



Renewed focus on the application of competition law to the labour markets



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A new report by the Nordic competition authorities shows that agreements between companies not to recruit each other's employees can be harmful to both workers and consumers.

The Nordic competition authorities (Norway, Sweden, Finland, Denmark and Iceland) have investigated how agreements affecting the labour market can constitute violations of competition law. The investigation has focused in particular on agreements to keep wage levels low (**wage-fixing agreements**) or not to recruit each other's employees (**no-poach agreements**). The investigation comes in the wake of the recent years gained global attention for anti-competitive agreements involving employees in other European countries and the US, with the UK Competition Authority (the CMA) and the Portuguese Competition Authority, for example, both issuing guidance on the issue.

As a result of the investigation the Nordic competition authorities have produced [a joint Nordic report on competition and labour markets](#). The Nordic report attempts to explain how anti-competitive agreements between companies that affect the labour markets, may also pose challenges in a Nordic context, despite the fact that both employees and employers are organised in a very different way in the Nordic countries than elsewhere in the world.

The Nordic reports highlight the following seven aspects:

- Wage-fixing agreements and no-poach agreements between competitors may constitute serious infringements of competition law.

- Wage-fixing agreements and no-poach agreements could lead to less efficient allocation of resources, be detrimental to consumers and generally have negative effects on employees' working conditions.
- Wage-fixing agreements and no-poach agreements are not uncommon in the Nordic Region, which suggest that there is a scope for greater enforcement.
- More active enforcement of competition law in labour markets is consistent with the approach taken by other European competition authorities.
- The Nordic competition laws contain exemptions for agreements related to collective bargaining agreements negotiated by organised social partners (trade unions and employers' associations).
- A relatively high proportion of employees and employers in the Nordic countries are members of trade unions and employers' associations, and wages and working conditions are often regulated in collective bargaining agreements, and that these factors may mitigate the negative effects on employees.
- While there may be other motives behind wage-fixing agreements and no-poach agreements, the harmful consequences of such agreements may remain the same.

According to the Norwegian Director of Competition, Tina Søreide, agreements between companies not to recruit each other's employees mean that labour does not flow to where it is most needed, and that this can lead to less competition and less innovation. The Director also explains that with this report the Norwegian Competition Authority wants to focus on anti-competitive agreements affecting the labour market and moreover that such agreements may constitute a violation of competition law.

Companies would as a consequence be well advised to review for compliance any formal or informal agreement or understanding they may have entered into which may limit competition the market for employees.