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No-Poach Agreements: An Overview of US, EU, and National Case Law

Donald J. Polden
Santa Clara University School of Law, dpolden@scu.edu

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No-poach agreements

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Donald J. Polden | Santa Clara University (Santa Clara)

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The United States, European Union, and many other international jurisdictions have antitrust and competition laws that seek to prevent anticompetitive conduct concerning labor and employment relationships. However, for many years these prohibitions on restraints of trade in labor markets and employment relationships were not routinely and rigorously enforced by those jurisdictions. The lack of governmental attention to these labor market practices has changed in important ways in recent years. Across many jurisdictions, we are now seeing more intense attention to conduct that suppresses wages of workers and their freedom of job mobility to other comparable positions. From an international perspective, particular attention is being paid to so-called "no-poach agreements". These agreements have been the focus of much more intense government scrutiny in the last decade, including in prior issues of this journal. [***1***] This annual review and evaluation of case law and government regulatory law continues that focus by reviewing several developments concerning no-poach agreements in the past year and a half.

No-poach agreements refer to contracts or arrangements between employers who compete in the same market to refrain from hiring each others' employees. Competing employers are likely to resort to wage and employee mobility restrictions to control labor costs associated with hiring and retention of employees. These business practices became notorious in the early 2000's when Steve Jobs of Apple orchestrated a relatively effective cartel arrangement with the CEO's of Silicon Valley's leading tech giants. The arrangement involved agreements not to hire each other's employees, mainly engineers working on critical projects. Another arrangement involved animators working for animation companies; again, the affected group were highly trained professionals whose loss through attrition to other Valley tech employers was a matter of concern to the CEO employers. The agreements were brazen and, while not publicized to any degree, were well known among those CEOs. Their companies included Apple, Google, eBay, Intel, and others and their CEOs proclaimed that the arrangements were necessary because their companies were investing heavily in their engineering talent only to have them leave to work for a rival at higher pay. Talent payrolls were being driven upward and key talent was being hired away from major projects on breakthrough products and corporate strategies.

Following a U.S. Department of Justice's Antitrust Division investigation, the corporate defendants entered into a consent decree promising not to engage in further no-poach arrangements. The record in the case revealed a bundle of labor practices that restricted their employees mobility and flatten wage scales for Valley engineers. The practices

included agreements not to hire each others' employees, agreement not to hire other cartel member's former employees, or to hire them only at the salaries they currently earned, and agreements with talent management companies to not present employees to competitor employers.

The U.S. Justice Department's investigation was undertaken as a civil action rather than criminal, although the conduct was a clear horizontal agreement to suppress wages. The subsequent consent decree did not result in civil fines or other punishment for the cartel members. The reason was the government's lack of certainty that the U.S. federal antitrust laws, notably Section 1 of the Sherman Act, clearly covered wage suppression agreements where the restraint of trade was on an item—labor—in a buy side market. [*2*]

A great deal has changed since those tech industry no-poach cases in understanding the economic consequences of no-poach agreements. No-poach agreements prevent worker mobility which directly affects the wages of workers who are prevented from moving to higher paying jobs in the same field or line of work. A restriction on moving to higher paying jobs may affect lifetime earnings opportunities for affected workers. Mobility restrictions also have an adverse effect on other employers in the geographic or occupational region in which the restrictions occur from getting experienced workers who are the target of the restrictions. [*3*]

Today, the U.S., antitrust enforcers, and many other countries' competition agencies, have articulated clear and aggressive enforcement policies concerning suppression of competition in labor markets and the E.U. and other international jurisdictions have followed suit with similar policy commitments. However, notwithstanding strong policy statements prohibiting no-poach and wage suppression conduct, the U.S. courts have been more uncertain for adjudication of wage and mobility claims by workers and by national enforcement agencies. The article first examines developments concerning labor restraints in the U.S. and then those in any other jurisdictions.

