GUIDANCE

ANTI-COMPETITIVE AGREEMENTS IN LABOUR MARKETS

WHERE TO GO FOR MORE INFORMATION?

You can consult the experts of the Competition Council:
E-mail: praneskmums@kt.gov.lt or call +370 5 212 6641; +370 5 260 8879.
For more information on competition law requirements,
please visit kt.gov.lt.

Businesses compete not only to sell or acquire different goods and services, but also to attract and retain employees. A competitive labour market, in which employers compete for workers by offering them the most attractive working conditions, ensures the mobility of workers, increases their bargaining power, guarantees their access to better wages, and promotes employers' investment in human capital. The ability of employers to attract and retain skilled employees also determines the position of firms in the market in which they sell their goods or services - the range, quality, price, innovation and volume of goods and services offered.

Agreements between employers on the working conditions of employees (recruitment, remuneration policies) can restrict competition. Such agreements negatively affect the position and working conditions of workers, such as their ability to find and hold a job that suits their interests and abilities, and to obtain a wage that satisfies them. Anti-competetive agreements between employers also harm consumers, as only a competitive labour market ensures better value for money for goods and services.

Examples of anti-competitive agreements in labour markets

- **No-poaching agreement**

Two or more undertakings agree not to make offers of employment to each other's employees and not to hire each other's employees without the consent of the other employer.

- **Wage-fixing agreement**

Two or more undertakings agree on fixing the amount of wages or other benefits to be paid to employees, or on other payment terms. Such agreements may include wage scales or wage ceilings, etc.

- **Commercially sensitive information sharing**

Two or more undertakings share sensitive information about the employment and working conditions that the company offers to potential employees or provides to existing employees. Depending on the nature of the information and the characteristics of the market and the nature of the exchange, the exchange of information may be considered as restrictive on competition [1].

Competitors are prohibited from agreeing to restrict competition between themselves in the labour market, even if it is to reduce operating costs - this would place both workers and consumers at a disadvantage. For example, while an agreement between companies on the wages to be paid may reduce costs, it results in lower wages for workers. In addition, a company seeking to improve efficiency and attract skilled staff may have to pay higher wages than the agreement allows. Accordingly, such an undertaking will not be able to increase production and develop the innovations needed to enter new markets or to implement expansion plans in a market in which it is already present. Consumers may, therefore, lose the opportunity to purchase more innovative and better quality products from this undertaking.

Under the competition law, undertakings competing to attract or retain employees are considered to be competitors on the labour market, regardless of whether they operate on the same market for goods and services.

IMPORTANT

- Agreements made in the course of the association's activities concerning the employment, working conditions, including wages, or non-solicitation of employees are also considered to be infringements of competition law.
- A prohibition of anti-competitive agreements in labour markets apply to both persons employed under a contract and persons who provide who provide services to the undertakings on other legal bases (e.g. personnel providing services on a self-employed basis).
- Agreements are understood broadly in competition law and may be concluded orally, in writing, by electronic means and in other ways.

[1] More detailed information on how the exchange of information is evaluated is provided in the guidelines of the Competition Council.

HOW TO AVOID ILLEGAL AGREEMENTS IN LABOUR MARKETS?

Actions that employers can take:

- inform your staff about the prohibition of anti-competitive agreements in labour markets;
- don't propose and/or agree to enter into agreements with other undertakings on the wages and/or other terms and conditions of employees;
- don't share non-public commercially sensitive information about its employees and their working conditions with another undertaking;
- don't offer and/or agree to make arrangements with another business entity not to recruit and/or hire each other's employees.

WHAT IF SOMEONE TRIES TO INVOLVE YOU IN ILLEGAL AGREEMENTS ON EMPLOYEES?

- Explain immediately that you cannot discuss such matters and stop the discussion;
- distance yourself from such proposals by expressing your clear disapproval to all participants of the potential agreement;
- if the discussion arises in association meetings, additionally ask to have your disagreement recorded in the proceedings of the meeting and leave the meeting immediately;
- contact the Competition Council immediately.

FINES FOR ILLEGAL AGREEMENTS

Anti-competitive agreements are prohibited by Article 5 of the Competition Law. The undertakings that have entered into agreements are liable to a fine of up to 10% of their annual worldwide revenue. The manager of an undertaking may be held personally liable for contributing to a cartel by being restricted from holding a managerial position for up to five years, and additionally fined up to EUR 14 481.

WHAT SHOULD I DO IF I BECOME A PARTY TO OR BECOME AWARE OF A PROHIBITED AGREEMENT?

