Antitrust law and the labour market: the first Italian proceedings for a secret cartel between employers

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Introduction: the I881 procedure of the AGCM

In recent years, antitrust enforcement has begun to treat the labour market as a real relevant market, in which competition between companies is also expressed through wages, benefits and professional mobility. The initiation of the I881 procedure is part of this framework.

With the provision of 22 December 2025, the Italian Competition Authority (AGCM) hypothesises the existence of a secret cartel between employers aimed at limiting competition in the reciprocal recruitment of qualified personnel.[1] According to the prosecution's hypothesis, at least from 2024, the companies involved[2] would

1 See www.agcm.it/dotcmsdoc/allegati-news/I881_provv.%20avvio.pdf accessed 24 April 2026.

2 The investigation was initiated against the following companies: IMA SpA, GD SpA, Coesia SpA, Akkodis Italy Srl, IEMA Srl, SIA Srl and SPAIQ Srl.

have entered into an agreement aimed at avoiding the hiring of staff from the other parties to the agreement, with the effect of limiting professional mobility in a highly specialised segment of the labour market.

The companies operate in the industrial district of the Italian Emilia-Romagna Region commonly referred to as the 'packaging valley', one of the most important manufacturing hubs in Europe in the production of precision packaging machinery, as well as components and related technical consultancy services. It is a highly integrated production ecosystem, in which companies active in the construction of machines, others specialised in the production of components and those focused on validation and technical support services coexist.

In this context, the figure of the 'validators' is inserted: engineers with specific experience in the sector, in charge of verifying that the packaging machinery – or their components – have been produced and installed at the end customer's premises in compliance with current legislation and the manufacturer's technical specifications.

According to the AGCM's preliminary findings, the companies would have participated in a horizontal agreement concerning the supply of the workforce.

As for the geographical dimension of the agreement, the Authority first hypothesises a regional extension, consistent with the territorial concentration of companies in the Emilia-Romagna *packaging valley*. However, the initiation measure does not exclude that, in light of the preliminary developments, a national dimension of the phenomenon may emerge, in view of the importance of the companies involved and the possible supra-regional mobility of the professionals concerned.

The investigation, which is expected to be completed by 30 June 2027, is part of a broader context of progressive expansion of antitrust enforcement to the labour market. Competition for the acquisition and retention of human capital is increasingly recognised as a structural component of the competitive process between companies, on a par with competition on price, quality and innovation in outlet markets.

In this perspective, the outcome of the I881 procedure will assume systemic importance. It will help to clarify whether and to what extent the approach, which values competition in the labour market as an autonomous and protected variable, will find a stable consolidation in the Italian legal system, marking a definitive alignment with the most recent developments in competition law at EU level.

Non-employment and wage fixing agreements under EU antitrust law

The European Commission describes non-employment agreements as presumably restrictive agreements by object.[3]

According to the Commission, it is difficult to establish that those cartels can be regarded as ancillary restrictions in relation to other agreements or that they can benefit from the exemption provided for in Article 101(3) of the Treaty on the Functioning of the European Union (TFEU).[4]

Under Article 101(3) TFEU, an agreement which restricts competition – including a cartel, which qualifies as a restriction by object – may also benefit from an exemption if it produces pro-competitive effects which offset the competitive harm. The exemption requires four cumulative conditions to be met:

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3 Guidelines on the application of Union competition law to collective agreements relating to the working conditions of the self-employed persons [2022] OJ C374/2 para 17 example 2 https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:52022XC0930(02) accessed 24 April 2026; Alessio Aresu, Dominik Erharter and Brigitta Renner-Loquenz, 'Antitrust in Labour Markets' (Competition policy brief, May 2024) https://competition-policy.ec.europa.eu/document/download/adb27d8b-3dd8-4202-958d-198cf0740ce3_en accessed 24 April 2026.

4 Article 101 states that:

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:
   (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
   (b) limit or control production, markets, technical development, or investment;
   (c) share markets or sources of supply;
   (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
   (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
   – any agreement or category of agreements between undertakings,
   – any decision or category of decisions by associations of undertakings,
   – any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
   (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
   (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

- the agreement must contribute to improving the production or distribution of goods, or to promoting technical or economic progress;
- consumers must receive a fair share of the benefits deriving from it;
- restrictions must be indispensable for the achievement of these objectives; and
- the cartel must not enable the parties to eliminate competition in respect of a substantial part of the goods or services concerned.

