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Abstract

Labor markets have emerged as a focal point for competition enforcement worldwide, with authorities increasingly scrutinizing wage-fixing and no-poach agreements as core antitrust violations. In the EU, this shift gained prominence with the Commission's Delivery Hero & Glovo decision, widely regarded as the first EU cartel infringement decision specifically addressing labor market restrictions.

Whilst the EU has only recently begun articulating its approach, Turkey offers a useful point of comparison, having developed a strong stance over the past years. In December 2024, the Guidelines on Anti-Competitive Practices in Labor Markets setting out a structured framework for assessing wage-fixing and no-poach agreements and building on a firm enforcement approach reflected in the decisional practice since the early 2020s was published.

Bearing in mind that Turkish competition law is largely modelled on EU competition law with close monitoring the EU execution, developments in Turkey often mirror, and at times foreshadow, trends in EU enforcement. Therefore, this article explores whether Turkey's forerunning precedents and policy guidance can offer an instructive preview of where EU practice is heading. Building on the foregoing, it identifies the core features of Turkey's approach and uses them as a reference point to assess the Commission's likely next steps.

Labor Markets Under Antitrust Scrutiny: What Turkey's Approach Signals for the EU

It is no secret that labor markets have become a focal point for antitrust authorities worldwide in recent years. Indeed, competition authorities are now treating labor market restrictions as a core antitrust issue for employers across sectors, rather than a side compliance concern.

In the European Union ("EU"), this shift has been brought into sharper focus by the European Commission's ("**Commission**") *Delivery Hero & Glovo* decision, which is regarded as the Commission's first cartel infringement decision specifically addressing labor market restrictions. Announced in June 2025, the decision prompted many companies to re-examine their human resources policies and employment practices. The Commission found that the shareholders' agreement concluded in connection with Delivery Hero's acquisition of a minority, non-controlling stake in Glovo contained limited reciprocal no hire clauses covering certain employees. It further considered that this arrangement was later broadened into a more general understanding not to actively approach each other's employees, and it characterized the relevant conduct as a cartel under Article 101 of the Treaty on the Functioning of the European Union ("**TFEU**").

However, the decision was not a bolt from the blue. In its policy brief dated May 2024 titled Antitrust in Labor Markets, the Commission indicated that it was actively examining wage fixing and no-poach agreements and referred to ongoing investigations, including unannounced inspections in the online ordering and delivery sector. The brief set out the Commission's substantive assessment that wage fixing, and no-poach agreements are generally to be treated as restrictions of competition by object. It also characterized such arrangements as comparable to buyer cartel conduct, noting that wage fixing

may fall within Article 101(1)(a) TFEU as a form of purchase price fixing, while no-poach agreements may fall within Article 101(1)(c) TFEU as a form of market sharing in respect of sources of supply. In this context, the *Delivery Hero & Glovo* decision can be seen as the application of an already articulated enforcement approach.

While EU was still digesting the implications of the *Delivery Hero & Glovo* decision and considering possible future enforcement steps by the Commission, the Turkish Competition Authority (“TCA”) had already set out its position on labor market restrictions in a particularly explicit manner. In December 2024, the TCA published its Guidelines on Anti-Competitive Practices in Labor Markets (“**Guidelines**”), thereby providing a detailed and structured framework for the assessment of wage fixing and no-poach agreements.

In fact, the TCA’s interest in labor market restrictions predates the publication of the Guidelines and has been shaped through a growing body of decisional practice since the early 2020s. The Turkish Competition Board (“**Board**”) has examined wage-fixing and no-poach/non-solicitation arrangements across multiple sectors and consistently assessed such conduct as a restriction of competition by object under Article 4 of Law No. 4054 on the Protection of Competition (“**Law No. 4054**”), often treating it as cartel behavior. In this sense, it is seen that the Guidelines largely codify and systematize an enforcement approach already observed in the TCA’s case law.

Building on this enforcement experience, the Guidelines formalize this position by stating that competition for labor, as an input into production, cannot be viewed separately from competition relating to other factors of production and therefore clearly falls within the scope of competition law. Against this background, the TCA considers agreements or concerted practices between undertakings, as well as decisions or practices of associations of undertakings, that have as their object or effect the determination of employees’ wages or other working conditions constitute infringements of Article 4 of Law No. 4054.

The concept of “working conditions” is interpreted broadly in the Guidelines and covers, among others, working hours, annual leave entitlements, wage supplements, rest breaks, private health insurance, private pension scheme and various social benefits such as marriage, birth, education, food, disability, and death allowances.