Developments in United States

The chief U.S. antitrust enforcer, the Department of Justice-Antitrust Division (hereinafter, "DOJ"), continues to signal its policy, announced almost seven years ago, to prosecute, criminally and civilly, no-poach agreements between competitors. To briefly summarize these developments:

In January 2023, the Federal Trade Commission announced that it was proposing rules that sharply curtailed the enforceability of non-compete agreements or clauses imposed by employers. [*4*] This presents a great challenge under the U.S. federalism policies as most laws permitting and limiting employers' use of non-compete provisions are made at a state, not federal, level.

More significantly, the FTC and the U.S. Department of Labor (DOL) announced a joint memorandum of understanding that articulates "the ways in which the FTC and DOL will work together" on issues affecting workers, including "labor market concentration, one-sided contract terms, and labor developments in the 'gig economy." [*5*]The MOU builds on the FTC's recent efforts to extend protections to workers from anti-competitive conduct by employers, including companies in the "gig" economy. A similar initiative involves an agreement between the FTC , DOJ and the National Labor Relations Board, another U.S. labor agency, to implement an inter-agency approach to curbing employers' use of non-compete agreement. Information sharing among governmental agencies, cross-training of staff at the agencies, and joint investigations of potential harmful conduct to employees are some of the initiatives identified in the FTC/DOL memorandum.

Notwithstanding the strong rhetoric by the FTC and DOJ in these pronouncements, they have struggled to successfully conclude litigation they have initiated to address the prohibited conduct. Beginning in 2020, seven cases were prosecuted by the DOJ as criminal violations of U.S. antitrust law because the DOJ contended that such

agreements were per se illegal violations of section 1, Sherman Act. [*6*] Of the seven cases, a jury found against the government position in three cases. In two other cases, the trial court dismissed the government's criminal charges against employers. In another case, the defendant entered into a plea agreement conceding it engaged in anti-competitive conduct. One case is still pending in the U.S. trial court. This is a very dismal success rate for government cases attempting to apply the rule of presumptive illegality to no-poach and non-solicitation conduct. Notwithstanding the government's lack of success in securing convictions in those cases, it has continued to press forward with its policy of active enforcement, including criminal proceedings.

But there is reason for the DOJ's optimism that courts can hold colluding employers criminally liable for violations of section 1, Sherman Act, for no-poach conduct. A significant federal appellate court decision by the 7th Circuit Court of Appeals in Chicago is a reason. In *Deslandes v. McDonald's USA*, the court, in a decision by a panel of judges who were well known for their knowledge of and expertise in U.S. antitrust law, reversed a lower court decision and held that no-poach agreements can constitute per se violations of the Sherman Act, was ancillary to a proper, legal transaction or activity. [*7*] Under U.S. antitrust law, the classification of anti-competitive conduct as per se, or presumptively, illegal is reserved for conduct that is clearly, unambiguously anticompetitive. Cartel price fixing, bid rigging and agreements among competitions to allocate territories are the primary examples of recognized per se violations under U.S. antitrust law. Those offenses are considered to be lacking any, or nearly any, procompetitive benefits and do not justify the expenditure of judicial resources to search for justifications. However, in cases involving conduct that may, or likely will, have pro-competitive attributes, the courts use a reasonableness standard (often referred to as "the rule of reason") to assess their likely competitive harms; a balancing of likely benefits to anticompetitive effects. Rule of reason offenses (such as nearly all vertical restraints) are subject to a much more comprehensive, reasonableness analysis, taking into account the defendant's possession of market power in the appropriate competitive market, the pro-competitive benefits of the defendant's conduct, and other factors. The DOJ only prosecutes per se offenses under the criminal antitrust provisions.

