A cartel might not just be about prices, but also about employees

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Prohibited anticompetitive agreements do not necessarily have to be just cartel agreements on product pricing or market sharing. Employers can also enter into agreements with each other to prevent their employees from leaving to work for competitors or to fix wages. Did you know these agreements can also be considered anticompetitive and are thus prohibited? If you are interested in the competitive aspects of labour market agreements, read today's article on a less common type of anticompetitive agreement to align remuneration or not to solicit.

The two most common types of anticompetitive behaviour on the labour market are agreements between employers not to hire employees from each other (**no-poaching**) and not to compete on wage conditions and other employee benefits (**wage-fixing**). These agreements can negatively impact the labour market to the detriment of employees and even affect final consumers. Therefore, the competition aspect must also be considered in the labour market, as anticompetitive behaviour can also occur here, especially in the form of cartel agreements between employers. It is irrelevant whether employers are competing in the same business, because the issue is competition in the labour market, where all employers can be competitors to each other irrespective of the product and services they offer. Such conduct can be severely punished by the Competition Protection Office, and at the same time, the damaged parties can sue for the damages incurred.

In May 2023, the Czech Competition Protection Office issued a fact sheet on this topic and announced that it intended to focus on investigating no-poaching and wage-fixing agreements as a priority. It can thus be reasonably expected that these agreements will become subject to specific investigations and administrative proceedings in future, as is already the case with other competition authorities in the European Union and the world. We therefore recommend that a prohibition on such arrangements should be an integral part of companies' compliance programmes. Firstly, employers will be aware of the defectiveness of such arrangements, and secondly — in the event of an individual failure — the Office can significantly reduce a fine if the offending company has a functioning compliance programme covering this area.

It is worth noting that standard post-contractual non-compete agreements concluded between companies and their employees are exempt from the Office’s supervision, as these are not considered anticompetitive and are explicitly allowed by Czech law. Employees can freely decide whether they want to conclude a non-compete agreement with their employer, as opposed to no-poaching and wage-fixing agreements between employers, which the employees have no influence over and which damage employees. However, post-contractual non-compete agreements between companies and employees need to be carefully drafted to be valid under the Czech law and to provide the employer with the right protection.

If you yourself are a party to such agreements, you have the opportunity to take advantage of the leniency programme and obtain immunity from possible fines or a significant reduction in fines. Our experts in competition and employment law can help you with this. Please do not hesitate to contact Lenka Krutáková or Jakub Kabát at CMS Prague.

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