August 2026

Labour markets in the spotlight: no-poach agreements and the reform of non-competes

Introduction

Labour markets have been a key focus for competition authorities and policymakers around the world in recent years, driven at least in part by the view that labour market mobility is key to economic growth and innovation.

Most recently, the ruling from the Court of Justice of the European Union (CJ) in *CD Tondela and Others* has brought fresh attention to the treatment of "no poach" agreements between competitors under competition rules. At the same time, the UK Government is proposing radical reform to the treatment of non-compete clauses in employment contracts. This briefing examines these developments, and the delicate interplay between them.

No-poach agreements – infringements of competition "by object"

Competition law prohibits agreements between competitors that prevent, restrict or distort competition. While competition authorities have traditionally focussed enforcement on sell-side cartels, they have in recent years been increasingly focused on anti-competitive behaviour in labour markets (see our previous briefing).

The UK Competition and Markets Authority (CMA) published guidance on this topic in 2023 (see here) and again more recently in 2025, while the European Commission published a policy brief in 2024 (see here). Both authorities focus in their guidance on no-poach and wage-fixing agreements as the main types of anti-competitive behaviour in labour markets,[1] taking the view that such agreements are generally among the most serious types of competition law breach as they depress wages and reduce labour market dynamism, leading to negative effects on productivity and innovation.

> No-poach agreements – Where businesses agree not to approach or hire each other's employees (or not to do so without the other employer's consent).
>
> Wage-fixing agreements – Where businesses agree to fix wages or other benefits or terms and conditions of employment.

The Commission endorsed the view that no poach agreements are "by object" infringements in June 2025 when it fined Delivery Hero and Glovo €329 million for (amongst other things) agreeing not to poach each other's employees (see here).

And the characterisation of "no poach" agreements as (generally) constituting an infringement of competition law by object was recently put beyond doubt by the CJ in its ruling in *Tondela* – albeit, the court accepted that the specific circumstances of that case (the COVID pandemic) and the agreement's parallel pro-competitive aim (preserving the integrity of competition) may exceptionally displace that categorisation (see here).

The characterisation of no poach agreements as restrictions of competition by object matters in practice – it

[1] The CMA guidance also identifies information sharing as the other main type of anti-competitive behaviour in labour markets.

means that no-poach agreements will in most cases be presumed unlawful, regardless of whether there is any actual harm to competition. Moreover, for the time being at least, such restrictions seem incapable of justification in most scenarios, in particular because the agencies consider there are often less-restrictive ways of achieving the same aim. For example, if the motivation for a no-poach clause is to protect investments made in training the employee, an obligation on the employee to reimburse proportionate training costs would achieve the same aim; if the motivation is to avoid being left short-staffed, labour-law compliant non-compete clauses in the employer-employee contract may achieve the same aim.[2,3]

For businesses, the practical implications are clear. No-poach agreements between competitors should be avoided in all but the most exceptional circumstances.

UK proposals to reform non-compete clauses in employment contracts

Non-compete clauses have long been a common and important protection for employers, with their treatment by the courts mostly settled for the last century. But both the UK Government and the CMA are proposing radical reform.

Non-competes are currently governed by case law, not statute. The courts start from the position that a non-compete clause or other "restrictive covenant" – which prohibits an employee from doing certain things after their employment ends – is unenforceable unless it is no wider than can be justified to protect the employer's legitimate business interests.

While some value the flexibility this regime offers, others worry about its potential chilling effect on competition and labour market mobility. The Government's November 2025 working paper followed years of political scrutiny and repeated calls for reform. As early as 2016, the then-Government issued a call for evidence on the use of non-compete clauses, against the backdrop of a suspicion that they stifled entrepreneurship and innovation. By 2023, the Conservative Government had announced plans to limit all non-compete clauses to a maximum duration of three months. These plans weren't implemented before the 2024 general election, leaving employers guessing as to what the new Labour Government would do.

The November 2025 working paper provided an answer. The Government argued that even unenforceable non-competes can pressure employees into compliance, dampen the dynamism of the UK's start-ups and scale-ups, and depress wages. The paper invited responses on a range of alternative policy options which it considers would support the Government's growth mission.

- A statutory limit on the length of non-compete clauses (potentially according to company size, with smaller companies allowed longer durations);
- A total ban on non-compete clauses;
- A ban on their use below a salary threshold; or
- A ban below a salary threshold combined with a statutory limit of three months above that threshold.

The CMA's response to the Government supports the last of these options. The CMA reasoned that more limited options, such as time restrictions alone, would not "materially reduce frictions", while a blanket ban was not necessary given the potential "pro-innovation arguments" for non-competes at higher salary levels. This intervention is consistent with the CMA's increasingly activist approach

[2] While the CMA's 2025 guidance indicates potentially greater flexibility with respect to non-solicitation clauses in certain types of commercial agreements (such as secondment or consultancy agreements) – suggesting these might be ok when necessary and proportionate – the guidance doesn't elaborate further on when such clauses might be considered necessary and proportionate. Meanwhile the Commission's policy brief suggests it is not easy to show necessity and proportionality, given - as noted - there are often less-restrictive ways of achieving the same aim.

