WAGE-FIXING AND NO-POACH AGREEMENTS: BARRIERS TO ECONOMIC DYNAMISM OF INDIA?

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ABSTRACT

*This article examines anti-competitive agreements in labour markets, particularly wage-fixing and no-poach agreements, which undermine fair competition and hinder talent mobility, affecting economic growth and workers' rights. In a global context, regulatory bodies like the European Commission and the U.S. Department of Justice have begun addressing these issues rigorously, designating certain labour practices as per se violations of competition laws. India's Competition Commission ("**CCI**"), though aware, has not explicitly regulated such agreements under its competition laws. The article underscores the adverse effects of these practices on India's economy, especially in high-demand sectors like IT, where restrictive agreements prevent wage growth and reduce labour market dynamism.*

Analyzing judicial precedents, the article highlights the potential for India to adopt similar regulatory frameworks to those in the U.S., EU, and Canada, which actively combat labour collusion. The authors advocate for the CCI to enforce competition laws in labour markets by establishing clear guidelines, enhancing penalties, and strengthening oversight. They also propose introducing whistleblower mechanisms and scrutinizing employment contracts during mergers. Implementing these reforms would promote fair labour practices, protect workers' rights, and support India's economic dynamism by allowing talent mobility and encouraging wage competitiveness.

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I. INTRODUCTION

Undercurrents of labour market collusion are causing concern worldwide in a time when the competition for talent is more intense than ever. Some businesses are turning to covert agreements that hinder competition and go against the fundamental principles of a free market, such as wage-fixing, no-poach agreements, and restrictive non-compete terms, as they race to maintain their competitive advantage.[1] These actions limit economic development and innovation in addition to endangering workers' rights.[2] There has never been a greater need to address these concerns, particularly in view of recent actions taken by regulatory agencies like the CCI and the European Commission ("***EC***"), who are intensifying their examination of labour market practices.[3]

The European Commission's May 2024 policy brief,[4] which classifies wage-fixing and no-poach agreements as "by-object" limitations under Article 101(1) of the Treaty on the Functioning of the European Union ("***TFEU***"),[5] is a clear call to action. With this audacious move, antitrust enforcement enters a new age when employer collaboration is not tolerated. There are significant ramifications: businesses now have to deal with a legal environment that requires openness and equity in their recruiting procedures. The message is obvious as probes into no-poach agreements spread across a variety of industries, from fast-food chains to IT giants: operating in the shadows is gone.

A comparable awakening is occurring in India. No-poach agreements have lately gained frightening popularity in the business sector, as companies are eager to restrict access to their talent pools at any costs. The CCI, which is becoming more watchful of these anti-competitive acts, however has failed to consider the same under the ambit of the Competition Law.[6] Indian businesses face the danger of violating competition laws when they implement policies that restrict employee mobility, which might lead to scrutiny and a change in how they operate.

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[1] Rahul Rai, Anicham Tamilmani, "India Inc's new-found liking for no-poach agreements could invite CCI's attention", Deccan Herald (March 2024), <https://www.deccanherald.com/opinion/india-incs-new-found-liking-for-no-poach-agreements-could-invite-ccis-attention-2917322>.

[2] Moshe Buchinsky, "Examining Key Economic Issues in Anti-Poaching and Pay Equity Litigation", Analysis Group <https://www.analysisgroup.com/examining-key-economic-issues-anti-poaching-pay-equity/>.

[3] Vaibhav Choukse, "No-Poaching Agreements – an expert's take whether it is a threat to competition or just good business", Zoomed Out, CNBC TV18 (August 2023), <https://www.cnbctv18.com/views/hr-google-apple-cci-no-poaching-agreements-an-experts-take-whether-it-is-a-threat-to-competition-or-just-good-business-17576291.htm>.

[4] European Commission, "Antitrust in Labour Markets" (Competition Policy Brief No. 2/2024, May 2024), <https://competition-policy.ec.europa.eu/document/download/adb27d8b-3dd8-4202-958d-198cf0740ce3_en>, accessed 31 October 2024.

[5] Treaty on the Functioning of the European Union (Consolidated version) [2008] OJ C115/47, art 101(1).

[6] Shivansh Shukla, "Handshakes on Headhunting? The Legality of No-Poach Agreements", The Indian Review of Corporate and Commercial Laws (July 2023), <https://www.ircc.in/post/handshakes-on-headhunting-the-legality-of-no-poach-agreements>.

However, this problem is universal and cuts beyond national boundaries. With new regulations to eliminate non-compete agreements that limit employees' ability to pursue better prospects, the Federal Trade Commission ("***FTC***") is creating a stir in the U.S.[7] This change demonstrates the increasing agreement that upholding workers' rights is crucial to a thriving economy. As authorities realize that strong competition among businesses is essential for luring top personnel and spurring innovation, the discussion surrounding labour market collusion is changing quickly. The relevance of the subject now cannot be overstated. Ensuring that labour markets are competitive and dynamic is crucial as countries recover from the COVID-19 pandemic's disruptions. This environment is made more complex by the expansion of gig economies and remote work, which are redefining traditional employment relationships and frequently leaving workers open to restrictive practices that might hinder their ability to advance in their careers.

Furthermore, the effects of anti-competitive agreements ripple through whole industries rather than just affecting individual workers. Reduced labour mobility might make it more difficult for businesses to recruit qualified workers and inhibit team innovation, according to research.[8] Any arrangement that restricts competition risks stagnating not only in pay but also in technical advancement and service delivery in a world where innovation is the driving force behind success.

As we explore this pressing matter, it becomes evident that strong legislative frameworks alone are not enough for successful regulation; all parties involved employers, workers, and regulatory agencies must work together to create an atmosphere that fosters fair competition. By focusing on both global patterns as well as specific country settings, such as India, this article aims to shed light on the state of competition law enforcement with regard to labour markets today. We want to make a significant contribution to the discussion on maintaining fair competition while defending workers' rights by examining current frameworks and suggesting novel regulatory strategies.

One of the problems that lies ahead is identifying anti-competitive practices; another is creating remedies that preserve social justice and economic development while balancing the interests of all parties involved. As we are at this point in labour market regulation, one thing is for sure: transparency, accountability, and a commitment to fostering an environment where every worker may thrive are necessary for the future.

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[7] Federal Trade Commission, "FTC Announces Rule Banning Noncompetes" (April 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>, accessed on 31 October 2024.

[8] Matthew S. Johnson, Michael Lipsitz, Alison Pei, "Innovation and the Enforcement of Noncompete Agreements", National Bureau of Economic Research (July 2023), <https://www.nber.org/system/files/working_papers/w31487/w31487.pdf> accessed on 31 October 2024.

II. UNDERSTANDING ANTI-COMPETITIVE AGREEMENTS IN THE LABOUR MARKET

Anti-competitive labour market activities can take many different forms, but they all seriously impede fair competition and the flow of talent. No-poaching agreements are one of these practices that is especially detrimental since they essentially create a cartel like atmosphere that stifles the prospects for career progression and worker mobility.[9] In order to segment the labour market and lessen competition for competent workers, these agreements arise when firms in the same industry band together to avoid employing each other's employees.[10] Because of this, the effects of these agreements go beyond specific businesses and impact whole sectors, which in turn impacts consumers.

