject.

Compared to ancillary restraints evaluated within the merger regime, it should not be expected that the no-poaching restrictions required for the application of individual projects or service contracts will be on the same scale as a transaction involving the transfer of all or a significant amount of assets. For this reason, decisions accepting the no-poaching agreements included in acquisition contracts that impose an employment ban on all employees of the undertakings as ancillary restraints cannot be considered precedents in the evaluation of no-poaching provisions added to the vertical agreements between undertakings.

The duration element also carries importance in terms of the necessity criterion. First, the duration should be determined precisely and should not exceed the duration of the main agreement. This is because a restriction, claimed to be necessary for the application of the main agreement, exceeding the duration of the agreement could mean that the necessity criterion is not met.

Furthermore, parties need to consider variables such as the geographic markets where the agreement will be applied or the cases in which the agreement will be applied also can be considered under the necessity criterion. Undertakings must arrange all these factors in the least restrictive manner possible.

Main takeaways

For a no-poaching clause to be considered compliant with competition law as an ancillary restraint, the following aspects are important:

• The no-poaching clause must be explicitly documented, whether integrated into an agreement or existing as a standalone clause, with clearly defined boundaries. Thus, it is crucial to avoid the uncertainties that a verbal agreement could cause.

• The no-poaching clause should be included in the main contract or, if a separate agreement is made, it should clearly regulate in which legitimate relationship context between the contracting parties the relevant provisions are established.

• Within the scope of the necessity element, for no-poaching clauses to be considered as ancillary restraints, they should not be designed to cover all employees of the undertakings and should be designed as necessary in terms of the main agreement. In this context, it can be said that undertakings need to identify a group of employees who can establish a concrete and direct connection with the objectives of the main agreement. This determination can sometimes be made based on title, position, or duty, or sometimes by listing the names of the employees directly. In any case, the employees covered by the clause must be precisely defined.

• Duration is also crucial in terms of the necessity criterion. The duration of the restriction imposed must be clearly defined. A clause lacking a definite date can be assumed to be applied indefinitely. Care should be taken not to impose restrictions in a no-poaching clause that would exceed the duration of the main agreement. For a restriction to be claimed necessary for the implementation of the main agreement, its duration shall not exceed the duration of the agreement. On the contrary, if the no-poaching clause exceeds the duration of the main agreement, this particularly may imply that the necessity criterion is not met.

[17] TCA decision, 21 August 2013, No.13-48/671-28; TCA decision, 28 August 2012, No.12-42/1318-431.

[18] CCA vs. KOIOS savjetovanje d.o.o., Zagreb. Retrieved from https://one.oecd.org/document/DAF/COMP/WD(2019)41/en/pdf

Deeper Dive into Private Hospitals Case: Fines for Restricting Doctors/Nurses' Mobility and Determining Service Fees

The Private Hospitals decision can be regarded as the first case in which the TCA investigated and fined the companies concerned for competition law infringements in the labour markets. Here, private health institutions and an association of undertakings:

• jointly determined the operating room service fees charged to freelance physicians,

• restricted competition by preventing employee transfers and jointly determining the salary scales of employees, and

• exchanged competitively sensitive information.

In this context, the TCA concluded that 18 private health institutions and one association of undertakings violated the Turkish Competition Law for various reasons including limiting competition in the labour markets. Within the scope of the decision, the activities of the relevant undertakings operating in Türkiye's two provinces, Samsun and Bursa, were examined separately. Let us take a look at those evaluations in more detail.

i. The TCA's Evaluation of the Undertakings Operating in Samsun

The TCA assessed that MEDICANA SAMSUN and MEDICALPARK/LIV SAMSUN had been parties to a gentlemen's agreement aimed at preventing the transfer of physicians. In the decision, it was determined that the two employees mentioned in the documents, evidencing the gentlemen's agreement, had not been able to transfer from MEDICALPARK/LIV SAMSUN to MEDICANA SAMSUN. Therefore, it was concluded that a gentlemen's agreement also had been put into practice.

The TCA also examined the physician transfer situation in respect of the two undertakings in question and emphasized the following points:

• Although it had been determined that the transfer of physicians between MEDICANA SAMSUN and MEDICALPARK/LIV SAMSUN had occurred, albeit in small numbers, physician circulation between other hospitals was higher than this;

• Even though a small number of transfers had occurred between the undertakings in 2017, 2019, and 2020, this did not indicate that there had been no agreement in those years; and

• Whether the transfers had occurred is merely an indication of whether or not the agreement had been put into practice, but since no-poaching agreements are per se violations, whether or not these agreements had been put into practice had no significance on the assessment of the violation.

Further, the statement made by the officials of Medicalpark/Liv Samsun, Medicana Samsun, Atasam, Büyük Anadolu, Özel Ana

Teşhis Tedavi ve Sağlık Hizmetleri A.Ş. ('LİMAN'), and Medi Bafra Özel Sağlık Hizmetleri San. Tic. A.Ş. ('MEDİBAFRA') that they would not allow the transfer of nurses between each other during meetings held in June 2020 was also assessed in the decision. However, since (i) the only document regarding the allegation was an oral statement of a party to the investigation; (ii) the relevant statement had not indicated that any decision had been taken to prevent the transfer of nurses, but only that it had been discussed; (iii) no documents on the subject could be obtained; and (iv) many nurses had been transferred between private hospitals between 2016 and 2020, it was assessed that no gentlemen's agreement had been made to prohibit the transfer of nurses.

ii. The TCA's Evaluation on Undertakings Operating in Bursa

The TCA stated that no-poaching and wage-fixing agreements, which constitute the main part of competition law enforcement in the labour markets, are no different from cartels. In light of this information, it was emphasized that gentlemen's agreements between competitors to prevent employee transfers violate the Turkish Competition Law per se. Accordingly, concerning the acts restricting competition in labour markets, the TCA based on the correspondence showing that the private health institutions in Bursa had agreed not to allow the transfer of each other's employees, stated that the correspondence in question revealed that the parties had decided to prevent the transfer of physicians. In addition to this correspondence, it also was determined that they had held meetings in this regard.