With regard to wage-fixing agreements, it seems difficult to sustain the existence of pro-competitive effects capable of satisfying those requirements. Such arrangements aim, by their nature, to compress the level of wages through the joint exercise of market power on the demand side of labour, without generating allocative improvements or technical progress that could compensate for the damage caused to workers and, indirectly, to consumers.

The evaluation of non-employment agreements is more articulated. In the abstract, they could be justified by the need to avoid hold-ups or to protect employers' investment in training, thus preserving incentives for investment in specific human capital. However, the economic literature highlights how the possible benefits are, at best, uncertain and difficult to demonstrate. While such agreements may strengthen the incentives of companies to offer training, they also reduce the incentives for workers to invest in their own general training, as they limit the opportunities to develop these skills with other employers.

It could also be assumed that the artificial reduction of wages leads to a decrease in production costs and, consequently, in prices in downstream markets. However, the Commission's Guidelines on the application of Article 101(3) make it clear that cost savings resulting from the mere exercise of market power do not constitute an efficiency relevant for the purposes of the exemption. In other words, wage compression achieved through a restriction of competition cannot be invoked as a benefit transferable to consumers.

The same Guidelines also specify that the pro-competitive benefits must manifest themselves, as a rule, in the same market in which the restrictive effects are produced. In the case of agreements restricting competition in the labour market, any advantages should therefore emerge in that market and not only in the outlet markets.

Even if a legitimate objective were recognised, the requirement of indispensability would hardly be satisfied. In fact, there are less restrictive instruments to protect companies' investments, such as confidentiality agreements, minimum permanence clauses, mechanisms for proportional reimbursement of training costs, periods of paid leave or non-compete clauses in accordance with national labour regulations. These solutions make it possible to pursue the same goals without eliminating competition for work in a generalised way.

In light of those considerations, it seems complex to imagine that wage-fixing or non-recruitment agreements could satisfy the strict requirements of Article 101(3) TFEU.

It follows that wage-fixing agreements and so-called no-poach agreements can be considered inherently detrimental to competition in the labour market.[5]

No-poach agreements in turn are divided into two main types: on the one hand, the commitment not to actively search for employees of other companies (so-called non-solicit or no cold calling); on the other hand, the obligation not to proceed with the recruitment even if it is the worker himself who spontaneously applies to a company other than the one currently employed (so-called no hire).[6]

Both wage setting and non-employment agreements have a direct impact on workers, producing negative effects on wage levels, labour mobility and, more generally, on the efficient allocation of human resources.

Due to the nature of the relationship between the companies involved, non-employment agreements can be divided into horizontal and vertical.

Horizontal are those concluded between competing companies, which decide not to compete for the attraction of qualified personnel. In such cases, the cartel seeks to neutralise an essential dimension of competition by preventing each undertaking from attempting to recruit workers already employed by rival undertakings.

On the other hand, vertical agreements are defined as agreements entered into between companies that are not in direct competition, but are linked by commercial or organisational relationships. This category includes, for example, clauses included in franchising agreements between franchisors and franchisees, or agreements between companies participating in a joint venture, in which the provision of a prohibition on reciprocal employment can be justified by the need

5 Giulia Mangiafico, 'Prohibition of restrictive agreements of competition and the labour market: the new guidelines of the Commission' (2024) 3 Quaderni AISDUE.

