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Insights

FOOD FOR THOUGHT: LABOUR MARKET CARTELS AND MINORITY SHAREHOLDINGS

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The European Commission (the "**Commission**") has fined Delivery Hero and Glovo €329 million for their involvement in an online food delivery cartel. This decision marks two important firsts: (1) the first time a minority stake in a competitor has been found by the Commission to enable anti-competitive behaviour; and (2) the first enforcement action that the Commission has taken against 'labour market' cartels, an area of high scrutiny by competition enforcement agencies worldwide.

THE INFRINGEMENT

Delivery Hero and Glovo are two of the largest food delivery companies in Europe, headquartered in Germany and Spain respectively. Delivery Hero acquired a 15% minority stake in Glovo in July 2018, which increased incrementally, culminating in Delivery Hero's sole control of Glovo in July 2022.

Prior to the acquisition of sole control, the Commission found that the companies (facilitated by Delivery Hero's minority shareholding) engaged in the following anti-competitive behaviour:

- **A labour market cartel**[1] through a reciprocal no-poach agreement for all employees except riders (which was expanded from an agreement not to hire certain employees included within the initial shareholders' agreement).
- **The exchange of competitively sensitive** information "*beyond what was needed for a corporate investor to protect a financial investment decision*", which allowed the parties to align their business strategies. The information included current and future pricing intentions, strategies and new offers.
- **Market sharing** by selling their businesses in certain geographic markets to each other to eliminate geographic overlaps, and agreeing to avoid entering into each other's national markets. Delivery Hero and Glovo also agreed which party should enter into new markets.

WHAT DOES THIS MEAN FOR MINORITY SHAREHOLDINGS?

In many respects, it would appear that nothing has changed. When announcing the fines, the Commission's Executive Vice-President, Teresa Ribera, said that "*owning a stake in a competitor is not illegal in itself. But it may be problematic when that stake is used to gain insight information and influence decisions in ways that can harm competition*". Importantly, it also remains the case that parties to a merger establishing control are able to enter into limited 'ancillary restrictions', which are directly related and necessary to the merger in order to protect the full value of the acquisition for the purchaser. For instance, the purchaser may legitimately need limited non-solicitation clauses for certain employees of the merged entity, and the ability to enter into such restrictions is unaffected by this decision.

HOWEVER…

The Commission's conditional approval of Naspers' acquisition (through its subsidiary, Prosus) of Just Eat Takeaway.com ("**JET**") suggests that, in practice, the Commission may now be taking a narrower approach to the permissibility of ownership of minority shareholdings in competitors, with Ribera stating that this decision "*sends a clear warning to an industry with recent antitrust issues: we won't tolerate any anticompetitive behaviour that may harm consumers*."

When assessing the proposed acquisition, the Commission considered that Prosus' minority shareholding in Delivery Hero (JET's competitor) raised competition law concerns on the basis that this relationship *could have* increased the risk of coordination and decreased incentives to compete. In order to obtain clearance and avoid an in-depth Phase II investigation, Naspers committed to "*reduce its shareholding in Delivery Hero, below* [an unspecified] *very low percentage"*, along with "*additional commitments* [to] *ensure that Naspers will have no influence over nor material interest in Delivery Hero's commercial decisions or strategy*".

While there is some uncertainty as to the Commission's approach to the ownership of minority shareholdings in competitors, it is clear that this is now an area of increased scrutiny for the Commission. At the very least, heightened attention must therefore be given to the setting up of robust information exchange protocols and 'clean teams' in similar transactions.

… AND LABOUR MARKET CARTELS?

As we have discussed previously, labour market cartels are now firmly a focus of competition authorities globally. Therefore, while the Delivery Hero/Glovo decision is a landmark case for the Commission, it follows many other authorities that have already issued decisions against labour market cartels in Europe at a national level. For instance:

- On 11 June 2025, the **French Competition Authority** fined four companies in the engineering, technology consulting and IT services sector €29.5 million for no poach agreements of an unlimited duration, concluding that this was an object infringement.[2] This follows two further decisions by the authority in which labour market cartels were found as part of a wider

infringement: in 2017 a cartel in the floor covering sector which included the exchange of information on salaries and bonuses, and agreement not to actively approach competitors' employees;[3] and in 2024, a cartel in the pre-cast concrete products sector which included an agreement not to poach employees from competitors.[4]

- The **UK's Competition and Markets Authority** has recently made its first cartel finding in this area against four companies active in the media sector and has an ongoing investigation into labour market concerns in the fragrance ingredient market.
- In addition, the **Belgian Competition Authority** has ongoing investigations in the sector of passenger transport by bus and coach, the **Portuguese Competition Authority** recently sanctioned three multinational technology consulting firms for implementing non-poach agreements, the **Slovak Competition Authority** fined the Slovak Association of the Fuel Industry and Trade for adopting a code that prevented members from hiring each other's employees, and the **Swiss Competition Authority** published best practices in the labour market after finding evidence that more than 200 companies from various industries had been regularly exchanging information on wages, wage developments, ancillary benefits, and working conditions.