In this context, the TCA underlined that the undertakings in the WhatsApp group would not have been a party to the competition violation only if the undertaking officials had reported the situation to the administrative authorities or immediately and clearly notified their competitors of their opposition to the anti-competitive issues raised in the conversations/meetings. In the absence of any document showing such action being taken by any of the undertakings, the TCA concluded that Ceylan, Doruk Yildirim, Atek, Hayat, Pedmer, Aritmi, Medicabil and Uludağ Özel Sağlık Hizmetleri San. ve Tic. A.Ş. ('CİHANGİR'), the participants of the WhatsApp group named 'TSS Working Group,' had violated Article 4 of the Competition Act by preventing the transfer of physicians.

The TCA also found that some undertakings had held meetings to jointly determine salary scales and salary increases for employees. In this context, the TCA concluded that ARİTMİ, MEDİCABİL, CİHANGİR, CEYLAN, Göz Nurunu Koruma Vakfı Bayrampaşa Göz Hastanesi İktisadi İşletmesi Bursa Şubesi ('GÖZ VAKFI BURSA'), RETİNA, MLP Sağlık Hizmetleri A.Ş. Bursa Şubesi ('MEDICALPARK BURSA'), Medicana Hastane İşletmeciliği A.Ş. Bursa Şubesi ('MEDICANA BURSA'), Pembemavi Tedavi Hiz. San. ve Tic. A.Ş. ('PEMBEMAVİ'), and Burfiz Özel Sağlık Hizmetleri A.Ş. ('BURFİZ') had violated Article 4 of the Competition Act by determining (i) the scale of employee salary increases and (ii) the minimum/maximum increase rates.

A fine of TRY 58 million (approximately USD 2.4 million) was imposed on the undertakings concerned. Among these, the number of undertakings that the TCA determined had tried to limit competition in the labour markets was 16. The total fine applied for this reason was approximately TRY 45 million (approximately USD 1.9 million).

[19] TCA decision, 24 February 2022, No.22-10/152-62.

[20] The USD figures are converted using the exchange rate of USD 1 = TRY 23.74 based on the applicable Central Bank of the Republic of Türkiye average buying rate for January-December 2023.

Do No-Poach Agreements Always Lead to Market Allocation? A Brief Comparison between the TCA's Approach v. Judgement from the U.S. Court

The reasoned decisions of recent investigations concluded by the Turkish Competition Authority regarding labour markets have not been published yet. Meanwhile, it would not be wrong to point out as observed during the investigation phase that the tendency of the TCA is to interpret no-poach agreements as per se illegal labour market allocation. Furthermore, the U.S. Court's recent judgement on The United States v. Patel case highlights some significant assessments regarding the interpretation of market allocation.

Competition authorities and regulators around the world are paying close attention to competition law violations in labour markets. In this context, the US Department of Justice ('DOJ') and the Federal Trade Commission ('FTC') jointly published the Antitrust Guidance for Human Resource Professionals in 2016. The guidance established that the DOJ would commence criminal prosecutions on no-poach and wage-fixing agreements in the labour market, resulting in the initiation of several criminal cases. Additionally, the TCA also has been busy concluding two investigations: one initiated against undertakings in the IT sector and the other against companies from various sectors. It imposed significant administrative monetary fines on the respective undertakings, adopting a decisive approach similar to that of the DOJ regarding market allocation.

The United States v. Patel case, one of the latest cases on no-poach agreements, is helpful to understand the approach of the US on market allocation.

In December 2021, the DOJ brought criminal charges against the executives of an aerospace firm and its outsourced suppliers regarding allegations that the no-poach agreements between the defendants were per se illegal labour market allocation. Upon the indictment, which was based on the defendants conducting a no-poach agreement for a nine-year period to prevent the transfer of qualified employees working on projects for the aerospace firm, the defendants filed a motion to dismiss. In December 2022, the Court dismissed the motion on the grounds it disagreed with the DOJ in terms of accepting all no-poach agreements as per se illegal market allocation. However, it held that a no-poach agreement has the potential to be a market allocation depending on the circumstances. Amid the trial process, the defendants provided evidence indicating that the agreements did not suppress employees' wages or mobility, and the alleged restrictions might have led to competitive benefits. Evidence was submitted establishing that the employees were able to switch between different engineering firms and hiring among the respective firms was commonplace throughout the alleged agreement. This evidence led the Court to conclude that the

agreement had so many exceptions that it could not be assessed to meaningfully allocate the labour market. As a result, the Court (i) refused to apply the per se rule, on the grounds that the no-poach agreement subject to the case did not significantly restrict competition; and (ii) accepted the defendant's claims that the no-poach agreements were ancillary restraints within the scope of legitimate collaborations, thereby requiring the rule of reason rather than per se standard. In April 2023, the Court ordered a judgement of acquittal based on the failure of the DOJ to prove that the no-poach agreements constituted a per se illegal market allocation. A noteworthy statement from the Court was that applying the per se standard to the mentioned no-poach agreement would expand the commonly accepted definition of market allocation in a way that is not explicitly utilised previously. The Patel case is significant for presenting an alternative rather mild approach on the assessment of no-poach agreements, as opposed to a stricter view of the TCA. The case established significant guidance on the exceptional per se standard in labour markets, emphasising the DOJ's burden of proof regarding the occurrence of irrebuttable presumed harm. Moreover, the acquittal raises the undertakings' hopes regarding the defences of a restraint being ancillary to a legitimate business collaboration. Following several acquittals, including (i) the United States v. DaVita, the DOJ's first criminal no-poach case resulting with acquittal from the jury, (ii) the United States v. Manahe, involving no-poach and wage-fixing agreements between four healthcare agency executives, which also concluded with acquittal from the jury, it appears that the DOJ's approach to criminal enforcement regarding labour markets may have evolved due to these unsuccessful prosecutions.