Similar to price-fixing in conventional markets, wage-fixing is another pernicious instance of anti-competitive conduct. In this collusive arrangement, businesses forego competition for the finest employee by agreeing to establish pay and control terms of employment, including vacations, rest intervals, and perks. They produce a stagnant workplace where employees have fewer options and less earning potential by standardizing wages. In addition to hurting workers, this lack of competition undermines industry innovation and productivity.[11]

These problems are made worse by no-poaching agreements, which create artificial divisions in the labour market.[12] Businesses may decide not to seek each other's personnel at all or restrict their hiring efforts to particular regions. Employers compete less for qualified workers as a result of this market fragmentation, which lowers pay and limits prospects for career progression. Businesses have little motivation to enhance working conditions or provide competitive pay when they are not vying for talent. As a result, employees are stuck in positions with few opportunities for advancement or higher pay.

These anti-competitive actions have effects on the output market in addition to the labour market. Productivity and creativity may suffer when businesses limit their capacity to draw in and keep people. Because businesses are less inclined to invest in their employees or enhance their offers,

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[9] Blair and Harrison (n 25) 42–46 (discussing the case of collusive monopsony and arguing that, acting in concert, buyers can orchestrate their purchase decisions to achieve precisely the same results as the monopsonist acting alone); Alan Devlin, 'Questioning the Per Se Standard in Cases of Concerted Monopsony' (2007) 3 Hastings Bus L J 223; and Posner (n 5) 47.

[10] Herbert Hovenkamp, 'Note for OECD: Competition Policy for Labour Markets' (2020) DAF/COMP/WD(2019)67, 5.

[11] OECD, 'Competition in Labour Markets' (2020), 28 <https://www.oecd.org/competition/competition-in-labour-markets-2020.pdf>.

[12] Lola Damstra, "How do non-poaching agreements distort competition", Oxera (June 2019), <https://www.oxera.com/insights/agenda/articles/how-do-non-poaching-agreements-distort-competition/>.

customers frequently receive lower-quality goods and services when the labour market is less competitive. Both employees and customers suffer from fewer options and worse results as a result of this vicious cycle.[13]

Although some businesses may contend that no-poaching agreements might improve operational effectiveness or encourage cooperation, these assertions frequently obscure the anti-competitive nature of these agreements. In actuality, these agreements frequently restrict employee choices and lower industry-wide remuneration levels. In addition to affecting individual employees, businesses that band together to restrict recruiting practices also contribute to larger economic inefficiencies that can impede innovation and progress.

III. HOW ANTI-COMPETITIVE AGREEMENTS STIFLE TALENT AND INNOVATION IN THE LABOUR MARKET?

Competition is the catalyst behind efficiency and innovation in a healthy free market. In a bid to serve customers and stimulate economic progress, businesses aim to provide the greatest selection of goods and services at competitive rates. In a similar vein, employees benefit from better terms and opportunities when businesses fight for talent. But this balance is upset by the rise of no-poaching agreements, which erect substantial obstacles to fair competition in the labour market. A thorough understanding of economic concepts like monopoly and monopsony, which shed light on how power dynamics influence labour mobility and wage stagnation, is necessary to comprehend the ramifications of these agreements.[14]

No-poaching agreements have systemic impacts on the labour market as a whole, with consequences that go well beyond specific businesses.[15] The decrease in labour market dynamism is among the most notable effects.[16] Employee remuneration, productivity, and creativity stagnate when these agreements prevent workers from freely changing employers. Businesses have no

[13] Ana Sofia Rodrigues, Marta Rocha, Sonia Moura, "Anti competitive Agreement in Labour Markets: A survey of the most recent developments in EU Competition Law", Journal of European Competition Law & Practice, Vol. 15, Issue 2, Pg 141-149 (March 2024), <https://doi.org/10.1093/jeclap/lpad068>.
[14] Mariateresa Maggiolino, "The Application of Competition Law to Labour Markets: Some Unresolved Issues", Journal of Antitrust Enforcement, Oxford (September 2022), <https://doi.org/10.1093/jaenfo/jnac021>.
[15] Evan Starr, "The ties that bind workers to Firms: No-Poach Agreements, Non competes, and other ways firms create and exercise labour market power", ProMarket (January 2023), <https://www.promarket.org/2022/01/03/workers-poaching-noncompete-employers-labour-antitrust/>.
[16] Clifford Chance, "New European Commission Policy Brief on Antitrust in Labour Markets" (June 2024), <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2024/06/new_european_commission_policy_brief_on_antitrust_%20in_labour_markets.pdf>.

motivation to raise pay or enhance working conditions if there is little competition to draw in talent.[17]

Furthermore, these agreements make it impossible to assign productive workers to companies where they may be most useful. Reduced productivity across industries is associated with decreased employment reallocation rates, according to research.[18] Innovation and general economic progress are hampered when skilled workers are unable to easily switch between businesses.

Mobility fosters innovation because it allows workers to move across companies, bringing new views and ideas that propel advancement. Because no-poaching agreements force qualified personnel into roles where they might not be fully exploited, they hinder this important component of innovation. Such agreements will inevitably result in a decrease in the caliber and diversity of goods offered on the market if labour mobility is crucial for encouraging innovation in a given industry.[19]

Think about this: how can we anticipate industry change if skilled workers are unable to move to companies that place a higher value on their abilities? The explanation is obvious: no-poaching agreements foster an atmosphere that inhibits innovation and growth.

According to economic theory,[20] There are numerous employers and employees on the supply and demand sides of a completely competitive labour market, respectively, meaning that no one has the chance to engage in dishonest negotiation. No-poaching agreements, on the other hand, upset this balance and give employers more negotiating leverage. The competition legislation is applicable when employers "collude" with one another, depriving workers of equitable possibilities that might otherwise be accessible.[21] A contract that forbids workers from changing employment

[17] Dr. Tilman Kuhn, Strati Sakellariou-Witt, Nina Frie, "Labour related agreements in the European Commission's antitrust spotlight: New Policy Brief on Antitrust in Labour Markets", White&Case (May 2024), <https://www.whitecase.com/insight-alert/labour-related-agreements-european-commissions-antitrust-spotlight-new-policy-brief>.

[18] Diti Goswami, "Productivity and job reallocation: evidence from the Indian manufacturing", International Journal of Manpower (February 2022), <http://dx.doi.org/10.1108/IJM-07-2020-0345>.

[19] Daniel Ferres, Gaurav Kankanhalli, Pradeep Muthukrishnan, "Anti-Poaching Agreements, Innovation, and Corporate Value: Evidence from the Technology Industry" (August 2023), <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4552393>.