6 Aresu, Erharter and Renner-Loquenz, 'Antitrust in Labour Markets' (Competition policy brief, May 2024). The policy brief offers guidelines on how to consider certain types of labour market agreements, such as wage-setting and non-employment agreements, from an antitrust perspective. The Commission's initiative stems from concerns about the anti-competitive effects that such practices could have on labour markets that are highly concentrated, and where the contractual balance between workers and employers means that wages reflect the marginal contribution of employees. At the time of the publication of the policy brief (May 2024), the Commission had not yet ruled on cases related to these agreements, but the document highlights how they too must be assessed in the light of European competition rules and, specifically, Art 101 TFEU. According to European case law, in fact, wage-fixing and no-poach agreements are comparable to cartels between buyers (so-called 'buyer cartels') in that the fixing of wages falls within the scope of Art 101(1)(a) TFEU as a type of purchase price (of the performance of work), while no-poach falls within the provisions of Art 101(1)(c) TFEU as a form of allocation of sources of supply, with possible qualification as restrictions by object.

to avoid opportunistic behaviour and phenomena of appropriation of personnel trained in the context of the collaboration. It is precisely in franchise contracts that such clauses are most frequently found.

Finally, it should be noted that these agreements are notoriously difficult to identify, as they are often characterised by a high degree of confidentiality. Their tendentially secret nature means that they are known only by the companies that are parties to the agreement, making it difficult to reveal the conduct and strengthening the role of investigative tools and internal reporting mechanisms.

From an economic point of view, non-employment agreements can have several negative effects. First, they can strengthen the bargaining power of companies vis-à-vis workers, reducing alternative employment opportunities and limiting labour mobility. This increased power may result in the imposition of lower wages than would be the case in a competitive environment.

Secondly, they can lead to an inefficient allocation of the labour force: the narrowing of the pool of potential employers and the compression of mobility hinder an effective matching of labour supply and demand, with possible productivity losses, reduced output and negative repercussions on downstream markets, such as higher prices or lower quality of goods and services.

In addition, such agreements can hold back innovation, as they limit the mobility of workers between companies, which is one of the main channels for the dissemination of knowledge and skills. Finally, they can reduce incentives to invest in human capital, discouraging companies and workers from investing in specialised training and education.

As highlighted in the European Commission's policy brief on the application of antitrust law in the labour market, published on 2 May 2024, the reduction in labour mobility negatively affects productivity, GDP growth and the diffusion of innovation, undermining the dynamic efficiency of the entire economic system.[7]

The European Commission's *Food Delivery Services* case

On 2 June 2025, the European Commission imposed a fine of €329m on Delivery Hero SE and Glovoapp23 SA ('Glovo'), among the main players in the food delivery market, for violation of Article 101 TFEU.[8]

7 A 2021 study (Matthew Gibson, 'Employer Market Power in Silicon Valley' [2025] The Economic Journal) on the effects of no-poach agreements investigated by the US Department of Justice in the technology sector, estimates that these agreements led on average, in the observed period, to a 4.8 per cent reduction in the wages of workers employed in companies adhering to the agreements.

8 See Case AT.40795 – *Food Delivery Services* at https://ec.europa.eu/competition/antitrust/cases1/202530/AT_40795_1262.pdf accessed 24 April 2026.

The EU Commission has accused the two companies of a plurality of anti-competitive conducts:

- for having entered into agreements aimed at not hiring reciprocal employees;
- for exchanging sensitive commercial information; and
- for dividing up the local markets.

As is apparent from the Commission's decision, in July 2018, Delivery Hero had acquired a non-controlling minority stake in Glovo and had progressively increased that stake through successive investments and, in July 2022, Delivery Hero had acquired sole control of Glovo.

The Commission found that, from July 2018 to July 2022, Delivery Hero and Glovo agreed not to take away their employees from each other. The Commission found that the shareholders' agreement signed at the time when Delivery Hero acquired a non-controlling minority stake in Glovo included limited mutual non-employment clauses for certain employees. Shortly thereafter, this agreement was extended to a general agreement not to actively contact the other party's employees.

The European Commission clarifies that no-poach agreements and related practices constitute a form of supply sources' sharing, similar to a cartel between buyers pursuant to Article 101(1)(c) TFEU.

When determining the sanction, the European Commission qualified the conduct ascertained as falling within the most serious infringements of competition law, also highlighting their four-year duration, between 17 July 2018 and 22 July 2022, the moment in which the last relevant episode takes place.

In calculating the fine, the amount resulting from the application of the ordinary parameters was subsequently reduced by ten per cent due to the settlement procedure that took place. Therefore, fines of €223,285,000 were imposed on Delivery Hero and €105,732,000 on Glovo, for a total amount of approximately €329m.