In contrast to the Patel case, the TCA currently approaches anti-competitive agreements in the labour markets to evaluate them as per se violations, similar to market allocation, as they are not different from cartels.

In its B-FIT decision, the TCA examined no-poach provisions in the franchise agreements. With this decision, the TCA did not explicitly state that the no-poach agreements are per se violations but instead examined whether the conditions for individual exemption were fulfilled. In its İzmir Container decision, the TCA made some evaluations suggesting that the violation in question might be evaluated as a per se violation. However, the TCA did not proceed with the investigation and did not impose any administrative fines, considering the limited effect on the market. Although the TCA's approach was softer in the past, with its Private Hospitals decision, it explicitly stated that the no-poaching agreements are per se violations. This decision clearly demonstrates the TCA's approach, which is to evaluate the no-poaching agreements as per se violations. However, does not clearly indicate the TCA's stance on ancillary restraints, as there are no evaluations regarding ancillary restraints in the decision.

The TCA also published its short-form decisions in two other investigations regarding anti-competitive agreements in the labour markets and imposed administrative fines on several undertakings. In these investigations, the TCA did not accept commitment applications of the several undertakings, considering that the no-poach agreements lead to market allocation, they are per se violations and thus, they should be evaluated as a cartel. Indeed, the fines imposed by the TCA calculated are based on cartel violations rather than other violations. It is not yet known whether the TCA's view on this issue will evolve; however, the awaited reasoned decisions might shed light on its assessments.

Focusing on labour market issues is significant as it would prevent the misclassification of employees, low wages and benefits, reduced quality of jobs available for the employees and limited mobility of employees. The competition authorities worldwide might have ignored harms in labour markets in favour of expected benefits in goods and services markets. Recent agendas of the authorities might be a compensation for this absence. Nevertheless, the balance should be maintained between law enforcement and legal certainty. Many national authorities expect laws, as well as Türkiye, since the case law has not developed yet to provide clarification and for the companies to remain vigilant with their antitrust compliance.

Although there is no doubt that the labour market issues will remain a high priority for the competition authorities, there might be a lack of clear guidelines, as seen in the TCA's situation. Even though labour market concerns have been on the TCA's agenda for several years and preparation of guidelines on competition issues in labour markets has been announced, no such guidelines have been published yet. The TCA's sensitivity towards the labour market has had remarkable benefits for labour empowerment. Additionally, guidelines on labour markets would assist employers in understanding how they should act and increase employer awareness.

[21] U.S. Department of Justice Antitrust Division and Federal Trade Commission. (2016). Antitrust Ğuidance for Human Resource Professionals. Retrieved from https://www.justice.gov/atr/file/903511/download

[22] TCA decision, 7 February 2019, No. 19-06/64-27.

[23] TCA decision, 2 January 2020, No. 20-10/3-2.

[24] The TCA decision, 24 February 2022, No. 22-10/152-62.

A Global Outlook at Competition Law Developments in Labour Markets

*Agreements between undertakings to restrict the mobility of employees and/or restricting competition in terms of compensation and side benefits have been targeted by the competition authorities in various jurisdictions. Within this context, for example, the United States (***'US'***) Federal Trade Commission (***'FTC'***) and Department of Justice (***'DOJ'***) issued the Antitrust Guidance for Human Resource Professionals in 2016, while in the EU, there have been calls for competition law action to target restrictive agreements by the European Commission. Finally, strong enforcement actions against restrictive agreements in the labour market have been taken in other jurisdictions such as the United Kingdom, Japan, and EU Member States, including France, Portugal, Lithuania and Romania. We summarise global competition law developments in the labour market with a particular focus on major jurisdictions throughout the world and provide our recommendation on how to limit compliance risks in the labour markets.*

III. United States – HR Guidance and more

The starting point for the enforcement of labour market cartels was in 2007 when the Competition Division of the DOJ launched an investigation into a hospital and healthcare organisation for colluding on wages. Three years later, in 2010, the DOJ investigated several tech companies (eBay, Intuit, Lucasfilm, Pixar, Adobe, Apple, Google, and Intel) for mutual agreements not to hire each other's employees. These investigations ended within three separate settlement procedures. The defendants settled with the government and agreed in a follow-on class action to pay victims more than USD 400 million.

In 2016, the DOJ and the FTC published a joint Antitrust Guidance for Human Resource Professionals ('HR Guidance') to alert human resource ('HR') professionals and others involved in hiring and compensation decisions to potential violations of the antitrust laws.

The HR Guidance informs human resources professionals about how competition law applies to the labour market. The DOJ and the FTC state that wage cartels and no-poaching agreements fall under the definition of a restriction on competition (also known as a per se violation) in the HR Guidance. In this context, the document points to two main anticompetitive conduct in the field of human resources: (i) agreements that restrict compensation terms (e.g., salary-fixing agreements) and no-poaching agreements, and (ii) the exchange of competitively sensitive information.

According to Antitrust Red Flags for Employment Practices, anticompetitive behaviour includes:

• agreeing with another company about employee salary or other terms of compensation, either at a specific level or within a range;
• agreeing with another company to refuse to solicit or hire that other company's employees;
• agreeing with another company about employee benefits and/or other terms of employment;
• expressing to competitors that you should not compete too aggressively for employees;
• exchanging company-specific information about employee compensation or terms of employment with another company, or receiving documents that contain another company's internal data about employee compensation;
• participating in a meeting, such as a trade association meeting, where the above topics are discussed; and
• discussing the above topics with colleagues from other companies, including during social events or in other non-professional settings.