[20] Naman Aggarwal, "Navigating the Legal landscape of No Poaching Agreements and Competitive Law", GNLU Journal of Law and Economics (July 2024), <https://gjle.in/2024/07/26/navigating-the-legal-landscape-of-no-poaching-agreements-and-competition-law/>.

[21] Gregory Day, "The Necessity in Antitrust Law", Washington and Lee Law Review, Vol. 78, Issue 4 (2021), <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=4742&context=wlulr>.

without their permission is a kind of restriction of trade and is comparable to anti-competitive horizontal agreements.[22]

IV. THE IT SECTOR CASE OF STAGNATION

One striking example of these tendencies in action is the IT industry. Big businesses like Wipro, Cognizant, and Infosys have come under fire for actions that could be similar to no-poaching agreements.[23] Wage growth has been frustratingly slow in this quickly changing industry, despite the tremendous need for qualified individuals.[24]

According to stories that have appeared in recent years, these companies continue to prosper financially, frequently reporting record profits, while their employees get stagnant pay that do not keep up with growing living expenses or inflation.[25] For instance, Infosys has come under fire for its unwillingness to provide large salary increases in spite of its strong financial results. In a similar vein, Cognizant's recruiting methods have drawn criticism for fostering an atmosphere in which workers feel stuck since they have few opportunities for promotion or higher pay elsewhere.

Important queries concerning the wider ramifications for the job market are brought up by this stagnation: How do slow wage growth rates result from no-poaching agreements? What impact does this have on the health of the economy? Research indicates that when businesses follow these tactics, they unintentionally reduce competition in the labour market as a whole as well as among themselves.

Reduced productivity and slower GDP growth have been closely associated with declining employment reallocation rates, which is a worrying trend for any economy that aspires to improve. Overall economic dynamism suffers as long as productive workers are bound to companies that are unwilling or unable to value them through competitive pay packages.

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[22] CAM Competition Team & CAM Corporate Team, "Non-solicitation in the context of Competition and Labour Laws", Cyril Amarchand Mangaldas (May 2018), <https://competition.cyrilamarchandblogs.com/2018/05/non-solicitation-context-competition-labour-laws/>.

[23] "Infosys accuses Cognizant of unfair employee poaching, sends letter to firm", Business Standard (December 2023), <https://www.business-standard.com/companies/news/infosys-accuses-cognizant-of-unfair-employee-poaching-sends-letter-to-firm-123122700824_1.html>.

[24] Haripriya Sureban, "IT Freshers salaries see sluggish growth", The Hindu Business Line (September 2022), <https://www.thehindubusinessline.com/info-tech/it-freshers-salaries-sees-sluggish-growth/article65849522.ece>.

[25] "Corporate profits nearly quadrupled, but employee salaries didn't: Economic Survey urges firms to raise compensation", The Economic Times (July 2022), <https://economictimes.indiatimes.com/news/economy/indicators/corporate-profits-nearly-quadrupled-but-employee-salaries-didnt-economic-survey-urges-firms-to-raise-compensation/articleshow/111928303.cms?from=mdr>.

Furthermore, research shows that monopoly and monopsony power both play a major role in the stagnation of wages in a number of industries.[26] Monopolistic behaviours enable dominant employers to pay lower wages than would be anticipated in a competitive setting, whereas monopolistic practices cause enterprises to charge higher prices for goods and services thereby diminishing demand for labour.[27]

The competitive nature of labour markets is seriously threatened by no-poaching agreements. These behaviours undercut the fundamental ideas that propel economic advancement by limiting worker mobility, lowering wages, and discouraging innovation.[28] It is clear that removing these obstacles is necessary to promote a more vibrant and fair labour market as competition authorities examine such agreements more closely under antitrust laws.

V. A WORLDWIDE LENS ON LABOUR MARKET COMPETITION

With effect from June 23, 2023, the most recent modifications to the Canadian Competition Act[29] signal a radical change in the law pertaining to labour market activities.[30] By expressly making wage-fixing and no-poaching agreements between unconnected businesses illegal, these reforms bring Canada into line with other countries—most notably the U.S.—that have previously taken action to outlaw similar labour-related arrangements.[31] By prohibiting agreements that can stifle salaries and limit job mobility, the new clauses seek to improve competition in labour markets.

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[26] Randy M Stutz, 'The Evolving Antitrust Treatment of labour-Market Restraints: From Theory to Practice' (2018), accessed 1 September 2021. Indeed, for years, labour economists have argued that labour markets were competitive and, more generally, that monopsonists were rare—see Frederick M Scherer and David Ross, Industrial Market Structure and Economic Performance (Houghton Mifflin 1990) 517–19. To date, however, many theoretical and empirical studies show that quite frequently in the labour markets, employers hold market power (and even a significant amount of it) on the 'buy side'—see, in particular, Ioanna Marinescu and Eric A Posner, 'A Proposal to Enhance Antitrust Protection Against labour Market Monopsony' (2018) 4–7 <https://rooseveltinstitute.org/publications/a-proposal-to-enhance-antitrust-protection-against-labour-market-monopsony/>.

[27] https://one.oecd.org/document/DAF/COMP(2019)2/en/pdf.

[28] Bahadir Balki, Arda Diler, Rana Antar, "The TCA's Stance on No-poaching Agreements: A Comparative Analysis", Kluwer Competition Law Review (June 2022), <https://competitionlawblog.kluwercompetitionlaw.com/2022/06/03/the-tcas-stance-on-no-poaching-agreements-a-comparative-analysis/>.

[29] Fall Economic Statement Implementation Act, SC 2024, c 15 (assented to 20 June 2024), <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-59/royal-assent>.

[30] Competition Act, RSC 1985, c 19 (2nd Supp), as amended by Bill C-59, SC 2024, c 15 (assented to 20 June 2024), <https://www.canada.ca/en/competition-bureau/news/2024/06/significant-changes-to-strengthen-the-competition-act-become-law.html>.

[31] Stephen A. Miller, Nathan J. Larkin, "DOJ Continues Crackdown on No-Poach Agreements", The Temple's Business Law Magazine, <https://www2.law.temple.edu/10q/doj-continues-crackdown-on-no-poach-agreements/>.

Employers who band together or agree to set salaries or restrict hiring from one another are now committing a per se criminal crime under the new section 45(1.1).[32] This implies that proof of anti-competitive consequences is not necessary for such agreements to be declared illegal. The word "employer" has a broad definition that includes business leaders, agents, and human resources specialists. Serious consequences, such as up to 14 years in jail and hefty fines at the discretion of the court, await violators of this clause. Individuals who are disadvantaged by these illegal acts have the right to file civil lawsuits against their employers, and corporations may also be held accountable if their top executives participate in such arrangements.

The goal of enacting this ban is to get rid of "naked restraints" on competitiveness that jeopardize ethical labour standards. According to the Commissioner of Competition, the Bureau would give enforcement of wage-fixing and no-poaching agreements among labour-competing companies first priority.[33] Nonetheless, the new legislation grants employers several exclusions and "defences.[34] For example, if an employer can show that a labour restriction is required to reach a more comprehensive agreement that does not contravene the ban, then an auxiliary restraints argument could be applicable. In a similar vein, if an employer's acts are required by other laws, a regulated conduct defences could be viable.

