

## CLIENT ALERT

# Food for thought: European Commission delivers antitrust fines for no-poach arrangement, information exchange and market sharing facilitated by a minority stake

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### Overview

On 2 June 2025 the European Commission announced that it has imposed a combined fine of €329 million on Delivery Hero and Glovo for engaging in an illegal cartel. This marks the first time the Commission has sanctioned the anticompetitive use of a minority stake in a competitor, as well as its first ever decision to fine companies involved in a no-poach arrangement.

Following a tip-off by a national competition authority (most likely Spain) and an anonymous whistleblower, the Commission carried out dawn raids at the companies' offices in Berlin and Barcelona in 2022 and 2023.

Both Delivery Hero and Glovo acknowledged their participation in the cartel and their liability for it. In exchange, the fine imposed on them was reduced by 10%.

## Collusion enabled by a minority shareholding

The conduct commenced in July 2018 when Delivery Hero acquired a non-controlling minority stake in Glovo. Delivery Hero then progressively increased this stake through subsequent investments until it acquired sole control of Glovo in July 2022.

The Commission found that during this period Delivery Hero and Glovo agreed:

- **not to poach each other's employees:** according to the Commission, the SHA signed in July 2018 included limited reciprocal no-poach clauses for certain employees. But this was subsequently expanded to a general agreement not to actively approach each other's employees;
- **to exchange commercially sensitive information**, including details on commercial strategies, prices, capacity, costs and product characteristics; and
- **to divide national markets in the EEA between themselves** by removing existing geographic overlaps between them, avoiding entry into their respective national markets, and agreeing which company should enter new markets.

According to the Commission's press release, the fact that these practices were "*facilitated by Delivery Hero's minority shareholding in Glovo*" was of particular concern. While the press release stresses that "[o]wning a stake in a competitor is not in itself illegal", in this case it "*enabled anticompetitive contacts*" between the competitors.

## The first EU sanction for a no-poach agreement

Anticompetitive labour market practices have been in regulators' crosshairs recently – particularly in the US, UK and at the European Member State level.<sup>1</sup>

The Commission previously indicated<sup>2</sup> that most cases against restrictive labour market agreements in Europe were likely to be dealt with by national competition authorities given the geographic scope of the relevant labour markets. This decision marks the first time the Commission has fined companies for agreeing not to actively poach each other's employees.

In a statement regarding the decision, Executive Vice-President Teresa Ribera noted that competition rules not only ensure lower prices but also "*protect our freedom to choose, including where we want to work*". This suggests that the Commission may pursue more cases involving anticompetitive labour market practices going forward.

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<sup>1</sup> See, for example, several recent investigations into no-poach agreements by the Portuguese Competition Authority since 2022; the French Competition Authority's investigation into no-poach agreements in the engineering, technology consulting and IT services sectors in 2023; or the Belgian Competition Authority's statement of objections to private security companies in 2023.

<sup>2</sup> Competition Policy Brief, Antitrust in Labour Markets (May 2024), available [here](#).

## Exchange of commercially sensitive information beyond the needs of a minority investor

It appears that Delivery Hero obtained commercially sensitive information through its seat on Glovo's board, and used its shareholder vote and board seat to influence various commercial decisions, with the result of aligning the two companies' respective business strategies.

The exact nature of the information that Delivery Hero and Glovo exchanged remains unclear as we await publication of the settlement decision. The press release mentions details on commercial strategies, prices, capacity, costs and product characteristics and notes that this went "*beyond what was needed for a corporate investor to protect a financial investment*". It remains to be seen whether the decision will clarify what information minority investors *can* receive.

## Implications for dealmakers and compliance counsel

### *Minority investments under the microscope*

The Commission's decision highlights that a minority shareholding can amount to an infringement of competition law if it facilitates coordination between competitors. While the Commission has for some time flagged structural links between competitors as an area of concern (for example in its horizontal merger guidelines, which note that structural links between competitors may help in aligning their incentives),<sup>3</sup> cross-shareholdings and cross-directorates have recently come under increased scrutiny: for example, on 1 September 2023 the merger notification form in the EU (the so-called "Form CO") introduced detailed disclosure requirements for cross-shareholdings and cross-directorates. But against the background of these most recent fines investors need to be even more mindful of minority investments and cross-directorates that may raise questions or concerns. Here are some practical takeaways from the Commission's decision:

- Where a company takes a minority interest in a competitor, documented **ethical walls and procedures to avoid conflicts of interest** should be put in place. If a company is represented on a competitor's board, recusal processes and firewalls should be put in place to control information flows.
- A **careful evaluation of information** received by a competitor in its capacity as a financial investor should be carried out to ensure this does not go beyond what is necessary to protect the value of the investment.
- **SHAs and other transaction documents** should be carefully reviewed to ensure that any restrictions on the minority investor or the target are proportionate and aimed at protecting the value of the investment only.

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<sup>3</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03), paragraph 48, available [here](#).

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*Labour market compliance is now a core antitrust risk*

No-poach agreements and other anticompetitive labour market practices such as wage-fixing and employment-related information exchange are increasingly in the antitrust spotlight. Antitrust compliance manuals should reflect this, and HR departments and deal teams should be trained to identify and avoid anticompetitive agreements and information flows in this area.

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