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Memorandum

EU No-Poach Fine Targets Anticompetitive Minority Shareholder Coordination

June 6, 2025

In a first, the European Commission ("**Commission**") has fined two food delivery companies EUR 329 million for unlawful information exchange and anticompetitive collusion to implement a no-poach agreement via their minority shareholdings in competing businesses.[1] This is the first time that the Commission has issued a fine for a no-poach infringement of Article 101 of the Treaty on the Functioning of the European Union ("**TFEU**"), and the decision marks a new phase of scrutiny by the Commission of minority shareholdings in competing businesses.

The Parties and the Investigation

Delivery Hero SE ("**Delivery Hero**") and Glovoapp23 SA ("**Glovo**") (together, the "**Parties**") provide intermediary delivery services from restaurants and similar facilities to customers ordering online or via an app. In July 2018, Delivery Hero acquired a minority shareholding in Glovo, increasing its share until it acquired sole control in 2022.

The Commission carried out unannounced inspections alongside national competition authorities ("**NCAs**") based on information received from an NCA and the Commission's anonymous whistleblower tool,[2] before formally launching an investigation in 2024.[3] On June 2, 2025, the Commission announced that it fined Delivery Hero and Glovo EUR 223 million and EUR 106 million, respectively, for their behaviour.

In the press release announcing its June 2025 decision (the decision is not yet publicly available), the Commission notes that the Parties had infringed Article 101 TFEU from July 2018 to July 2022 (the period of Delivery Hero's minority shareholding in Glovo), in the following ways:

- ***Information Sharing***. The Parties exchanged many forms of competitively sensitive information, including commercial strategies, prices, capacity, costs, and product characteristics.

[1] Commission press release, "*Commission Fines Delivery Hero and Glovo EUR 329 million for Participation in Online Food Delivery Cartel*", June 2, 2025, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1356.

[2] *See* the Commission's online whistleblower resources available at: https://competition-policy.ec.europa.eu/index/whistleblower_en.

[3] Commission press release, "*Commission Opens Investigation into Possible Anticompetitive Agreements in the Online Food Delivery Sector*", July 23, 2024, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3908.

- ***No-poach Agreement***. The Parties' shareholders' agreement for Delivery Hero's minority investment in 2018 included reciprocal clauses not to hire certain employees. The Commission alleged that the agreement then expanded to a general prohibition on poaching employees.
- ***Geographic Market Sharing***. The Parties agreed on which EEA national markets to enter or abstain.

The Commission found that each anticompetitive practice was facilitated by Delivery Hero's minority shareholding in Glovo and noted that, while a minority shareholding in a competitor is not *per se* illegal, Delivery Hero's minority shareholding in Glovo enabled it to obtain competitively sensitive information and align and coordinate business strategies.

Take Away 1: Misusing Information Obtained via Minority Shareholdings in Competitors Infringes Competition Law

This is the first time the Commission has fined a company for the anticompetitive use of a minority shareholding in a competing business.

Companies in the same corporate structure form a "single economic unit" under European competition law. This concept is used by the Commission and European Court of Justice both to exclude intra-group agreements from the scope of Article 101 TFEU and to impute, within a group of companies, the anticompetitive conduct of a subsidiary to its parent company.[4] Determining whether companies form part of the same "single economic unit" involves a review of factors including the economic, organisational, and legal links between the entities as well as the degree of decisional autonomy of the subsidiary.

More complex corporate structures may complicate the assessment of parental liability and whether a shareholding is deemed controlling, and therefore, part of the same "single economic unit". Sharing competitively sensitive information between two independent companies can reduce independent corporate decision making and lead to market coordination, contrary to Article 101 TFEU.

Risks arise when a director sits on the board of two competing companies (an "interlocking directorate") and one of the companies has a non-controlling shareholding in the other. Inadvertently or otherwise, the director risks facilitating unlawful agreements or coordination where they receive or share competitively sensitive information. Examples of such information include non-public pricing, strategy, manufacturing plans, and R&D.

Interlocking directorates have long been a focus of US antitrust law, as prohibited by Section 8 of the Clayton Act, which prohibits the same individual from serving on the board of two competing companies (subject to certain *de minimis* exemptions) (an "**interlock**"). An interlock that violates Section 8 is unlawful in itself, and it does not matter whether the interlock results in anticompetitive effects.