The Canadian Competition Bureau has released Enforcement Guidelines,[35] detailing how it plans to implement these restrictions in order to assist companies in navigating this new regulatory environment. These instructions make it clear that only agreements formed after June 23, 2023, will be examined; however, if they show a consensus after the implementation date, reaffirming or implementing pre-existing agreements may also be subject to scrutiny. Notably, this ban does not apply to wage-fixing or no-poaching agreements between linked firms.

When evaluating whether the ban applies, the Bureau will consider the nature of employment ties as part of its investigation focus. The ban could not be applicable if an employer does not have a conventional employer-employee relationship with those who are parties to a contested agreement.

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[32] Competition Act, RSC 1985, c C-34, s 45(1.1).
[33] Chris Hersh, Erika Woolgar, "No-poach, no problem: Competition Bureau releases enforcement guidelines for wage-fixing and no-poaching agreements", Norton Rose Fulbright (June 2023), <https://www.nortonrosefulbright.com/en/knowledge/publications/ae773684/no-poach-no-problem-competition-bureau-releases-enforcement-guidelines-for-wage-fixing>.
[34] Mark Katz, "Canada Joins the Labour Party: Wage Fixing and No-Poaching Agreements are now Illegal under the Competition Act", Kluwer Competition Law Blog (June 2022), <https://competitionlawblog.kluwercompetitionlaw.com/2022/06/30/canada-joins-the-labour-party-wage-fixing-and-no-poaching-agreements-are-now-illegal-under-the-competition-act/>.
[35] Competition Bureau of Canada, 'Enforcement Guidelines on Wage-Fixing and No-Poaching Agreements' (May 30, 2023) <https://competition-bureau.canada.ca/how-we-foster-competition/consultations/enforcement-guidance-wage-fixing-and-no-poaching-agreements> accessed 5 November 2024.

Additionally, the new legislation only forbids "two-way" no-poach agreements, which ban both parties from employing each other's workers.

Alongside these changes in Canada, attention has also been drawn to antitrust concerns in the US labour markets.[36] Through a number of programs designed to increase worker mobility and bargaining power, the Biden administration has placed a high priority on labour market competitiveness. The Executive Order[37] on Promoting Competition in the American Economy, which was released in July 2021 and urged federal agencies to reduce unfair labour practices, outlined this objective.

U.S. officials have been particularly concerned about no-poach agreements, which are contracts between businesses that prohibit them from hiring or recruiting one another's workers. These kinds of agreements have been considered detrimental as they limit worker competitiveness and may result in lower salaries across industries. According to recommendations released by the FTC and the U.S. Department of Justice ("***DOJ***"), "naked" no-poach agreements are inherently unlawful under antitrust statutes.[38]

With more criminal convictions resulting from DOJ investigations, the enforcement environment around no-poach agreements has changed dramatically in recent years.[39] Furthermore, a number of states have passed laws outlawing no-poach clauses at the state level,[40] indicating a growing understanding of the necessity of more stringent rules pertaining to hiring practices.

Private antitrust litigation has increased in reaction to alleged violations of labour market competition regulations, coinciding with federal and state government initiatives. Companies that

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[36] Ermelinda Spinelli, Jan Rybnicek, Sarah Jensen, "Antitrust enforcers' attention on labour markets spreading across the globe: a new legal battlefield?", Freshfields Risk & Compliance (March 2023), <https://riskandcompliance.freshfields.com/post/102iaul/antitrust-enforcers-attention-on-labour-markets-spreading-across-the-globe-a-new>.

[37] Executive Order on Promoting Competition in the American Economy, 86 FR 36987 (9 July 2021) <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

[38] Department of Justice and Federal Trade Commission, 'Guidance for Human Resource Professionals' (2023) <https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-release-guidance-human-resource-professionals>.

[39] Dee Bansal, Beatriz Mejia, Julia Brinton and Lauren Hirsch, "The 'no-poach' approach: trends in antitrust enforcement of employment agreements", Global Competition Review (October 2024), <https://globalcompetitionreview.com/review/the-antitrust-review-of-the-americas/2025/article/the-no-poach-approach-trends-in-antitrust-enforcement-of-employment-agreements>.

[40] Jeffrey A. Wadsworth, "As U.S. Department of Justice suffers setbacks, New York Continues Crackdown on No-Poach Agreement:, Harter Secrest & Emery LLP (December 2023), <https://hselaw.com/news-and-information/legalcurrents/as-u-s-department-of-justice-suffers-setbacks-new-york-continues-crack-down-on-no-poach-agreements/>; Christopher J. Abbott, Elena Marie Oliveri, "DOJ Continues to Prioritize No-Poach Cases", Jenner & Block (May 2023), <https://www.jenner.com/en/news-insights/publications/doj-continues-to-prioritize-no-poach-cases>.

impose no-hire agreements on franchisees and other business partners have been the target of class action lawsuits alleging that their actions violate Section 1 of the Sherman Act.[41]

A fragmented legal landscape that makes compliance difficult for companies operating under these frameworks is the result of the wide variations in the legal standards used to no-poach agreements among U.S. courts.[42] When it comes to horizontal no-poach agreements between franchisors and franchisees, some courts have taken a per se rule stance,[43] while others use a rule-of-reason methodology that weighs whether an agreement's pro-competitive advantages are outweighed by its anti-competitive impacts.[44]

Fighting anti-competitive behaviours, including wage-fixing and no-poaching agreements, is reflected in the rapidly evolving job market legislation in the UK and the EU.[45] After the first criminal conviction for labour market antitrust crimes by the U.S. Department of Justice in October 2022,[46] labour agreements have come under increased scrutiny worldwide.[47] Significant action has been made to address these problems by the EC,[48] and the UK Competition and Markets Authority ("***CMA***"),[49] indicating a move towards stricter enforcement of competition rules.

The CMA published new guidelines in February 2023 to assist companies in navigating the intricacies of employment-related competition legislation.[50] This guideline emphasizes how