An undertaking that has entered into an agreement restricting competition but has disclosed the agreement to the Competition Council may be exempted from fines [2]. To apply for immunity, undertakings may consult the Competition Council's experts anonymously at the contacts listed on page 1 of this Guidance.
Persons who are aware of restrictive agreements concluded by employers in relation to employees may report them to the Competition Council here.

FINANCIAL BENEFITS FOR THOSE WHO REPORT PROHIBITED AGREEMENTS

Individuals who report anti-competitive agreements to the Competition Council may be granted a single cash benefit [3]. The amount of the payment is 1 per cent of the total amount of fines imposed by the Competition Council for the infringement, but not less than EUR 1 000 and not more than EUR 100 000.
Any person providing information may apply for special whistleblower status and the protection it confers under the Whistleblower Protection Act.

[2] The conditions for immunity from fines are established in Article 38(1) of the Law on Competition.
[3] The conditions for granting a single benefit are set out in Article 38(1) of the Law on Competition.

Other issues of the competition law relevant to employer-employee relations

- **COLLECTIVE AGREEMENTS BETWEEN EMPLOYERS AND EMPLOYEES**

Collective agreements between organisations representing employers and organisations representing employees, where the agreement is exclusively for the purpose of improving employment and/or working conditions, are outside the scope of the competition law [4]. It must be assessed in each case whether the purpose and nature of the collective agreement make it exempt from the competition law. A collective agreement cannot be a cover for a cartel agreement.

- **COLLECTIVE AGREEMENTS WITH SELF-EMPLOYED WORKERS**

If the situation of self-employed workers is similar to that of employees, collective agreements concluded with them will also fall outside the scope of competition law [5]. In some cases, self-employed workers who are not in a similar situation to employees may nevertheless find it difficult to influence their working conditions because they are in a weak bargaining position compared to the other party(ies) to the contract. The Competition Council, like the European Commission, will consider that its priority is not met by [6] and will therefore not investigate collective agreements on terms and conditions of employment concluded between employers and the self-employed:
(1) when they are concluded in accordance with national or European Union law, or
(2) where there is a significant difference in the bargaining power of the parties.

- **AGREEMENTS ON EMPLOYEES IN CONCENTRATIONS**

In the case of a transfer of an enterprise or part of an enterprise, non-compete obligations imposed on the seller may be necessary and directly related to the implementation of the concentration. In order to obtain the full value of the assets transferred, the purchaser must be able to benefit from some protection against competition from the vendor in order to gain the loyalty of customers and to assimilate and exploit the know-how. However, such restrictions are justified only for legitimate purposes in the implementation of the concentration, where their duration, geographical scope, subject matter and the persons to whom they apply are proportionate to the objectives pursued. The more detailed conditions for imposing restrictions are are set out in the European Commission's notices [7].

- **EXEMPTIONS FROM THE PROHIBITION ON ANTI-COMPETITIVE AGREEMENTS**

The prohibition of anti-competitive agreements does not apply in exceptional cases, where the agreement promotes technical or economic progress or improves the quality manufacturing goods or distribution of goods and thereby enables consumers to obtain additional benefits, also where the agreement: (1) does not impose on the parties to the agreement any restrictions which are not necessary for the attainment of the objectives referred to above; (2) does not grant the parties to the agreement the opportunity to restrict competition in a substantial part of the relevant market [8].

The burden of proving that the agreement meets the conditions of the exemption lies with the party seeking to benefit from the exemption. For a more detailed description of the conditions for the application of the exemption from the prohibition of anti-competitive agreements, please refer to the European Commission's guidelines [9].

The Guidance is not a binding legal act of a normative nature. The Competition Council establishes infringements of the Law on Competition only after a detailed assessment of the specific situation.

[4] 21 September, 1999 Decision Albany International BV vs. Stichting Bedrijfspensioenfonds Textielindustrie, C-67/96, ECLI:EU:C:1999:430, points 59 and 60.
[5] Communication from the Commission 2022/C 374/02 "Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons" (OL C 374, 2022 9 30, p. 2).
[6] The priority of the Competition Council's activities is established by the Resolution of the Competition Council of 27 December 2022 No. 1S-136 (2022) on the adoption of the priority of the activities of the Competition Council in the supervision of the Law on Competition.
[7] Commission Notice on restrictions directly related and necessary to concentrations 2005/C 56/03, Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, Commission Notice 2008/C 267/01.
[8] Law on Competition, Article 6.
[9] Communication from the Commission. Guidelines on the application of Article 81(3) of the Treaty 2004/C 101/08.