There were two main issues resolved by the *Deslandes* court: (1) that no-poach agreements could constitute presumptively unlawful conduct analyzed under the rule of per se illegality, and (2) whether such agreements should be considered as ancillary to a valid business transaction and therefore avoid liability because the pro-competitive attributes of the primary transaction were great enough to out weight the negative effects on workers. On the first issue, the standard of liability for no-poach conduct, the court noted that the no-poach clauses in the franchise agreements restricted a market for "inputs" (labor) but without a paramount or offsetting increase in outputs (more hamburgers) and was therefore a "naked restraint". According to the court, those restraints, evaluated under Sherman Act, §1 controlling case law, are treated as presumptively unlawful and therefore the franchise no-poach agreements should be analyzed using that standard. [*8*]

The second, and perhaps more difficult, question concerned a possible defense to the plaintiffs' claim of an illegal agreement to restrain trade: that the restraint in question (here, the agreement not to hire the employees of other McDonald's franchises until they had left employment for at least six months). Under U.S. antitrust law, some transactions that are anti-competitive may be excused if the restraint was necessary for the accomplishment of an overarching and proper economic purpose. An example of an ancillary restraint discussed by the court is where the franchisees invested funds and financial support for employee training and business-specific skills, then the employer may be permitted to impose a restriction on mobility (such as a non-compete provision in the employee's employment terms) in order to recoup that investment. So, the restrictive provision (i.e., the no-poach agreement) was ancillary to and reasonably designed to accomplish the legitimate goals of the employment relationship (i.e., recouping investment in employee training). According to the court, this required additional analysis by the trial court as to the scope of the restrictive provision and its likely effectiveness in achieving the employer's pro-competitive goals.

The importance of the *Deslandes* decision cannot be understated. It is the highest U.S. court that has examined a no-poach agreement and concluded that it might be a per se violation of U.S. antitrust law. It will likely have significant precedential value in other cases involving claims that a no-poach agreement between competitors in a market for employees and talent can constitute a per se violation of the Sherman Act. However, it must also be noted that the *Deslandes* case was a civil antitrust case, brought by private litigants and not by the U.S government as a criminal matter. Those factors may limit the precedential value of the *Deslandes* opinion in government no-poach criminal cases.

The Biden Administration has charted a path of stronger protection for workers in its competition policy, including measures to limit or prevent restraints on workers' wages and mobility. [***9***] The U.S. antitrust enforcement agencies—the FTC and DOJ—regularly provide and update "Guidelines" to inform others, especially the business community, on the agencies' current positions on enforcement of competition law. The guidelines are just that: pronouncements by government agencies on their enforcement policies and priorities and, often, articulating "safe harbors" and best practices. The guidelines do not have the force of law such as legislation or a judicial pronouncement, but they are extremely important to industry participants interested in how the government agencies are likely to react to horizontal or vertical mergers, agreements among competitors for cooperative projects, and similar activities that pose competition related issues or problems.

There are some recent agency guidelines that are relevant to labor competition issues. By way of background, in 2016, the agencies (FTC and DOJ) published a set of guidelines for human resource professionals that advised employers that the agencies would enforce antitrust law and policies in situations where collaborative employer conduct harmed employees. [***10***] Those guidelines also stated that in the case of substantial and clearly illegal collaborative activities by employers, that federal criminal prosecution was possible. The agency guidelines also set forth several "best practices" for corporate human resources professionals to follow in order to escape liability.

Similar efforts by the Biden Administration's antitrust enforcers to protect workers are articulated in the recent FTC/DOJ Merger Guidelines.) Merger Guidelines [***11***]. The merger guidelines emphasize that a merger of competing buyers can harm sellers just as a merger of competing buyers, including "employers as buyers of labor." Mergers of buyers increase concerns of coordination, enhanced or dominant market positions and heightened concentration in buyers' markets. The Guidelines provide that those concerns "apply to labor markets where employers are the buyers of labor and workers are the sellers"…and the Agencies "will consider whether workers face a risk that the merger may substantially lessen competition for their labor." The Guidelines articulate a strong intention to evaluate the competitive effects of mergers, such as increased coordination of other industry members, undue concentration in markets affected by a proposed merger in buy-side market, especially whether "workers face a risk that he merger may lessen competition for their labor." It will be important to see how those considerations will shape enforcement efforts by FTC and DOJ in proposed mergers in markets for labor and workers.