For clarity, below we elaborate on the anti-competitive conduct in the labour market in three sub-sections: (i) naked wage-fixing or no-poaching agreements, (ii) agreements that are reasonably necessary to a larger legitimate cooperation between the employers (i.e., ancillary restraints), and (iii) the exchange of competitively sensitive information, including a brief account of the recent developments in the US.

i.i. Naked wage-fixing or no-poaching agreements

The HR Guidance explicitly states that naked wage-fixing or no-poaching agreements among employers, whether entered into directly or through a third-party intermediary, are per se illegal under the antitrust laws. According to the HR Guidance, individuals are likely to break the antitrust laws if they agree with individual(s) at another company: about employee salary or other terms of compensation, either at a specific level or within a range (so-called wage-fixing agreements), or to refuse to solicit or hire that other company's employees (so-called 'no-poaching' agreements). Please note that from an antitrust perspective, firms that compete to hire or retain employees are competitors in the labour market, regardless of whether the firms make the same products or compete to provide the same services. It does not matter whether the agreement is informal or formal, written or unwritten, spoken or unspoken.

Antitrust violations in the labour market may have severe consequences, including criminal prosecutions against individuals. In 2021, the DOJ opened several criminal investigations and has since filed multiple criminal indictments. The Surgical Care Affiliates LLC was involved in different antitrust cases concerning the healthcare sector. The law and practice demonstrate that the no-poaching agreements pose a problem from the perspective of the antitrust laws, particularly in the US unless those are reasonably necessary (as explained in the next section below).

The HR Guidance differentiates between (i) naked wage-fixing or no-poaching agreements, and (ii) agreements that are reasonably necessary to a larger legitimate cooperation between the employers. Within this scope, agreements that are reasonably necessary to a larger legitimate cooperation between the employers are not considered per se illegal under US antitrust laws.

The US authorities clarify that its enforcement actions do not prohibit non-solicitation provisions that are reasonably necessary for (i) mergers or acquisitions, investments, or divestitures, including due diligence-related actions; (ii) contracts with consultants or recipients of consulting services, auditors, outsourcing vendors, recruiting agencies or providers of temporary employees or contract workers; and (iii) the settlement or compromise of legal disputes.

In Knorr-Bremse, the DOJ characterised the no-poaching agreement between Knorr and Wabtec as a naked restraint that was not reasonably necessary to any separate transaction. However, the decision was significant as it discussed the terms for legitimate agreements not to solicit, recruit or hire employees that were ancillary to a legitimate collaboration. In this scope, parties agreed that such agreements should:

- be in writing and signed by all parties thereto;
- identify, with specificity, the agreement to which it was ancillary;
- be tailored narrowly to affect only employees who were reasonably anticipated to be directly involved in the agreement;
- identify with reasonable specificity the employees who were subject to the agreement; and
- contain a specific termination date or event.

It is also important to highlight at this point that the evaluation of no-poaching agreements in franchising contexts could be more lenient under the US antitrust law. In the Deslandes v. McDonald's decision, for example, it was established that the restrictions should be evaluated under the rule of reason approach despite the plaintiffs' arguments that the court should apply the quick-look or subject the non-compete clauses to per se treatment. Nevertheless, the DOJ and the FTC published a joint amicus brief arguing that such naked restrictions should be illegal per se, in line with plaintiffs' arguments. They assert that horizontal no-hire restrictions are per se illegal, unless the employer can show that the provision is 'ancillary' to the franchise agreement itself. In this case, it depends on whether the hiring restriction is 'reasonably necessary' to a pro-competitive benefit of the franchise agreements.

i.ii. Exchange of competitively sensitive information

The exchange of competitively sensitive information also may violate antitrust laws. Even if an individual does not agree explicitly to fix compensation or other terms of employment, exchanging competitively sensitive information could serve as evidence of an implicit illegal agreement. While agreements to share information are not per se illegal and therefore not prosecuted criminally, they may be subject to civil antitrust liability when they have, or are likely to have, an anticompetitive effect. For completeness, in case the exchange of competitively sensitive information could serve as evidence of an implicit illegal agreement such as a naked wage-fixing or no-poach agreement, the DOJ could bring criminal prosecution against individuals, companies or both. However, it is possible to design and carry out information exchanges in ways that conform with the antitrust laws, provided the following criteria are met:

- a neutral third party manages the exchange,
- the exchange involves relatively old information,
- the information is aggregated to protect the identity of the underlying sources, and
- enough sources are aggregated to prevent competitors from linking particular data to an individual source.

An early example of an antitrust violation relating to the periodical exchange of information on salaries and side benefits is US v. Utah Society for Healthcare Human Resources Administration et al. in 1994. The DOJ sued the Utah Society for Healthcare Human Resources Administration, a society of HR professionals at Utah hospitals, for conspiring to exchange non-public prospective and current wage information about registered nurses. The exchange caused defendant hospitals to match each other's wages, keeping the salaries of registered nurses in Salt Lake County and elsewhere in Utah artificially low. The case ended in a consent judgment so that registered nurses could benefit from competition for their services.

In the 2001 Todd v. Exxon case, it was alleged that 14 defendant employers had met regularly to discuss the results of periodically conducted surveys of employees' past and current salaries, as well

as the employers' current and projected salary budgets. Salary and other compensation data were regularly collected, analysed, and distributed among the defendants by themselves and by a third-party consultant. In its appellate review of this decision, the Second Circuit Court applied the rule of reason standard and highlighted that the 'structure of the industry involved, and the nature of the information exchanged' must be considered in deciding whether the alleged conduct violates antitrust rules.