[41] Sherman Act, 15 U.S.C. § 1 (2021).
[42] Eric Akira Tate, Cooper J. Spinelli, "No-Poach case alert: DOJs no-poach strategy dealt another blow as court tosses case before it reaches jury", Employment Law Commentary (May 2023), <https://elc.mofo.com/topics/no-poach-case-alert-doj-s-no-poach-strategy-dealt-another-blow-as-court-tosses-case-before-it-reaches-jury>.
[43] Molly Edgar, "The DOJs Role in the Franchise No-Poach Problem", Hastings Law Journal, Vol 72, Issue 5, (May, 2021), <https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=3944&context=hastings_law_journal>.
[44] Brian Callaci, Mathew Gibson, Sergio Pinto, Marshall Steinbaum, Matt Walsh, "The effect of franchise no-poaching restrictions on worker earnings", IZA Institute of labour Economics (July 2023), <https://docs.iza.org/dp16330.pdf>.
[45] TUC, "UK employment rights and the EU" Frances O'Grady, TUC, London WC1B 3LS, <https://www.tuc.org.uk/sites/default/files/UK%20employment%20rights%20and%20the%20EU.pdf>.
[46] Press Release, U.S. Dep't of Just., "Health Care Company Pleads Guilty and is Sentenced for Conspiring to Suppress Wages of School Nurses" (Oct. 27, 2022), <https://www.justice.gov/opa/pr/health-care-company-pleads-guilty-and-sentenced-conspiring-suppress-wages-school-nurses>.
[47] Carl W Hittinger, Danyll W Foix, Julian D Perlman, Jeffrey E Liskov and Maria Luevano, "Antitrust scrutiny of US labour markets intensifies", Global Competition Review (August 2023), <https://globalcompetitionreview.com/review/the-antitrust-review-of-the-americas/2024/article/antitrust-scrutiny-of-us-labour-markets-intensifies>.
[48] Tilman Kuhn, Strati Sakellarious-Witt, J. Mark Gidley, Kathryn Jordan Mims, George L. Paul, Mark Powell, Cristina Caroppo, Peter Citron, "No-poach agreements on the European Commission dawn raid radar", Kluwer Competition Law Blog (November 2021), <https://competitionlawblog.kluwercompetitionlaw.com/2021/11/09/no-poach-agreements-on-the-european-commission-dawn-raid-radar/>.
[49] Competition and Markets Authority, "CMA research report on competition and market power in UK labour market", (January 2024), <https://www.gov.uk/government/news/cma-research-report-on-competition-and-market-power-in-uk-labour-market>.
[50] Competition Market Authority, "CMA reminds employers to avoid anti-competitive practices", (February 2023), <https://www.gov.uk/government/news/cma-reminds-employers-to-avoid-anti-competitive-

seriously the CMA takes employer collusive agreements, especially those pertaining to wage-fixing and no-poaching.[51] As part of its larger plan to guarantee that competition flourishes in the employment sector, the CMA is concentrating on these behaviours.[52]

Three main kinds of collusive agreements that may occur in labour markets are identified in the guidelines.[53] The first are *no-poaching agreements*, which are contracts that forbid employers from employing one another's workers without permission. Given that workers have few possibilities for other jobs, these agreements limit employee mobility and give employers the authority to include unpleasant clauses in employment contracts. The second category is *wage-fixing agreements*, which are contracts between businesses to determine employee pay or other benefits. Because of this approach, employees are unable to bargain for greater salary or look for better-paying jobs elsewhere. Last but not least is *information sharing*, which occurs when employers exchange private information regarding terms and conditions of employment. This might result in industry-wide standardization of terms that could hinder competition.

Because collusion may be more possible in industries with limited talent pools, such as TV broadcasting, the CMA has mostly concentrated its attention on these industries. But these practices have an impact on many other businesses, especially those that need specialized talents. The CMA established a leniency program for companies that could unintentionally get into such anti-competitive agreements in order to encourage compliance even further.[54] Businesses may be able to escape harsh fines by applying for leniency if they reveal their involvement in these activities prior to the start of any inquiry. The CMA pledged to take a more active approach to addressing competition concerns in the employment sector in its most recent annual plan. This shows a strong desire to strengthen enforcement against anti-competitive behaviour that can hurt workers and customers by restricting options and lowering wages.

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practices#:~:text=The%20new%20materials%20cover%20no,and%20conditions%20of%20employees'%20contracts.>.

[51] Totis Kotsonis, Tadeusz Gielas, "Main Developments in Competition Law and Policy 2023- United Kingdom", Kluwer Competition Law Blog (June 2024), <https://competitionlawblog.kluwercompetitionlaw.com/2024/06/03/main-developments-in-competition-law-and-policy-2023-united-kingdom/>.

[52] Ashurst, "CMA's growing interest in labour markets", (March 2024), <https://www.ashurst.com/en/insights/cmas-growing-interest-in-labour-markets/>.

[53] Competition and Markets Authority, "Employers advice on how to avoid anti-competitive behaviour" (February 2023), <https://www.gov.uk/government/publications/avoid-breaking-competition-law-advice-for-employers/employers-advice-on-how-to-avoid-anti-competitive-behaviour>.

[54] Stephen Wisking, Veronica Roberts, Kristien Geeurickx, "UK government proposes wide ranging reforms to its competition and consumer protection regimes", Herbert Smith Freehills (July 2021), <https://www.herbertsmithfreehills.com/notes/crt/2021-07/uk-government-proposes-wide-ranging-reforms-to-its-competition-and-consumer-protection-regimes>.

The European Commission released a significant policy brief on labour market antitrust on May 3, 2024.[55] By outlining what exactly qualifies as a violation of competition law in this situation and offering crucial guidance on evaluating wage-fixing and no-poach agreements, this paper marks a major step toward the establishment of competitive labour markets throughout the EU.

According to the policy brief, wage-fixing and no-poach agreements should be categorized as limitations by object under Article 101 of the TFEU since they are often harmful to competition.[56] Because of this categorization, such agreements are assumed to be unlawful without requiring proof of their true anti-competitive impact.

Companies that engage in wage-fixing or no-poach agreements may contend that their actions serve justifiable goals, such as preserving intellectual property or investments in employee training, but the policy brief makes clear that justifiable goals do not excuse these agreements from being categorized as restrictions by object.[57] According to the brief, businesses might accomplish comparable goals using less troublesome strategies, such non-disclosure agreements or commitments forcing workers to stay with a company for a predetermined amount of time following training. This demonstrates that companies looking to safeguard their interests without engaging in anti-competitive behaviour have legal options.

The EC stresses that evidence of a desire to limit competition—such as maintaining low pay or preventing market entry—can bolster claims against such agreements, but it is not required to prove intent to restrict competition for an agreement to be declared unlawful. The policy brief recognizes that not all no-poach provisions should be regarded as unlawful cartels; in certain cases, they may be appropriate as auxiliary constraints or satisfy requirements outlined in Article 101(3).[58] This is dependent on proving that these provisions are required to accomplish pro-competitive goals without unnecessarily limiting competition, though.

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[55] Alessio Aresu, Dominik Erharter, Brigitta Renner-Loquenz, "Competition Policy Brief", European Commission (May 2024), </https://competition-policy.ec.europa.eu/document/download/adb27d8b-3dd8-4202-958d-198cf0740ce3_en>.

[56] Treaty on the Functioning of the European Union (TFEU) art 101.

[57] Anne Federle, Paula Gonzalez Alarcon, "No-poach agreements can comply with competition- when they are not naked: A quick guide to ancillary no-poach agreements" Bird and Bird (May 2024), <https://competitionlawinsights.twobirds.com/post/102j7q8/no-poach-agreements-can-comply-with-competition-when-they-are-not-naked-a-qu>.

[58] Treaty on the Functioning of the European Union (TFEU) art 101(3).