The DOJ also continues to employ another vehicle to influence the development of domestic law to protect workers' rights through its use of statements of interest filed in state or federal courts. These statements are filed in employment and competition cases to inform and persuade the trial judges of the antitrust law that is applicable to the issues before the court, especially monopsony claims in labor markets. Statements of interest are used in some cases in which the DOJ is not a party (such as a private lawsuit) but has an expressed interest in how the court may construe federal antitrust law. The DOJ has filed such statements in several cases involving practices that limit or constrain competition for workers. [***12***] The DOJ filed a statement of interest in a Nevada state proceeding involving claims by anesthesiologists that their employment contracts contained non-compete provisions that limited their post-employment opportunities with other anesthesiology providers. The offending provisions prevented employment at other medical practices more than 25 miles away from the defendant-employer for two years after conclusion of employment. [***13***] The DOJ submitted the statement of interest in a state court proceeding contesting

the enforceability of the non-compete provisions and argued that the non-compete provisions enforced against the plaintiff-anesthesiologists could be a per se violation of the Sherman Act. The agency contended that the non-compete provision would prevent competition against the defendant for two years and 25 miles through an agreement among competitors to allocate territories in which they would otherwise compete.

United States courts can expect continued use of the statements of interest in labor antitrust cases as the Biden Administration promotes its aggressive policies to protect workers.

Developments in Europe and Other Jurisdictions

Just as antitrust enforcers in the United States are grappling with the reach and scope of addressing restraints on competition for workers, this is true in many other parts of the world. Many jurisdictions are taking steps, including litigation, administrative rule-making and legislation, to address growing international concerns with restraints in markets for talent.

Several jurisdictions have initiated investigations and proceedings to address concerns about agreements and practices that restrain worker wages and mobility. In other jurisdictions, competition agencies have forcefully articulated policies to enforce competition laws concerning collaborative actions affecting workers. The following are brief summaries of those initiatives.

The EU Commissioner for Competition, in October of 2021, announced an increased focus on cartel arrangements that facilitated wage fixing and no-poach agreements. [*14*] This major pronouncement referenced antitrust enforcement in the human resources sector around the world (specifically noting the U.S. FTC Guidance for HR Professionals discussed above) and it takes aim at "buyer cartels" in labor markets but pointing out some of the challenges of bringing actions for wage suppression and no-poach agreements under Art. 101 of TFEU.

In August of 2023, the Australian government announced that it would undertake a two year review of national competition policy and enforcement procedures with particular emphasis on mergers and non-compete provisions in employment contracts. Under current law (The Competition and Consumer Act 2010) such restrictive provisions are evaluated under the restraint of trade doctrine. According to the government announcement of the review, it could include a close review of the purposes and effects of no-poach agreements under Australian competition law. [*15*]

In Switzerland, the Secretariat of Competition Commission (COMC)) announced in December of 2022 an investigation into certain practices of thirty-four (34) banking institutions. The announced concern and target of the investigation was exchanges of salary information between employers. [*16*]

The Belgium Competition Authority announced that it would focus on certain critical sectors (such as sports, agro-food, pharma, etc.) as well as increasing its enforcement budget to take a closer look at certain "new challenges" such as the use of wage fixing and no-poach agreements in those sectors. [*17*]

In June of 2023, the Latvian Competition Authority (Competition Council or CC) launched an examination of employee no-poach agreements under Section 11 of the Competition Law, which is derived from Section 101 of the Treaty on the Functioning of the European Union. [*18*] The law prohibits several practices such as price fixing and market allocations and was found applicable to agreements between competitors to limit the conditions of recruiting and compensating employees. According to the Competition Council, such collusion is treated by member states of the E.U. as a restriction already aimed at restricting competition, which is the most serious infringement of

competition law. The CC elaborated that no-poach agreements should not be confused with non-compete provisions in employment contracts because the latter are generally permitted and regulated, essentially ensuring that the agreements do not disproportionately restrict employee's personal freedoms.