In addressing 'the nature of the information exchanged,' the Second Circuit clearly laid out the four factors that courts should consider in determining whether the information exchange is anticompetitive: (i) the timeframe to which the information pertains to (i.e., whether the information is historical or current/future); (ii) the specificity of the information, (iii) the public availability of the information, and (iv) the context of the information exchanged. Federal Trade Commissioner J. Thomas Roche commented that factors such as the existence of a concentrated industry, a fungible product or service, inelastic demand, use of current or future data, non-aggregated results, not making the survey results in public, frequent meetings among participants, and agreements regarding the use of the survey results generally raise the antitrust scrutiny of information exchanges.

Information exchanges from the competition law perspective are treated in the same way, irrespective of the industry. A special caution must be taken in commercially sensitive information among competitors, paying attention to the age, aggregation, and nature of the information. All in all, the US approach to the application of the antitrust rules to the labour markets is straightforward. A distinction is made between naked and ancillary restraints. In this respect, naked no-poach and wage-fixing agreements are per se illegal under US Law, meaning that such conduct is banned regardless of its actual/potential effects in the labour market. Ancillary restrictions, on the other hand, are treated under the 'rule of reason' analysis and are expected to be reasonably necessary for the legitimate cooperation between parties to an agreement.

II. The EU and Other Examples

EU officials have emphasised that the scope of competition law rules also extends to the labour market repeatedly. It seems plausible to assume that the EC will treat wage-fixing and no-poaching agreements as cartels/per se restrictions of Article 101 of the TFEU. While the precise enforcement action at the level of the European Commission is lacking, there have been numerous cases at the national level of the EU member states demonstrating that the no-poaching agreements infringe competition law, with some exceptions. Let's look at some of the prominent competition cases in the EU and some other jurisdictions:

[26] Department of Justice and the Federal Trade Commission (2016). Antitrust Guidance for Human Resource Professionals. Retrieved from https://www.justice.gov/atr/file/903511/download. Access Date: 9 February 2023.

[27] Speech by EVP M. Vestager at the Italian Antitrust Association Annual Conference - 'A New Era of Cartel Enforcement' (22 October 2021). Retrieved from https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/speech-evp-m-vestager-italian-antitrust-association-annual-conference-new-era-cartel-enforcement_en. Accessed 9 February 2023. Also, Draft Report on Competition Policy - Annual Report 2022- (European Parliament Committee on Economic and Monetary Affairs 2023). Retrieved from https://europarl.europa.eu/doceo/document/ECON-PR-740653_EN.docx.

[28] United States v. Arizona Hosp. & Healthcare Ass'n & AzHHA Service Corp., No. CV07-1030-PHX (D. Ariz. 2007).

[29] United States v. Adobe Sys. Inc., No. 10-CV-01629 (D.D.C. 2010); United States v. Lucasfilm Ltd., No. 10-CV-02220 (D.D.C. 2010).

[30] In re High–Tech Employee Antitrust Litigation, 856 F. Supp. 2d 1103 (N.D. Cal. 2012); Nitsch v. Dreamworks Animation SKĞ Inc., 315 F.R.D. 270 (N.D. Cal. 2016).

[31] Federal Trade Commission and Department of Justice. "FTC-DOJ Antitrust Guidance for Human Resource Professionals." Retrieved from https://www.ftc.gov/system/files/documents/public_statements/992623/ftc-doj_hr_red_flags.pdf

[32] HR Guidance, p. 3.

[33] 'Health Care Company Indicted for Labor Market Collusion' (7 January

Jurisdiction/year	Allegations/violations	Outcome
European Commission/2023	Companies active in the online ordering and delivery of food, groceries and other consumer goods in two Member States	Unannounced inspections pending
Croatia/2015	Gemicro, IT sector/abuse of dominance by refusing to deal with businesses that would not promise they would not hire former Gemicro's employees from competing businesses	Commitment to eliminate this clause accepted
Croatia/2018	A no-poaching agreement between BILOG and KOIOS, viewed as ancillary to IT and consultancy services agreements.	Was not found restrictive or anticompetitive
France/ 2017	A cartel with the participation of the groups Forbo, Gerflor, Tarkett, Midfloor, and Topfloor, active in the PVC and linoleum floor coverings industry, and the industry's trade association (SFEC). Included no-poaching and wage-fixing.	Restricted competition by object and imposed administrative fines
Hungary/2020	The Association of Hungarian HR Consulting Agencies in its internal rules fixed minimum fees and other conditions with respect to the labour-hire and recruitment + no-poaching.	Fined for breach of Article 101(1) TFEU

2021). Retrieved from https://www.justice.gov/opa/pr/health-care-company-indicted-labor-market-collusion. Accessed 10 February 2023. For other cases, please see 'Second Individual Charged with Fixing Wages for Health Care Workers and Obstructing FTC Investigation' (19 April 2021), retrieved from https://www.justice.gov/opa/pr/second-individual-charged-fixing-wages-health-care-workers-and-obstructing-ftc-investigation. Retrieved 10 February 2023; and 'Former Aerospace Outsourcing Executive Charged for Key Role in a Long-Running Antitrust Conspiracy' (8 December 2021) Retrienved from https://www.justice.gov/opa/pr/former-aerospace-outsourcing-executive-charged-key-role-long-running-antitrust-conspiracy. Accessed on 10 February 2023.

[34] Federal Register, "United States v. Knorr-Bremse AĞ and Westinghouse Air Brake Technologies Corporation; Final Judgment," (Federal Register, November 7, 2018), accessed February 10, 2023, https://www.justice.gov/atr/case-document/file/1084651/download.

[35] See Deslandes v. McDonald's US, LLC, https://casetext.com/case/deslandes-v-mcdonalds-us-llc.