The European Commission has reaffirmed its resolve to enforce current competition regulations against labour market agreement violations.[59] National authorities have the authority to look into and punish businesses that are proven to be using anti-competitive tactics. Despite the fact that labour markets frequently function at the national or regional level, the European Commission has the power to examine wage-fixing and no-poach agreements among its member states in the event that evidence of cooperation is discovered.[60]

This policy brief's release indicates increased EU enforcement activity against labour market anti-competitive agreements. Businesses are now taking a more cautious approach to no-poach provisions and integrating human resources staff into compliance training programs. Notwithstanding its thoroughness, the policy brief offers no particular recommendations about information sharing procedures in labour markets or how contracts between HR companies and their customers need to be evaluated in light of competition laws. As national authorities continue to assess such procedures, it is expected that these gaps will be filled.

There is a chance for jurisdictions like India, where competition law has traditionally been influenced by frameworks in the UK, the US, and the EU, to implement comparable policies targeted at boosting labour market competitiveness as nations around the world come to understand the significance of competitive labour markets. India can ensure that its workforce prospers in a global economy that is becoming more and more competitive while promoting fair employment practices by enacting laws that prohibit wage-fixing and no-poaching agreements.

Stakeholders in the business have had varying responses to these developments, although they typically support more transparent rules that encourage fair competition in labour markets. Many employers are aware that anti-competitive behaviour can have long-term negative impacts on their companies, such as decreased innovation and discontent among employees. Nonetheless, several sector leaders have voiced worries about possible regulatory overreach, worrying that lawful corporate operations can be mistaken for anti-competitive conduct.

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[59] Elske Raedts, Chloe Gregg, "Commission takes labour market enforcement to the next level", Stibbe (June 2024), <https://www.stibbe.com/publications-and-insights/commission-takes-labour-market-enforcement-to-the-next-level>.

[60] Concurrences, "No-poach agreements- Closing the enforcement gap", Competition Law Review (2023), <https://www.wilmerhale.com/-/media/files/shared_content/editorial/publications/documents/20231129-concurrences--no-poach-agreements-closing-the-enforcement-gap-.pdf>.

A major move towards tougher enforcement of competition rules pertaining to labour market activities is shown in recent measures taken by the European Commission and the UK CMA.[61] These regulatory agencies seek to promote competitive workplaces where workers may bargain for fair pay and have more job mobility by aggressively combating wage-fixing and no-poach agreements. There is a noticeable trend towards promoting competitive labour markets worldwide as we witness these notable changes in regulatory strategies across different jurisdictions—such as Canada's most recent amendments, increased scrutiny in the U.S., proactive actions by the UK CMA,[62] and comprehensive frameworks established by the EU.

VI. THE INDIAN LEGAL LANDSCAPE

India's competition legal environment is changing, especially with regard to agreements and employment practices that could limit employee mobility. Even though Indian competition law is based on the frameworks of the United States and the European Union, it has certain peculiarities, particularly in regards to how agreements like wage-fixing and no-poaching are interpreted. Although no-poaching agreements ("***NPAs***") are not specifically addressed under the Competition Act of 2002, as amended, they may be examined under Section 3(3),[63] which addresses anti-competitive horizontal arrangements, such as cartels. Because NPAs have the ability to affect employee wages and manage the market's supply of skilled personnel, this clause is especially pertinent.[64]

Organizations are finding it more and more difficult to retain essential talent as employee mobility increases. Illegal agreements like NPAs do not offer a workable solution, and traditional retention measures frequently fall short. Even though the CCI hasn't yet decided a case regarding NPAs explicitly, businesses, recruiters, and HR specialists need to be on the lookout for competition law compliance while creating employment practices. Both businesses and its officers may face hefty fines for noncompliance.

From a legal perspective, a business who takes a cautious approach—drafting carefully crafted employment agreements stands a higher chance of limiting legal risks and lawfully keeping

[61] Jane Hannon, Alexandra Kamerling, Chloe Cumber, "Competition in labour markets takes centre stage in UK, EU and USA", DLA Piper (January 2024), <https://www.dlapiper.com/en/insights/publications/2024/01/competition-in-labour-markets-takes-centre-stage-in-uk-eu-and-usa>.
[62] Marta Isabel Garcia, "Labouring over competition: tech sector feels the heat of enforcement", Tech UK (May 2024), <https://www.techuk.org/resource/labouring-over-competition-tech-sector-feels-the-heat-of-enforcement.html>.
[63] Competition Act 2022, s 3(3).
[64] Lola Damstra, "How do non-poaching agreement distort competition", Oxera (June 2019), <https://www.oxera.com/insights/agenda/articles/how-do-non-poaching-agreements-distort-competition/>.

important personnel. Any restrictive condition in an employment contract, such as a non-compete agreement, is nullified upon cessation of employment in accordance with Section 27 of the Indian Contract Act, 1872.[6566] In a similar vein, non-solicitation agreements have been examined in a number of legal settings.

A non-solicitation provision was analyzed in the seminal case of *Embee Software Pvt. Ltd. v. Samir Kumar Shaw & Others (2012),*[67] and determined not to be a trade restriction under Section 27 of the Contract Act. According to the court, a former employee's solicitation may constitute tortious behaviour that goes against the interests of the former employer. Another noteworthy case is *Wipro Ltd. v. Beckman Coulter (2006)*,[68] in which the Delhi High Court confirmed that a non-solicitation agreement between two business organizations can be enforceable under Indian law.

The CCI has only come across a small number of instances pertaining to recruiting practices that involve claims like predatory hiring or non-compete provisions, notwithstanding this court's precedence regarding non-solicitation clauses.[69] Nonetheless, the CCI has often rejected these claims as being more about employment concerns than infractions of competition laws.

This brings up a crucial query: Do wage-fixing and no-poaching agreements violate the Competition Act? Employers at the same level of the value chain enter into these kinds of agreements. Anti-competitive agreements between businesses involved in related crafts or services are covered under Section 3.[70] Consequently, firms vying for talent may in fact be subject to Section 3's jurisdiction as they are seen as rivals in the labour market.

Although no-poaching or wage-fixing agreements are not specifically mentioned in the Competition Act, they may nonetheless be investigated under Section 3(3) since they have the power to determine employee remuneration and restrict the supply of skilled labour. How these agreements are regarded under Indian competition law will be determined in large part by the CCI's interpretation.

[65] Indian Contract Act 1872, s 27.
[66] V.F.S. global services Pvt. Ltd Vs Mr. Suprit Roy (2008(2) Bom CR 446).
[67] Embee Software Pvt. Ltd. v. Samir Kumar Shaw & Others, AIR 2012 Cal 141.
[68] Wipro Ltd. v. Beckman Coulter, 2006 (2) CTLJ 57 (Del).
[69] Cyril Amarchand Mangaldas, "Non-solicitation in the context of competition and labour laws", (May 2018), <https://competition.cyrilamarchandblogs.com/2018/05/non-solicitation-context-competition-labour-laws/>.
[70] Competition Act 2022, s 3.