The UK's Competition and Markets Authority (CMA) published an important new guidance for UK employers in February of 2023 that reminded the employers of their obligation to comply with competition law and that collusion between employers concerning wages and salary, working conditions and hiring practices is illegal. [*19*] The CMA's guidance letter also reminded employers of the possible consequences for both businesses and individuals, including fines of up to 10% of worldwide turnover, personal liability for individual and even criminal sanctions. In particular, the CMA identified three principal types of anti-competitive conduct as: (1) no-poach agreements between competitor businesses, (2) wage-fixing agreements (such as agreements between competitors to pay the same wage rates or setting maximum caps on pay) and (3) information sharing agreements, including both formal or overt agreements and "gentlemen's agreements," which would have the likely effect of stifling employee wages and position mobility. The CMA also set forth several recommendations for businesses to take in avoiding liability under the national competition laws. Those recommendations are very much in line with the guidelines for human resources professional promulgated by the U.S. Federal Trade Commission and U.S. Department of Justice in 2016.

Canada has been revising and updating its approaches to certain agreements and arrangements affecting employees under its competition laws. In 2021, the Canadian Competition Authority revised its policies and recommendations concerning non-compete clauses as a part of the national Competitor Collaboration Guidelines. [*20*] In particular, the Authority emphasized that, in certain circumstances, a non-competition agreement, say in the context of a merger transaction, could be considered a market allocation agreement and be subject to the criminal cartel provisions of Canadian law. Generally, however, the use of non-compete provisions in a horizontal acquisition transaction would not be considered as a likely anticompetitive practice because there are many appropriate, pro-competitive reasons for such restrictions in an acquisition.

Subsequently, the Canadian Competition Authority promulgated "Enforcement Guidelines on wage-fixing and no poaching agreements" by which the Canadian Competition Bureau described its approach to application of Canadian antitrust law to certain labor market practices. [*21*] The guidelines take an aggressive approach to those labor practices, including "naked restraints" on competition such as agreements to fix, maintain, decrease or control salaries, wages and terms and conditions of employment (such as benefits). The guidelines specifically apply to no-poaching agreements between "unaffiliated employers" not to solicit or hire each other's employees. The guidelines also articulate a "ancillary restraints defence" that would permit some employer agreements concerning wages or job mobility that are implemented for "legitimate collaboration, strategic alliance or joint venture reasons". It also reaches some forms of information sharing by employers.

The Turkish Competition Authority, in August of 2023, concluded an investigation with findings that sixteen Turkish employers had violated Turkish competition law by entering into agreements to prevent hiring each other's employees or otherwise limit the mobility of their employees. [*22*]

Conclusion and Summary

This introduction to the special issue on no-poach agreements illustrates the significant attention that many countries are paying to labor and employment practices that have the purpose or the intended effect of restraining workers from moving to new employers, nearly always for higher wages, benefits and promotion opportunities, or of limiting their wages and compensation. Wage suppression and the use of no-poach agreements among employers is an international problem even though its effects are often felt on a local or national level. We should expect to see international expansion of efforts to apply antitrust and competition norms and policies to employment markets.

Note from the Editors: although the e-Competitions editors are doing their best to build a comprehensive set of the leading EU and national antitrust cases, the completeness of the database cannot be guaranteed. The present foreword seeks to provide readers with a view of the existing trends based primarily on cases reported in e-Competitions. Readers are welcome to bring any other relevant cases to the attention of the editors.

[1] See ***Eric A. Posner***, ***Cristina Volpin***, *No-poach agreements: An overview of EU and national case law, 4 May 2023, e-Competitions No-poach agreements, Art. N° 112194.*

[2] See Donald J. Polden, *Restraints on Workers' Wages and Mobility: No-Poach Agreements and the Antitrust Laws*, 59 *Santa Clara Law Rev.* 579 (2020) (describing the Silicon Valley no-poach cartel agreements and the DOJ litigation to break it up). See also, "When Rules Don't Apply", a documentary film treating the no-poach conspiracy, including some insights into the DOJ"s litigation strategy, available at: *https://www.whenrulesdontapply.com/about-the-film*

[3] See ***Eric A. Posner***, ***Cristina Volpin***, *No-poach agreements: An overview of EU and national case law, 4 May 2023, e-Competitions No-poach agreements, Art. N° 112194.* See also, Eric A. Posner, How Antitrust Failed Workers (Oxford University Press, 2021).