[36] Federal Trade Commission, "FTC Joins Justice Department in Amicus Brief Supporting Workers' Challenge to McDonald's 'No Hire' Franchise Restrictions," 10 November 2022, https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-joins-justice-department-amicus-brief-supporting-workers-challenge-mcdonalds-no-hire-franchise (Accessed: 10 February 2023). Also, United States Department of Justice, "U.S. v. Utah Society for Healthcare Human Resources Administration et al.," https://www.justice.gov/atr/case/us-v-utah-society-healthcare-human-resources-administration-et-al

[37] HR Guidance, p. 4.

[38] Ibid.

[39] See United States Department of Justice, "U.S. v. Utah Society for Healthcare Human Resources Administration et al.," https://www.justice.gov/atr/case/us-v-utah-society-healthcare-human-resources-administration-et-al

[40] Todd v. Exxon, 275 F.3d 191, 198 (2d Cir. 2001).

[41] J. Thomas Rosch, "Antitrust Issues Related to Benchmarking and Other Information Exchanges," 3 May 2011, https://www.ftc.gov/sites/default/files/documents/public_statements/antitrust-issues-related-benchmarking-and-other-information-exchanges/110503roschbenchmarking.pdf (Accessed: 10 February 2023).

[42] European Commission, "Press release: Antitrust: Commission publishes guidance on competition rules applicable to the labour market," November 22, 2023, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5944.

[43] 'Gemicro commitments accepted' (AZTN, 12 June 2015), [Online], Available: https://www.aztn.hr/en/gemicro-committments-accepted/ [Accessed: 12 February 2023].

[44] 'Competition Issues in Labour Markets – Note by Croatia' (OECD 2019) [Online], Available: https://one.oecd.org/document/DAF/COMP/WD(2019)41/en/pdf [Accessed: 12 February 2023].

[45] 'See https://www.autoritedelaconcurrence.fr/en/decision/regarding-practices-implemented-hard-wearing-floor-covering-sector Access Date: 02.02.2023.

[46] See 'Decision regarding practices implemented in the hard-wearing floor covering sector' (Autorité de la Concurrence, [Date]), [Online], Available: https://www.autoritedelaconcurrence.fr/en/decision/regarding-practices-implemented-hard-wearing-floor-covering-sector [Accessed: 02 February 2023].

[47] Lithuanian Court Overturns Basketball League Sanctions for Wage-Fixing' [Online], Available: https://globalcompetitionreview.com/article/lithuanian-court-overturns-basketball-league-sanctions-wage-fixing [Accessed: 12 February 2023].

[48] See 'ACM Warns Employers: Non-Hiring Arrangements Are Prohibited' (Autoriteit Consument & Markt, [Date]), [Online], Available: https://www.acm.nl/en/publications/acm-warns-employers-non-hiring-arrangements-are-prohibited [Accessed: 02 February 2023].

[49] See 'The Polish Competition Authority Initiates Proceedings Against National' [Online], Available: https://www.concurrences.com/en/bulletin/news-issues/april-2021/the-polish-competition-authority-initiates-proceedings-against-national [Accessed: 01 October 2021].

[50] Global Competition Review. 'Speedway League and Ğoverning Body Sanctioned in Poland Imposing Salary Cap.' [Online] Available at: https://globalcompetitionreview.com/article/speedway-league-and-governing-body-sanctioned-in-poland-imposing-salary-cap [Accessed on: Insert Access Date].

Jurisdiction/year	Allegations/violations	Outcome
Lithuania/2020	The Lithuanian Basketball League and 10 basketball clubs fixed the wages of basketball players.	Overturned by the court due to lack of impact assessment
The Netherlands /2010	A no-poaching agreement was made between 15 hospitals not to recruit or employ anaesthesiologists for a period of 12 months	Illegal
The Netherlands/2022	In some sectors, such as energy and technology, it was difficult to find qualified employees, which led to no-poaching agreements.	A warning that no-poach agreements were illegal
Poland/2021	The Polish Basketball League and 16 basketball clubs determined the terms of contract termination and fixed wages.	Fines imposed
Poland/2023	The Polish Motorsports Federation and the company's top speedway league imposed salary caps on professional motorcyclists.	Fines imposed

Jurisdiction/year	Allegations/violations	Outcome
Portugal/2022	31 football clubs agreed to prevent the recruitment of players who unilaterally had terminated their employment contracts during the COVID-19 pandemic.	Sanctioned
Romania/2022	Seven automotive firms allegedly were involved in no-poaching of automotive engineers and wage-fixing agreements	Investigation
Spain/2010	Eight companies operating as road transport forwarding agents had no-poaching agreements	Violation by object, fines imposed
Spain/2011	Eight manufacturers of cosmetic products agreed not to hire each other's salespeople or make cold calls without permission	Fines imposed
Switzerland/2022	34 banks allegedly were involved in the illegal sharing of pay details	Preliminary investigation
Outside of the EU		
Mexico/2021	17 professional soccer clubs, the Mexican Football Federation, and eight individuals accused of jointly capping wages for female soccer players	Fines imposed
Peru/2023	Six construction companies engaged in no-poaching practices	Fines imposed
UK/2006	OFT-UK decision, 'a fee-fixing cartel,' the exchange of information on future fees by certain independent fee-paying schools.	Fines imposed

[51] *AdC Issues Sanctioning Decision for Anticompetitive Agreement in the Labor Market for the First Time' (Autoridade da Concorrência, 29 April 2022), [Online], Available: https://www.concorrencia.pt/en/articles/adc-issues-sanctioning-decision-anticompetitive-agreement-labor-market-first-time [Accessed: 12 February 2023].*

[52] *See 'Investigatie Piata Muncii Ian 2022' (Consiliul Concurenei, January 2022), [Online], Available: http://www.consiliulconcurentei.ro/wp-content/uploads/2022/01/investigatie-piata-muncii-ian-2022.pdf [Accessed: 02 February 2023].*

[53] *Decision of the Spanish NCA, 31 July 2010, Resolución (EXPTE. S/0120/08, Transitarios).*

[54] *Decision of the Spanish NCA, 2 March 2011, Resolución (EXPTE. S/0086/08, Peluquería Profesional).*

[55] *See 'NSB news: [Title of the Press Release]' [Online], Available: https://www.weko.admin.ch/weko/en/home/medien/press-releases/nsb-news.msg-id-92044.html [Accessed: 21 February 2023].*

FINAL REMARKS

Competition law enforcement in the labour market has been proliferating throughout the world in the last ten years. Particularly, anti-competitive agreements between competing undertakings in the labour market have been targeted by many competition authorities worldwide.