Under Section 3(3)(b)[71] and Section 3(3)(c)[72] of the Competition Act, 2002, wage-fixing and no-poaching agreements may also be scrutinized. Section 3(3)(b) pertains to agreements that restrict or control the production, supply, or distribution of goods or services. In the case of no-poaching agreements, employers mutually agree not to hire from each other, which effectively restricts the supply of skilled labour in the market. This restriction can limit employment opportunities and suppress competition among employers seeking talent. Meanwhile, Section 3(3)(c) addresses market or customer allocation agreements, which can extend to labour markets. When employers agree to avoid recruiting each other's employees, they are effectively segmenting the labour market, which reduces competition for skilled workers and may lead to suppressed wages and limited worker mobility. Both sections underscore how these agreements can restrict competition in the labour market, justifying review by the Competition Commission of India (CCI) under Indian competition law.

Finding rivals that have wage-fixing or no-poaching agreements in place to avoid antitrust obligations is another factor taken into account by the CCI. Businesses used to focus on direct rivals in product marketplaces, but this idea has now broadened to encompass any organization that may vie for talent, such as suppliers or customers.

The recent no-poaching pact between Adani Group and Reliance Industries,[73] India's two largest corporate conglomerates, is a noteworthy case that presents serious competition law issues.

Because of collusive agreements between rival employers and non-compete agreements between employers and employees, competition concerns extend beyond products and services to labour markets. The CCI has been cautious in claiming its position in this field, despite well-established international precedents from developed nations.

Recent modifications to merger control regimes intended to facilitate company operations - most notably, the removal of requirements for revealing non-compete agreements during merger filings further highlight this cautious regulatory approach.

[71] Competition Act 2002, s 3(3)(b).
[72] Competition Act 2002, s 3(3)(c).
[73] Shivansh Shukla, "Handshakes or Headhunting? The Legality of No-Poach Agreements", IRCCL (July 2023), <https://www.irccl.in/post/handshakes-on-headhunting-the-legality-of-no-poach-agreements>.

It's interesting to note that OECD research[74] points to a growing trend of more methodical examination of labour market competitiveness challenges in different jurisdictions. Enforcement actions pertaining to labour input marketplaces are permitted under the current framework; the only thing left to do is adjust the current instruments for efficient competition analysis in these markets.

Since the Adani-Reliance no-poach agreement just serves as a window into more significant systemic problems in India's labour market, the CCI needs to take a serious look at these industry practices.[75] The commission must vigorously carry out its role and abandon its passive stance toward labour markets. According to reports, Reliance Industries and Adani Group have mutually agreed not to hire one other's staff, which is a practice that is controversial in the field of competition law. Although supporters contend that neither side is in a dominating position and that this arrangement does not limit individual job chances, worries about such cooperation among significant market participants persist.

VII. JUDICIAL PERSPECTIVE ON LABOUR MARKET PRACTICES

There have been notable changes in the field of competition law concerning wage-fixing and NPAs in a number of jurisdictions, most notably the U.S. and the UK. In stark contrast to India's more cautious stance, where no direct cases involving NPAs have been decided, these nations have set up a system that examines such agreements under competition law.

The Indian judiciary's position on restrictive covenants in employment contracts is demonstrated by seminal decisions such as *Gujarat Bottling v. Coca-Cola Company*[76] and *Pepsi Foods Ltd. v. Bharat Coca-Cola Holdings Pvt. Ltd.*[77] The Supreme Court held in Gujarat Bottling that people are free to pursue any lawful business as long as it doesn't go against public policy. The Court further emphasized that the restriction of trade theory applies to other contractual arrangements in addition to employment contracts by ruling that restrictive covenants that last longer than the period of a contract is illegal under Section 27[78] of the Indian Contract Act.

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[74] OECD, "Labour market transition across OECD countries: Stylised facts", (December 2021), <https://www.oecd.org/en/publications/labour-market-transitions-across-oecd-countries-stylised-facts_62c85872-en.html>.

[75] K R Srivats, "Anti-poaching labour pacts need scrutiny", The Hindu Business Line (September 2022), <https://www.thehindubusinessline.com/opinion/anti-poaching-labour-pacts-need-scrutiny/article65956138.ece>.

[76] M/S Gujarat Bottling Co Ltd & Ors. v. The Coca Cola & Ors. [1995] SC 5.

[77] Pepsi Foods Ltd. Vs. Bharat Coca-Cola Holdings Pvt. Ltd.
1999 SCC Online Del 530.

[78] Indian Contract Act 1872, s 27.

In an identical manner, the Court determined that a provision prohibiting an employee from accepting a new position for a full year following termination in Pepsi Foods was in violation of Section 27.[79] The Court affirmed that contracts cannot restrict an employee's capacity to pursue better job prospects by ruling that such agreements are unlawful, unenforceable, and against public policy. The Court's decision to forbid the creation of permanent work relationships, which it referred to as "economic terrorism," demonstrates the court's unequivocal condemnation of excessively restrictive contracts.

On the contrary, American courts have adopted a more robust position on NPAs in the context of antitrust law. Similar to other allocation agreements in consumer markets, the court held in *Danielle Seaman v. Duke University*[80] that no-poach agreements between rival employers are inherently illegal under Section 1 of the Sherman Act.[81] This viewpoint is consistent with the larger legal environment in the United States, where NPAs are seen as anti-competitive in the same way as price-fixing schemes.

By claiming that competition law applies equally in labour markets as it does in consumer markets, the *United States v. eBay*[82] ruling strengthened this position even more. The court underlined that no-poach agreements allow firms to forgo vying for talent, so substituting cooperative advantages for competitive dangers. Because of this rationale, U.S. antitrust regulators have strengthened their commitment to preserving competitive labour markets by seeing NPAs similarly to other anti-competitive actions.

The DOJ and FTC's 2016 joint guidelines,[83] which deemed "naked" no-poach agreements unlawful in and of themselves under Section 1 of the Sherman Act,[84] is indicative of the growing scrutiny around non-poaching agreements.[85] A major change in the way labour market agreements are implemented in the United States has resulted from this instruction, which has opened the door for a surge of criminal prosecutions pertaining to non-poaching agreements.

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[79] Madhub Chunder Poramanick v. Rajcoomar Doss and Ors, (1874) 14 Beng LR 76.
[80] Danielle Seaman v Duke University, No 1:15-cv-00462 (M.D.N.C. 2019).
[81] Sherman Act, 15 U.S.C. § 1 (1890).
[82] United States v eBay Inc, No 12-CV-05869 (ND Cal, 2013).
[83] Press Release, U.S. Dep't of Justice, Justice Department and Federal Trade Commission Release Guidance for Human Resource Professionals on How Antitrust Law Applies to Employee Hiring and Compensation (Oct. 20, 2016), <https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-release-guidance-human-resource-professional>.
[84] Sherman Act, 15 U.S.C. § 1 (1890).
[85] Laura K Kaufmann, "No-poach Agreements: Increasingly Risky", Antitrust and Unfair Competition Law, Spring 2022, Vol 32, No. 1, Calfornia Lawyers Association (2022), <https://calawyers.org/publications/antitrust-unfair-competition-law/competition-spring-2022-vol-32-no-1-no-poach-agreements-increasingly-risky/#fr27>.