[4] See *https://www.ftc.gov/legal-library/browse/federal-register-notices/non-compete-clause-rulemaking*

[5] See ***US Federal Trade Commission***, *The US FTC announces a partnership with the Department of Labor to bolster efforts to protect workers from anticompetitive, unfair, and deceptive practices in labor markets, 21 September 2023, e-Competitions September 2023, Art. N° 114261*; and *US FTC, Memorandum of Understanding Between The U.S. Department of Labor and the Federal Trade Commission, Agreement, 30 August 2023* .

[6] For concise summaries of the cases, and the U.S. DOJ's affirmation of its intention to continue to seek criminal penalties for no-poach agreements, see L&L Gates LLP, *DOJ Jettisons Its Last Criminal No-Poach Prosecution, but Antitrust Scrutiny of Labor Markets is Here to Stay,* available at *https://www.klgates.com/DOJ-Jettisons-Its-Last-Criminal-No-Poach-Prosecution-but-Antitrust-Scrutiny-of-Labor-Markets-is-Here-to-Stay-12-21-2023*.

[7] United States Court of Appeals Seventh Circuit, *McDonald's / Deslandes*, Case Nos: 22-2333 & 22-2334, Judgment, 25 August 2023. According to the appellate court, prior to and leading up to the filing of a complaint, "every McDonald's franchise operator promised not to hire any person employed by a different franchise, or by McDonald's itself, until six months after the last date that person had worked for McDonald's or another franchise." Further, the court noted that a related clause in the franchise agreements barred one franchise from soliciting another's employees. *Deslandes v. McDonald's USA*, LLC, 81 F.4th 699 (7th Cir. 2023). See ***Molly Donovan***, *The US Court of Appeals for the Seventh Circuit vacates a District Court's dismissal of an antitrust no-poach claim against a multinational fast food chain (McDonald's / Deslandes), 25 August 2023, e-Competitions August 2023, Art. N° 114071* ; and ***Rachel Mossman Zieminski***, ***Todd Stenerson***, ***David A. Higbee***, ***Ben Gris***, ***Djordje Petkoski***, ***Susan Loeb***, *The US Court of Appeals for the Seventh Circuit vacates and remands a District Court's dismissal of an antitrust case that challenged no-hire and non-solicitation clauses in a multinational fast food chain's franchise agreements (McDonald's / Deslandes), 25 August 2023, e-Competitions August 2023, Art. N° 113979.*

[8] The *Deslandes* court emphasized a recent U.S. Supreme Court decision involving collegiate athletes

and the policies of their supervising authority, the National Collegiate Athletic Association, an association of U.S. colleges and universities, to suppress the ability of student athletes to obtain greater financial support and compensation for their athletic endeavors for those schools.

[9] See, e.g. ***Arjun Garg***, ***Kevin Sheys***, ***David Horowitz***, ***Chuck Loughlin***, ***Edith Ramirez***, ***Logan Breed***, ***Leigh Oliver***, *The US President Joe Biden issues sweeping executive order targeting corporate consolidation and anticompetitive activity in the labor, financial services, healthcare, transportation, telecommunications, agricultural, and tech markets, 9 July 2021, e-Competitions July 2021, Art. N° 101506*; ***Ryan Shores***, ***Ben Gris***, ***David A. Higbee***, ***Jessica K. Delbaum***, ***Djordje Petkoski***, ***Noni Nelson***, ***Caitlin Hutchinson Maddox***, ***Reena Agrawal Sahni***, *The US President Joe Biden signs an executive order aimed at promoting competition in the American economy using antitrust laws, 9 July 2021, e-Competitions July 2021, Art. N° 101505*; and ***Michael Gallagher***, ***Kristen O'Shaughnessy***, ***Kathryn Jordan Mims***, ***Kevin Adam***, ***Jaclyn Phillips***, *The US President Joe Biden publishes an executive order containing 72 initiatives to address competition concerns in several industries, including pharmaceuticals, biotech, and healthcare, 9 July 2021, e-Competitions July 2021, Art. N° 101504*.