While various types of agreements may potentially restrict competition between undertakings in labor markets, the TCA identifies two forms of infringement as particularly prevalent in practice: (i) wage fixing agreements, whereby undertakings coordinate on employees’ wages or other working conditions, and (ii) no-poach agreements, under which undertakings agree not to recruit or hire each other’s employees. The TCA makes clear that both wage fixing and no-poach agreements constitute restrictions of competition by object and are treated as cartel conduct. Moreover, where a third party facilitates or intermediates such coordination, that third party may, depending on the specific dynamics of the case, be considered a party to the infringement.

The Guidelines also address information exchange in labor markets. The TCA notes that information exchange may take place not only directly between undertakings, but also indirectly through third party channels such as intermediary institutions or platforms, associations of undertakings, independent market research firms, private employment agencies, websites, media outlets, or algorithmic tools. The exchange of competitively sensitive information may reduce uncertainty in the market, facilitate anticompetitive coordination, and enable undertakings to monitor compliance with collusive arrangements. Therefore, the TCA explicitly states that such exchanges may be assessed as restrictive agreements or concerted practices within the meaning of Article 4 of Law No. 4054.

At the same time, the TCA sets out a safe harbor for certain forms of information exchange which, as a rule, are unlikely to produce anticompetitive effects. The Guidelines indicate that an information exchange would not be considered restrictive where all of the following conditions are met: (i) it is carried out by an independent third party; (ii) the underlying data are sufficiently aggregated and anonymized such that neither the source of the data nor individual data points can be identified; (iii) the information relates to a period at least three months prior; (iv) the dataset includes data from at least ten participants; and (v) no single participant's data represent more than 25 percent of the aggregated dataset.

Lastly, the Guidelines also address the circumstances under which restrictions in labor markets may be assessed as ancillary restraints. In this respect, the TCA clarifies the conditions under which labor related restrictions may be considered objectively necessary and proportionate to the implementation of a legitimate main transaction, such as a merger or acquisition agreement.

As mentioned above, the TCA started delving into the interplay between labor markets and competition law years before the publication of the Guidelines. In this respect, decisions such as the *Private Hospitals* dated 24.02.2022 and numbered 22-10/152-62 and the *Kocaeli Private Schools* dated 03.10.2024 and numbered 24-40/948-407 had already comprehensive analyses on the subject and established that wage fixing and employee non-solicitation agreements constitute infringements of Article 4 of Law No. 4054 by their object and may qualify as cartels.

At the same time, a review of the scope of the Board's investigations indicates that the TCA has adopted a sector-agnostic approach, under which the labor market practices of undertakings across all industries may fall within its scrutiny. This is illustrated by the *HR* decision dated 26.07.2023 and numbered 23-34/649-218, in which the Board examined allegations of a "gentlemen's agreement" among more than thirty undertakings operating in different sectors. In the said decision, the Board found that certain undertakings had entered into an agreement aimed at restricting employee mobility and explicitly emphasized that isolated instances of employee movement did not alter the anticompetitive nature of such an arrangement.

With its later decisions, the Board have maintained this approach, while further developing and refining its reasoning in labor market cases. As the case law expanded, the Board's analysis became more detailed and methodologically structured, forming a growing body of decisions that is increasingly relevant for competition law practitioners.

It can be stated that the TCA consolidated and systematized the approach already reflected in its case law with the adoption of the Guidelines. The Guidelines aim to set out the legal assessment of wage fixing and no-poach agreements, delineate the scope of prohibited conduct, and clarify the limited circumstances in which certain restrictions may be treated as ancillary restraints. In this respect, the TCA has arguably moved ahead of many jurisdictions by distilling enforcement experience into a comprehensive policy document. Moreover, the TCA's rapidly expanding decisional practice offers a broad set of factual scenarios and legal reasoning, giving practitioners valuable insight into how competition law authorities are likely to assess labor market conduct in practice.

It is also worth noting that Turkish competition law is largely modelled on EU competition law, with Law No. 4054 closely reflecting the principles underpinning Articles 101 and 102 TFEU. The TCA also consistently refers to and draws on EU case law and the Commission's decisional practice. This structural alignment suggests that developments in Turkish competition law often mirror, and at times may even foreshadow, trends in EU enforcement. In the context of labor market restrictions, where the Commission has only recently begun to articulate its position, Turkey's forerunning body of case law

and policy guidance can therefore offer a particularly instructive indication of the direction EU practice is likely to take.

In light of the above, this article explores whether Turkey's experience in labor market enforcement may offer an early indication of where EU practice is heading. Building on the TCA's Guidelines and key decisions, it identifies the core features of the Turkish approach and uses them as a reference point to assess what the Commission's next steps might look like in this area, including the direction of future investigations, the content of any prospective guidance, and the enforcement priorities that may emerge in labor markets.