On the other hand, NPAs have not yet been specifically mentioned in the CCI's 'enforcement proceedings or rulings. There have been no noteworthy cases that particularly target NPAs or wage-fixing arrangements, despite the Competition Act's Section 3(3) offering a framework for analyzing anti-competitive horizontal agreements, including those that impact labour markets.

The effectiveness with which Indian courts and regulatory agencies will address new labour market practices that can violate competition rules is called into doubt by this lack of judicial involvement. Indian courts have set precedents for restrictive covenants, but they haven't yet dared to look into how NPAs affect labour market competitiveness.

VIII. SUGGESTIONS

1. Regulatory Reforms in India: In accordance with competition law, the CCI ought to take into account specifically addressing wage-fixing and no-poach agreements. Clarifying the legitimacy of such agreements through amendments to the Competition Act will allow the CCI to take decisive action. Additionally, incorporating guidelines similar to those of the U.S. DOJ and FTC,[86] which categorize certain labour practices as per se illegal, may enhance clarity and deterrence.[87]
2. Introduce Penalties and Sanctions for Violations: Businesses found to be involved in wage-fixing or no-poach agreements would face severe fines and sanctions. Large fines or even criminal penalties can serve as powerful disincentives for businesses thinking about entering into such contracts.
3. Implement Regulatory Oversight and Monitoring: A special task force should be formed by the Competition Commission of India (CCI) to keep an eye on labour market practices, particularly in sectors like manufacturing and information technology that have a history of restrictive agreements. To identify and deal with anti-competitive behavior, this task force might review hiring practices on a regular basis.
4. Strengthen International Collaboration for Best Practices: To learn the best techniques for controlling competition in the labour market, the CCI can work with international agencies such as the European Commission and the U.S. Department of Justice. Gaining knowledge from these agencies' experiences can help develop efficient enforcement and regulation strategies.

[86] Federal Trade Commission and U.S. Department of Justice, Antitrust Guidelines for Collaborations Among Competitors (April 2000), <https://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf>.
[87] Mitchell Anderson, "Avoiding No-Poach Liability: Making Reasonable Choices to Quality for the Rule of Reason",Arizona Law Review, Vol. 63:1111 (2021), <https://arizonalawreview.org/pdf/63-4/63arizlrev1111.pdf>.

5. Establish a Whistleblower Mechanism: Establish a CCI whistleblower policy that safeguards workers who expose unfair labour practices. This system can discourage businesses from entering into unfair contracts and promote ethical hiring procedures.
6. Review of Employment Contracts in Mergers: In order to avoid restrictive practices from becoming ingrained in labour agreements and to promote a labour market that values flexibility and fair salaries, regulatory agencies should examine employment contracts during merger or acquisition evaluations to make sure they adhere to competition law.

IX. CONCLUSION

Though they still lack thorough regulatory control, anti-competitive labour market agreements including wage-fixing and no-poach agreements are receiving more attention in India. Even while India has embraced international frameworks for competition, its approach to labour market regulation is still restricted, mostly concentrating on product markets while ignoring accords pertaining to employment. However, these activities have a big impact on India's workforce and economy, which is expanding quickly. This is especially true for sectors like manufacturing, IT, and pharmaceuticals that have a strong demand for trained workers.

Businesses can stifle wages and restrict employee mobility with little fear of legal repercussions because there aren't any explicit, binding rules governing these restrictive agreements. By curbing talent mobility and decreasing overall labour market dynamism, this not only impedes individual career advancement and earning potential but also stifles the economy as a whole. Restrictive no-poach agreements among large firms, for instance, limit competition in industries like technology, which leads to wage stagnation despite notable sector growth. Because they are unable to use their skills for career advancement or higher pay, employees are locked into particular companies, which eventually stifles creativity and productivity.

Section 3(3) of the Competition Act of 2002[88] gives the Competition Commission of India (CCI) the authority to look into anti-competitive behaviour. Despite the fact that wage-fixing and no-poach agreements have the potential to violate worker rights and reduce wages, the CCI has not yet specifically addressed these issues. The CCI may establish a clear regulatory norm by explicitly placing wage-fixing and no-poach practices under the jurisdiction of competition law. This would highlight the need for fair competition in labour markets, just as it does in product markets.

[88] Competition Act 2002, s 3(3).

In order to address these concerns, the CCI might examine regulatory methods in countries such as the U.S.,[89] the EU,[90] and Canada,[91] where labour market laws have been reinforced. Adopting rules akin to the U.S. Department of Justice's position on "naked" no-poach agreements[92] which are criminal in and of themselves could be a useful strategy, for instance. These rules would make it clear that collusive contracts that restrict employee mobility are not only immoral but also unlawful.

Furthermore, as it has done in cases involving non-compete restrictions in employment contracts, the Indian judiciary can be crucial in establishing legal precedents regarding restrictive labour agreements. A wider legal foundation for preserving labour market competition would be established if this strategy were extended to wage-fixing and no-poach agreements. The negative consequences of such agreements can also be lessened by legislative measures that promote openness in recruiting procedures, salary structures, and job conditions.

In conclusion, developing a vibrant labour market is crucial for India to keep its competitive advantage in the global economy. In addition to defending workers' rights, enforcing wage-fixing and no-poach agreements under competition law will boost economic growth by facilitating talent mobility, encouraging innovation, and guaranteeing that companies fairly compete for skilled labour. Together with increased knowledge and openness in labour practices, this regulation change would contribute to the development of a fair labour market where companies and employees may prosper.

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[89] Purdue Global Law School, "No-Poaching and Wage-Fixing Agreements Draw Antitrust Scrutiny" Purdue Global (May 2024), <https://www.purduegloballawschool.edu/blog/news/no-poaching-wage-fixing-agreements>.

[90] M. Mustafa Polat, "The Assessment of Labour Market Collusion: EX Policy Brief on Antitrust Issues in Labour Markets", Kluwer Competition Law Blog (May 2024), <https://competitionlawblog.kluwercompetitionlaw.com/2024/05/07/the-assessment-of-labour-market-collusion-ec-policy-brief-on-antitrust-issues-in-labour-markets/>.

[91] Anita Banicevic, Alysha Manji-Knight, Mark Katz, "Employer Beware: Amendments to the Canadian Competition Act's Criminal Conspiracy Provisions Take Effect" Kluwer Competition Law Blog (July 2023), <https://competitionlawblog.kluwercompetitionlaw.com/2023/07/15/employers-beware-amendments-to-the-canadian-competition-acts-criminal-conspiracy-provisions-take-effect/>.

[92] Kelly Anderson, "DOJ Focus on No-Poach Cases Could Have Wide- Ranging Consequences for Managers", SHRM (August 2021), <https://www.shrm.org/in/topics-tools/news/managing-smart/doj-focus-no-poach-cases-wide-ranging-consequences-managers>.