[10] See, e.g. ***Mark L. Krotoski***, ***David R. Brenneman***, *The US DoJ and FTC issue guidance signalling that they will bring enforcement actions for wage-fixing and no-poaching agreements under federal antitrust law, 20 October 2016, e-Competitions October 2016, Art. N° 83753*; ***Clifford H. Aronson***, ***Karen M. Lent***, ***Tara L. Reinhart***, *The US FTC and DoJ jointly issue antitrust guidance for human resource professionals, 20 October 2016, e-Competitions October 2016, Art. N° 82301*; and ***Robert E. Connolly***, *The US DoJ and FTC issue joint guidance on employee wage-fixing and non-poaching agreements, 20 October 2016, e-Competitions October 2016, Art. N° 81709*.

[11] See, e.g. ***US Federal Trade Commission***, *The US FTC and DoJ release 2023 Merger Guidelines which reflect realities of the modern economy, 18 December 2023, e-Competitions January 2024, Art. N° 116469*; ***J. Mark Gidley***, ***George Paul***, ***Rebecca Farrington***, ***Anna Kertesz***, ***Douglas Jasinski***, ***Heather Greenfield***, ***Allain Andry***, ***Andrew Hamm***, *The US FTC and DoJ finalize changes to the Merger Guidelines thereby formalizing a shift towards an aggressive merger enforcement policy, 18 December 2023, e-Competitions January 2024, Art. N° 116510*; and ***Jamillia Ferris***, ***Meghan Rissmiller***, ***Jan Rybnicek***, ***Matthew D. McDonald***, ***Sam Fulliton***, *The US FTC and DoJ issue final merger guidelines which represent a significant departure from the 2010 Guidelines and reflect the expansive enforcement approach followed by current antitrust agencies' leaderships, 18 December 2023, e-Competitions January 2024, Art. N° 116511*. For a copy of the new guidelines, see *https://www.ftc.gov/system/files/ftc_gov/pdf/P234000-NEW-MERGER-GUIDELINES.pdf*.

[12] Michael Murray, Antitrust Enforcement in Labor Markets: The Department of Justice Efforts, 59 Santa Clara Law Rev. 561 (2020) (providing a description by a senior DOJ-Antitrust Division attorney of the statement of interest filings in cases involving restraints on labor wages and mobility).

[13] See ***Katie Hellings***, ***Benjamin F. Holt***, ***Liam Phibbs***, ***Daniel E. Shulak***, *The US DoJ submits a statement of interest in a Nevada state court lawsuit filed by a group of anesthesiologists alleging that non-compete provisions in their employment agreements with a medical group violate State law (Pickert Medical Group), 25 February 2022, e-Competitions February 2022, Art. N° 105735*.

[14] EU Commission, *A New Era of Cartel Enforcement*, Margrethe Vestager, Speech, 22 October 2021. See ***Tilman Kuhn***, ***Strati Sakellariou-Witt***, ***J. Mark Gidley***, ***Kathryn Jordan Mims***, ***George Paul***, ***Mark Powell***, ***Cristina Caroppo***, ***Peter Citron***, *The EU Commission plans a series of dawn raids to investigate anticompetitive practices in labor markets, 22 October 2021, e-Competitions October 2021, Art. N° 103553*; ***Kaarli Harry Eichhorn***, ***Jörg Hladjk***, ***Cristiana Spontoni***, ***Rick van 't Hullenaar***, *The EU Commissioner for Competition Vestager highlights the Commission's fight against cartels during and after COVID-19, including reigniting dawn raids, 22 October 2021, e-Competitions October 2021,*