[4] *See*, *e.g.*, Cases 6/73 and 7/73, *Imperial Chemical Industries v Commission*, judgment of March 6, 1974, EU:C:1974:18*;* and Case C-595/18 P, *The Goldman Sachs Group v Commission*, judgment of January 27, 2021, EU:C:2021:73.

Whilst sharing competitively sensitive information is well established as being contrary to Article 101 TFEU, this decision could herald an increased Commission focus on minority shareholdings among competitors.

Take Away 2: Commission Confirms No-Poach Agreements Infringe European Competition Law

No-poach or no-hire agreements have emerged as one of the hot topics in antitrust, largely pioneered by the US antitrust agencies, as well as state-level enforcement.[5] These agreements can restrict competition by preventing companies from recruiting or competing for employees and suppressing the labour market.

The Commission has shown interest in pursuing no-poach agreements under competition law. In 2021, Executive Vice President and Competition Commissioner Vestager announced a new era of cartel enforcement to include no-poach agreements, commenting that such agreements can impact on competition where they are used to "*keep wages down, restricting talent from moving to where it serves the economy best*".[6] A number of NCAs have recently sanctioned or announced investigations into no-poach agreements. This decision, however, represents the first Commission fine for a no-poach agreement.

Ensuring Competition Law Compliance

- ***Review Minority Shareholdings and Board Roles***. Companies with complex structures should identify any competing affiliates, subsidiaries, or portfolio companies in which they hold minority interests and ensure that, where there are any interlocking directorates, appropriate information sharing safeguards are in place. Directors of competing companies should take care not to act as conduits in sharing competitively sensitive information and consult counsel to establish appropriate safeguards. It is important to consider the notion of "competitor" broadly, and on a regular basis, when companies expand their scope of activity.
- ***Antitrust and Competition Law Training Remains Crucial***. The Commission continues to make use of its broad investigation powers. Investigations stem from information received from an NCA, submissions through the Commission's online whistle-blower tool, and from the Commission's dawn raids.

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[5] Including most notably the Big Tech no-poach suits settled by the Department of Justice ("**DOJ**") against six large technology companies including Apple and Google in 2010 – DOJ press release, "*Justice Department Requires Six High Tech Companies to Stop Entering into Anticompetitive Employee Solicitation Agreements*", September 24, 2010, available at: https://www.justice.gov/archives/opa/pr/justice-department-requires-six-high-tech-companies-stop-entering-anticompetitive-employee, as well as more recent enforcement during the Biden administration (*see* "*Antitrust Division Continues to Focus on Competitors Sharing Company Directors in Violation of Section 8 of the Clayton Act*", March 9, 2023, available at: https://www.justice.gov/archives/opa/pr/justice-department-s-ongoing-section-8-enforcement-prevents-more-potentially-illegal; "*Two Pinterest Directors Resign from Nextdoor Board of Directors in Response to Justice Department's Ongoing Enforcement Efforts Against Interlocking Directorates*", Aug. 16, 2023, available at: https://www.justice.gov/archives/opa/pr/two-pinterest-directors-resign-nextdoor-board-directors-response-justice-departments-ongoing) The DOJ and Federal Trade Commission also published joint guidance on antitrust for human resources ("**HR**") professionals in 2016 (updated subsequently in 2025) – both 2016 and 2025 guidelines available at: https://www.justice.gov/archives/opa/pr/justice-department-and-federal-trade-commission-issue-antitrust-guidelines-business.

[6] Commission, "*Speech by EVP M. Vestager at the Italian Antitrust Association Annual Conference, "A new era of cartel enforcement""*, October 22, 2021, available at: ec.europa.eu/commission/presscorner/detail/en/speech_21_7877.

The Commission has also recently reported an uptick in cartel investigations. In this active enforcement environment, companies should ensure employees and directors are properly trained on competition law compliance and the information sharing practices.

- ***Review HR Policies for Anticompetitive Practices***. Review internal hiring policies and employment contracts for any non-solicit or no-hire clauses that could be anticompetitive. Consider whether there are any practices in the industry that might amount to anticompetitive agreements. Companies should seek competition counsel advice when drafting agreements, particularly where there are potentially anticompetitive employment clauses.

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