[3] This briefing is focussed on competition authorities' approach to no-poach agreements outside the M&A context. In an M&A context, Commission and CMA guidance on ancillary restraints provides that non-solicitation obligations imposed on the seller will generally be directly related and necessary to the implementation of the transaction, provided their scope and duration are limited to what is necessary to ensure the full value of the target is transferred – generally up to three years where know-how and goodwill is transferred, and up to two years where only goodwill is included. Other types of non-solicitation clause imposed in an M&A context (for example, on the purchaser in an NDA) would not be directly related and necessary to the transaction under the ancillary restraints guidance, and would fall to be assessed under Article 101 TFEU. It remains to be seen whether the strict approach the authorities are taking to no-poach clauses in a non-M&A context may also in time impact non-solicitation clauses in the M&A context.

to labour market competition in recent years, and frames the issue in primarily economic terms: "healthy and competitive labour markets are a powerful driver of economic growth, and high levels of labour mobility act as a cross-economy enabler of innovation and productivity".

But not everyone is convinced of the case for change. Much of the employment law community has taken the view that the Government has not made out a compelling case for reform, suggesting that efforts might be better directed at improving information and enforcement in those sectors where covenants appear to be imposed on junior employees without adequate justification. The Employment Lawyers Association, for example, cautioned in its response to the Government that "reform in this area of law risks unintended adverse consequences which may undermine the government's objectives rather than helping to achieve them", warning that employers could lose confidence that their trade secrets and proprietary information are adequately protected under UK law.

For now, the consultation has closed and the Government is yet to announce its next steps. What can be said is that, with the CMA's intervention, reform looks significantly more likely than before – and would be in keeping with the Government's demonstrated appetite for employment law change. Businesses should therefore be prepared for the possibility of a shake-up in the near future.

Competing visions of growth

The increased scrutiny of labour market restrictions – from both a competition and employment law perspective – reflects a more fundamental debate about the relationship between such restrictions and economic growth.

On one side of that debate, industry stakeholders argue that restrictions like non-competes promote competition and innovation. Financial services group TheCityUK has been a prominent voice, emphasising that non-competes protect intellectual property and R&D and give employers the confidence to invest: "the benefits of this type of restrictive covenant are clear and well-understood, particularly in knowledge-intensive industries". On this view, weakening or removing non-competes risks reducing investment and placing the UK at a competitive disadvantage internationally.

On the other side, the CMA and the Government argue that labour market mobility is itself a critical driver of growth. On this view, access to talent can be a major barrier to innovation and scaling, and restrictions such as no-poach agreements and non-competes hold the economy back by limiting worker mobility and constraining businesses' ability to expand. As the CMA put it in its response, "reducing frictions on labour mobility should be a priority in the context of the government's growth mission".[4]

This conceptual divide is reflected in how each side views the international evidence: whereas the Government and CMA point to California's long-standing ban on non-competes as a "significant contributing factor" to the rise of Silicon Valley, TheCityUK paints a less rosy picture, noting that major financial services firms tend to avoid operating there and that some large technology companies are moving to other states. Tellingly, the Government's own working paper acknowledges that there is no consensus on whether banning non-competes ultimately leads to more or less innovation. That candid admission underscores how finely balanced – and how contested – this debate remains.

Practical takeaways

Against the backdrop of renewed enforcement interest and the prospect of legislative reform, businesses should take stock of their current practices around labour mobility and consider how these might need to adapt. Recognising that fact-specific assessments will often be required, practical steps to consider include:

- Reviewing any existing no-poach and non-solicitation clauses, and ensuring that staff involved in recruitment understand the high competition law risks associated with these;
- Auditing existing employment contracts for non-compete clauses, in readiness for potential statutory reform in the UK; and
- Monitoring developments closely – in particular the Government's response to the working paper, and further enforcement activity in labour markets by both the Commission and the CMA.

[4] It will be interesting to see what impact any curtailment of non-competes has on the competition assessment of no-poach clauses – as already noted it is often difficult to justify a no-poach agreement under competition law due to the availability of a less restrictive alternative in the form of a labour-law compliant non-compete within the employment relationship. If non-competes are curtailed or banned in the UK, that interplay could shift, with the possibility of greater scope to justify a no-poach clauses in some circumstances.

Contact

Anna Lyle-Smythe
Partner
T:+32 (0)2 737 9410
E: First.Last@slaughterandmay.com

Nick Bailey
Associate
T:+44 (0)20 7090 3682
E: Nick.Bailey@Slaughterandmay.com

Annalisa Tosdevin
Knowledge Counsel
T:+44 (0)20 7090 4555
E: Annalisa.Tosdevin@Slaughterandmay.com

Clare Fletcher
Knowledge Counsel
T:+44 (0)20 7090 5135
E: Clare.Fletcher@Slaughterandmay.com

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650