CMS | Romania joins countries penalising “no-poach” practices

Romania’s Competition Council issued its first decision against “no-poach” agreements in the automotive and engineering labour markets. This landmark enforcement action resulted in total fines of approximately EUR 32.15 million imposed on eight companies for coordinated restrictions on recruiting and hiring specialised personnel.

The investigation established that the companies agreed not to compete for the recruitment and mutual hiring of qualified or specialised staff involved in motor-vehicle production activities and related engineering and technical consulting services in Romania. The practices included agreements between the companies not to approach, solicit, or hire each other’s employees without prior consent.

The Council characterised the conduct as a form of market allocation in the labour market. The focus on labour-market competition reflects the principle that competition law protects not only product and service markets but also the upstream competition for inputs, including human capital. The Council considers “no-poaching” arrangements extremely harmful, since they reduce or eliminate competitive incentives to attract and retain talent and can depress wages, stagnate career progression, and restrict mobility, harming both the competitive process and employees.

While this is the first case in which the Council opposed “no-poach” arrangements in Romania, more decisions like this are likely to follow, given the opposition to no-poach agreements by the European Commission, other EU member states, the US and other international jurisdictions.

The case was initiated following an anonymous report submitted through Romania’s Competition Whistleblowers Platform, a forum for any interested person, including even a disgruntled employee, to report perceived wrongdoings.

Agreements that limit hiring or recruitment can attract severe penalties, whether the agreements are bilateral or multilateral, written or tacit, horizontal or vertical, between competitors or non-competitors. Provisions at particular risk include mutual no-hire clauses, non-solicitation commitments, and informal “gentlemen’s agreements” between competitors.

From a businesswise perspective, certain agreements limiting parties’ freedom to target company employees can be legitimate for specific types of collaborations and under defined legal conditions. Such circumstances, however, can only be cleared on a case-by-case basis and should always be subject to a prior competition law review to be defensible.

Companies operating in Romania must now reinforce antitrust compliance programmes with a specific focus on HR and recruitment practices. Policies should prohibit implementing or discussing no-poach, no-hire, or wage-fixing arrangements, particularly with competitors. Training should include HR, talent acquisition, and line managers involved in hiring. Collaboration agreements, joint ventures, and supplier or service relationships should be reviewed to eliminate restraints unrelated or disproportionate to legitimate cooperation needs.

Internal audits and whistleblowing channels should be strengthened for the early detection and remediation of risks, and specialised legal counsel should vet any restrictions affecting personnel mobility to ensure necessity, proportionality, and alignment with competition law.

As the first enforcement action of its kind in Romania, this case establishes a clear precedent that labour-market collusion is a priority for competition enforcement. Companies should expect continued enforcement and public guidance, and take proactive steps to align HR practices with competition law requirements.

For more information on this decision could affect your Romania-based business, contact your CMS client partner or the CMS experts who contributed to this article: **Cristina Popescu** and **Laura Capata**.