• The US has been one of the leading jurisdictions with respect to civil antitrust enforcement in the labour market with strict antitrust scrutiny. Many cases brought charges against corporations and individuals regarding anti-competitive conduct. Additionally, the US courts have been reluctant to impose criminal penalties on individuals for allegedly anticompetitive conduct in the labour market.

• A distinction exists between naked and ancillary restraints. In this respect, naked no-poach and wage-fixing agreements are per se illegal under US Law, meaning that such conduct is banned regardless of its actual/potential effects in the labour market. Ancillary restrictions, on the other hand, are treated under the 'rule of reason' analysis and are expected to be reasonably necessary for the legitimate cooperation between parties to an agreement.

• The jurisprudence relating to the exchange of competitively sensitive information is not sufficiently clear yet. We understand that such exchange of information is assessed only in light of a rule of reason analysis, which requires proving its actual or potential effects in the relevant labour markets. The exchange of competitively sensitive information also may lead to criminal or civil penalties in the US, as this may serve as evidence of an implicit illegal agreement and/or may have potential or actual anticompetitive effects in the labour market.

• The enforcement action at the EU level has been limited so far. No-poaching and wage-fixing agreements are likely to fall into the category of buyer cartels and have a direct impact on individuals and the economy. Account of the effects of the no-poaching agreement on the labour market and wages is to be taken when determining the anti-competitiveness of collusive behaviour under Article 101(1) of the TFEU.

• There have been many cases at the national level of EU member states condemning naked no-poaching and wage-fixing restrictions in the EU. The exchange of private information about employee salaries and bonuses, agreements on preventing the recruitment of players who unilaterally terminated their employment contracts during the COVID-19 pandemic, wage-fixing, and no-poaching agreements have been among the most common types of violations detected.

• Considering the adverse effects of no-poaching agreements on both the labour markets and the output market, the effects of these agreements are regarded by the TCA as identical to territory/customer allocation in the market and should be evaluated under the same category. The TCA remains vigilant regarding competition law issues in the labour markets, refining its practice and approach accordingly. It is highly probable that the TCA will retain its strict approach to such violations.

• In an attempt to limit the number of violations in the labour market, the competition authorities have issued various secondary legislation/materials, such as guidelines, advisory bulletins, and

detailed reports. The TCA is working on its own guidelines in this regard.

• At the same time, the liability for such infringements becomes more serious in many jurisdictions. Similar to the US, it will be a criminal offence as of 23 June 2023 in Canada to enter into wage-fixing and no-poaching agreements.

• Consequently, the number of private antitrust damage claims also may be expected to increase with the development of competition law enforcement in the labour market, particularly, in jurisdictions where plaintiffs are awarded triple damages (e.g., the US).

• Considering the increasing competition law enforcement risks in labour markets, the competition compliance teams are faced with more challenges. Compliance risks for global companies are even more complicated as anti-competitive conduct may have spill-over effects in multiple jurisdictions, which may also entail criminal law sanctions on individuals.

• We also note that the level of competition law awareness in HR departments remains significantly low, as competition law jurisprudence is relatively novel for this area. In this respect, we consider that the following actions should be adopted to minimise the competition law risks arising in labour markets:

o Prepare guidance papers along with practical Do's/Don'ts lists for HR staff and obtain compliance commitments from the staff;

o Provide workshops and provide competition law training sessions for HR staff;

o Circulate regular competition compliance briefing notes, which should include recent developments in the area;

o Establish technological infrastructure to detect risky communication;

o Sign confidentiality agreements with HR staff and establish procedures to prevent the exchange of competitively sensitive information for employment and post-employment periods; and

o Conduct mock inspections and establish hotlines for whistle-blowers.

To conclude, as competition law enforcement in the labour market intensifies globally, it is crucial for organizations to navigate the evolving landscape with vigilance and compliance. By implementing proactive measures, such as comprehensive training for HR personnel, robust compliance protocols, and technological safeguards, companies can mitigate the risks associated with anti-competitive behavior. Additionally, fostering a culture of awareness and accountability within HR departments will be essential in safeguarding against potential violations and ensuring fair and competitive practices in the labour market.

[56] See 'COFECE sanciona a 17 clubes de la Liga MX, a la Federación Mexicana de Fútbol y 8 personas físicas por coludirse en el mercado de fichaje de las y los futbolistas' [Online], Available: https://www.cofece.mx/cofece-sanciona-a-17-clubes-de-la-liga-mx-a-la-federacion-mexicana-de-futbol-y-8-personas-fisicas-por-coludirse-en-el-mercado-de-fichaje-de-las-y-los-futbolistas/, [Accessed: 02 February 2023]. Also, "See [Title of the Intelligence Report]" [Online], Available: https://app.parr-global.com/intelligence/view/intelcms-hf7jkb, [Accessed: 02 February 2023].

[57] Global Competition Review. 'Peru fines construction companies in first no-poach case.' [Online] Available at: https://globalcompetitionreview.com/article/peru-fines-construction-companies-in-first-no-poach-case.