Further, while the Delivery Hero/Glovo decision is the first enforcement action taken by the Commission against a labour market cartel, it is by no means the first judgment on this issue by the European Courts. As discussed in our article, in October 2024 the European Court of Justice (following an Article 267 TFEU reference) ruled on the anti-competitive nature of no-poach agreements in C-650/22 ("***Diarra***"), and a number of further ECJ reference decisions are awaited on this topic.

However, while we are starting to see the first completed enforcement cases and ECJ reference decisions, the approaches of the European authorities and Courts to labour market cartels are still developing, meaning some uncertainty remains around the approach authorities will take.

Muddying the waters further, the approach of authorities globally is by no means consistent. In the U.S., federal antitrust agencies have signalled that they will continue to monitor conduct that harms American workers, for example in public statements by FTC Chair, Andrew Ferguson.[5] However, the agencies are very likely to roll back the FTC's rule broadly prohibiting non-compete agreements, which was issued under the previous administration. Commissioners Ferguson and Holyoak dissented when the FTC voted to issue that rule, noting it would invalidate some thirty million contracts and pre-empt the laws of 46 states.[6] The rule is currently suspended as its validity is litigated, with the current administration now arguing against it. In sum, the US antitrust agencies have indicated that they will still review anti-competitive agreements and practices that harm American workers, but they will not implement sweeping rules prohibiting commonly used employment agreement restrictions.

KEY TAKE AWAYS FOR BUSINESS

The Commission has emphasised that it will be paying closer attention to the behaviour of parties where there are minority shareholdings between competitors. If you are considering acquiring a minority shareholding in a competitor, care must be taken to ensure that the structure of the transaction or the processes put in place do not facilitate anti-competitive behaviour, particularly with respect to the exchange of commercially sensitive information.

Similarly, it is clear that the labour market cartels remain a focus of competition authorities. We therefore anticipate an increasing number of investigations and enforcement actions being taken in this area in the coming years, so companies must remain vigilant in their competition compliance efforts when taking actions that affect labour markets.

If you would like to discuss any of the issues raised in this article (or how competition law applies to your business more broadly), please contact a member of BCLP's global Antitrust & Competition team.

This insight was authored by Tanvi Wadhwa, Nicholas Young, Rémi Beydon, Dave Anderson and Rebecca Nelson. The authors would also like to thank Thomas Wright, David Schwartz and Steve Scannell for their contributions.

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[1] Labour market cartels are typically defined as: (i) no-poaching agreements (agreements not to hire each other's employees); (ii) wage-fixing agreements (agreements to fix pay or other employee benefits); and (iii) information sharing of terms and conditions offered to employees.

[2] Decision 25-D-03 of 11 June 2025 in the engineering, technology consulting and IT services sectors.

[3] Decision 17-D-20 of 18 October 2017 regarding practices implemented in the hardwearing floor coverings sector.

[4] Decision 24-D-06 of 21 May 2024 regarding practices implemented in the pre-cast concrete products sector.

[5] Memorandum from Chairman Andrew N. Ferguson, Directive Regarding Labor Markets Task Force, FTC (February 26, 2025).

[6] *Dissenting Statement of Comm'n Andrew N. Ferguson Joined by Comm'n Melissa Holyoak in the Matter of the Non-Compete Clause Rule*, FTC Matter No. P201200 (June 28, 2024).

RELATED CAPABILITIES

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MEET THE TEAM

Dave Anderson

Brussels

david.anderson@bclplaw.com
+32 (0) 2 792 2421

Rebecca A. D. Nelson

St. Louis / Washington

rebecca.nelson@bclplaw.com
+1 314 259 2412

Nicholas Young

London

nicholas.young@bclplaw.com
+44 (0) 20 3400 3692

Rémi Beydon

Paris

remi.beydon@bclplaw.com
+33 (0) 1 44 17 77 21