The decision highlights that both in the Commission's practice and in EU case law, such cartels are classified as restrictions of competition by object. In fact, these are agreements which, by their very nature, are capable of undermining the proper functioning of normal competitive play and it is sufficient that a degree of harm to competition emerges such as to make it unnecessary to demonstrate their actual effects.[9]

The European Commission's decision represents a particularly significant step in the evolution of European competition enforcement in the labour market.

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9 Communication from the Commission on guidelines on the application of Union competition law to collective agreements concerning the working conditions of solo self-employed persons [2022] OJ C374/02 https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:52022XC0930(02) accessed 24 April 2026.

The innovative scope of the decision does not lay only in the ascertainment of the offence, but also in the statement of principle according to which competition to attract and retain workers is an integral part of the competitive process between companies. In other words, the Commission has clarified that competition is not limited to the size of the prices charged to consumers or the conditions under which downstream services are offered, but also extends to competition for the acquisition of inputs, including skilled labour.

By classifying the cartel as a restriction by object, the Commission considered that a non-solicitation agreement between competing undertakings is, by its nature, capable of eliminating an essential competitive variable: the possibility of attracting staff through more favourable economic or professional conditions. This removal of competitive pressure has a direct impact on labour mobility, wage growth and, more generally, the allocative efficiency of the market. The agreement does not, therefore, require a precise demonstration of the actual effects in order to be classified as unlawful, since its very structure reveals a sufficient degree of harmfulness.

The decision also assumes systemic importance because it explicitly places the labour market within the ordinary scope of application of Article 101 TFEU, overcoming any residual uncertainty about the full competitive relevance of collusive practices on the labour demand side. In this way, the Commission has consolidated a line of motion which equates cartels relating to labour supply with traditional price-fixing or market-sharing cartels, marking a significant evolution in the conception of antitrust protection at European level.[10]

Points of contact between the Commission's *Food Delivery Services* case and the AGCM's I881 case: between practical applications and perspectives

The parallelism between the Food Delivery Services case and the I881 proceeding initiated by the Antitrust Authority is evident. If the Italian Authority were to confirm this approach, it would consolidate an orientation according to which no-poach agreements constitute, in principle, serious violations of Article 101

10 Marco Di Giovanni, *First intervention of the European Commission on no-poaching agreements in labour markets* [2025] *Giornale di diritto del lavoro e di relazioni industriali* n 187.

TFEU and Article 2 of Law 287/1990 on Rules for the protection of competition and the market.[11]

This evolution has significant consequences for companies, which are called upon to integrate the labour dimension into competitive compliance programmes.

So for non-solicitation clauses, exchanges of information on salaries and benefits, informal agreements between human resources managers, the practices take on a different legal relevance in light of the new orientation.

Antitrust is no longer limited to overseeing outlet markets: it also intervenes in the labour supply market, recognising that competition for human capital is an integral part of the market economy's functioning.

The Italian procedure is consistently part of this path. It remains necessary, however, to wait for the conclusion of the investigation procedure to verify, in practice, what the Authority's orientation will be.

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11 Law 287/1990 on Rules for the protection of competition and the market Art 2 provides that:

1. Agreements and/or concerted practices between undertakings shall be deemed to be agreements, as well as resolutions, even if adopted pursuant to statutory or regulatory provisions, of consortia, associations of undertakings and other similar bodies.
2. Agreements between undertakings which have as their object or effect the significant prevention, restriction or distortion of competition within the national market or in a significant part of it, including through activities consisting in:
   (a) directly or indirectly fix purchase or selling prices or other contractual conditions;
   (b) preventing or restricting production, market outlets or access, investment, technical development or technological progress;
   (c) share markets or sources of supply;
   (d) apply, in commercial relations with other contracting parties, objectively different conditions for equivalent services, so as to give them unjustified disadvantages in competition;
   (e) make the conclusion of contracts subject to the acceptance by the other contracting parties of additional services which, by their nature or according to commercial usage, bear no relation to the subject-matter of the contracts.
3. Prohibited agreements shall be null and void for all purposes.