[58] Office of Fair Trading. Decision no CA98/05/2006, "Exchange of Information on future fees by certain independent fee-paying schools," Case CE/2890-03, dated 20 November 2006.

Project Everest

A surprise encounter, an idea, exchanged why nots and here we go!

ACTECON's social responsibility initiative, The Story Books on Competition Law, was a dream come true, reaching over 25,000 children worldwide through The Secret Agreement and The Greatest Artist last year. This number will continue to increase to emphasize the notions of ethics and competition. This year, we are excited to be part of a challenge for future and new generations. ACTECON is proud to stand beside legendary alpinist Tunç Fındık, one of only 50 people to complete 14 X 8,000 m., as he climbs to the world's highest peak, Mount Everest this time without the aid of supplementary oxygen.

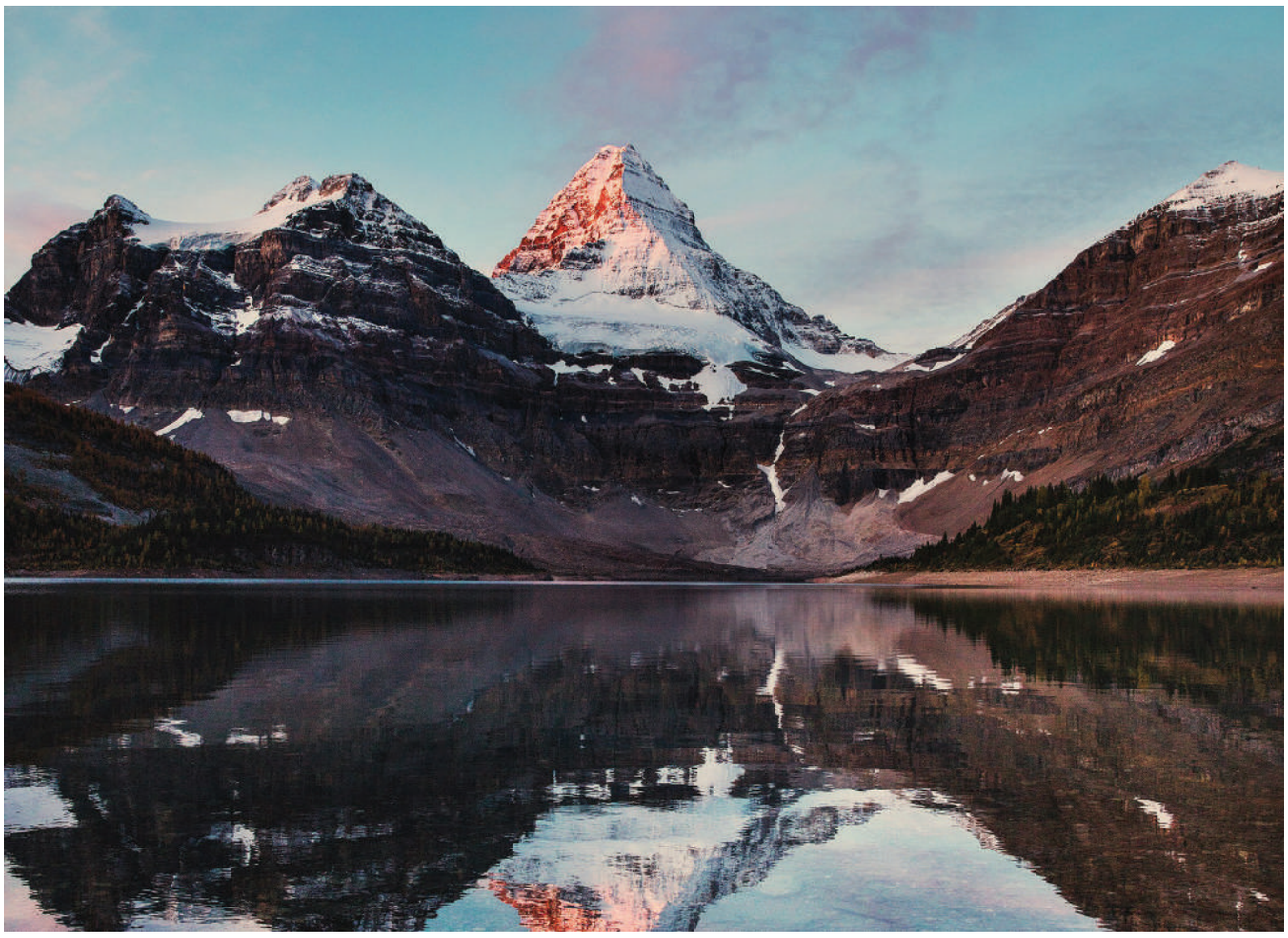
Global warming trend poses a confluence of threats, including the decline of water and oxygen levels, which are essential for sustaining life across the planet. To emphasize the vital role of water and oxygen for all living beings, Tunç has decided to climb Everest without oxygen support. As caretakers of the planet, it is our collective responsibility to combat global warming and protect our planet for future generations. This climb is not only a personal challenge for Tunç, but a call to action for all of us.

The ascent will begin in early April 2024 and we will be sharing regular updates along the way. ACTECON is excited to lend its support to Tunç Fındık as he embarks on his most competitive journey to conquer Mount Everest without oxygen aid.

Project Everest

Project Everest

Project Everest



Çamlıca Köşkü - Tekkeci Sokak No:3-5 Arnavutköy - Beşiktaş 34345 İstanbul - Türkiye
+90 (212) 211 50 11
+90 (212) 211 32 22
info@actecon.com www.actecon.com

ACTECON is a firm combining competition law, international trade remedies and regulatory affairs. We offer effective strategies from law & economics perspective, ensuring that strategic business objectives, practices, and economic activities comply with competition law, international trade rules and regulations.