Art. N° 103394; and ***Christian Ritz***, ***Hubertus Weber***, *The EU Commissioner for Competition Vestager announces increased focus on atypical cartels, including wage fixing or no-poach agreements in the labour market, 22 October 2021, e-Competitions October 2021, Art. N° 103347.*

[*15*] Australian Government, *A more dynamic and competitive economy*, Press Release, 23 August 2023. See, ***Melissa Fraser***, ***Tihana Zuk***, ***Angie Ng***, ***Amanda Tesvic***, *The Australian Government undertakes a 2-year review of the country's competition policy settings, 23 August 2023, e-Competitions August 2023, Art. N° 113831.*

[*16*] See ***Swiss Competition Authority***, *The Swiss Competition Authority investigates the labour market in the banking sector, 5 December 2022, e-Competitions December 2022, Art. N° 114497.*

[*17*] Belgian Competition Authority, *Politique de priorités de l'Autorité belge de la Concurrence pour 2021*, Notice, 16 May 2022 (French). See ***Hendrik Viaene***, ***Karolien Van der Putten*** , ***Hannelore Wiame***, *The Belgian Competition Authority publishes its annual notice on enforcement priorities, including institutional changes, sustainability goals, and labour markets focus, 16 May 2022, e-Competitions May 2022, Art. N° 106835.*

[*18*] See ***Latvian Competition Authority***, *The Latvian Competition Authority examines employee poaching agreements from a competition law perspective, 9 June 2023, e-Competitions June 2023, Art. N° 112889.*

[*19*] See, e.g. ***UK Competition*** *Authority, The UK Competition Authority reminds employers to avoid anti-competitive practices, 9 February 2023, e-Competitions February 2023, Art. N° 111040*; ***Emma Zarb***, ***Nicola Whiteley***, ***Charlotte Oliver***, ***Matthew G. Rose***, *The UK Competition Authority issues new guidance on avoiding anti-competitive behaviour for employers, 9 February 2023, e-Competitions February 2023, Art. N° 111065*; and ***Marc Israel***, ***J. Mark Gidley***, ***Kathryn Jordan Mims***, ***Tilman Kuhn***, ***Strati Sakellariou-Witt***, ***Peter Citron***, *The UK Competition Authority publishes a guide for employers on how to avoid breaching competition law in labour markets, 9 February 2023, e-Competitions February 2023, Art. N° 111529.*

[*20*] See ***Canadian Competition Bureau***, *The Canadian Competition Authority releases updated guidelines regarding collaborations between competitors, 6 May 2021, e-Competitions May 2021, Art. N° 101080*; ***Chris Margison***, ***Robin Spillette***, *The Canadian Competition Authority revises its approach to non-compete clauses and publishes its updated Competitor Collaboration Guidelines, 6 May 2021, e-Competitions May 2021, Art. N° 114963*; and ***Huy Do***, ***Chris Margison***, ***Robin Spillette***, *The Canadian Competition Authority releases its new and long-awaited Competitor Collaboration Guidelines, 6 May 2021, e-Competitions May 2021, Art. N° 114969.*

[*21*] See ***Canadian Competition Bureau***, *The Canadian Competition Authority publishes a guideline to criminalise wage-fixing and no-poach agreements, 30 May 2023, e-Competitions May 2023, Art. N° 112787*; ***Arlan W. Gates***, ***Justine Johnston***, *The Canadian Competition Authority publishes enforcement guidelines on recently criminalized wage-fixing and no-poach agreements, 30 May 2023, e-Competitions May 2023, Art. N° 112936*; and ***Antonio Di Domenico***, ***Chris Margison***, ***Robin Spillette***, ***Musa Mansuar***, *The Canadian Competition Authority issues finalized enforcement guidelines for wage-fixing and no-poach agreements, 30 May 2023, e-Competitions May 2023, Art. N° 114894.*

[*22*] See ***Turkish Competition Authority***, *The Turkish Competition Authority concludes that 16 undertakings had violated competition law in the labour market by engaging in no-poach agreements (Turk Telekom / VeriPark / Vodafone…), 3 August 2023, e-Competitions August 2023, Art. N° 113554.*