



AUTORIDADE DA
CONCORRÊNCIA

BEST PRACTICES
IN PREVENTING
ANTICOMPETITIVE
AGREEMENTS IN LABOR
MARKETS



Who is it aimed at?

This guide is aimed at companies (undertakings) and human resources professionals and others involved in the recruitment process in companies.

What is the objective?

Raise awareness to the risks of entering into anticompetitive agreements and of best practices in the hiring of employees and the definition of salary conditions.



What type of labor market agreements can harm competition?

**AGREEMENTS TO
FIX WAGES** or
other forms of
compensation

These are **AGREEMENTS** by which companies harmonise or standardise the wage or other benefits of their employees.

**AGREEMENTS NOT
TO SOLICIT OR NOT
TO HIRE**
employees (no-
poach
agreements)

These are **AGREEMENTS** whereby companies mutually agree not to make spontaneous offers or to hire employees, without the prior consent of the other companies in the agreement.

What effects can labor market agreements have?



INTRODUCE AN INEFFICIENCY

BY DISTORTING THE ALLOCATION OF THE LABOR INPUT

HAVE AN INSTRUMENTAL ROLE

IN MARKET SHARING AGREEMENTS BETWEEN COMPETITORS

SIGNAL POOR COMPETITION

BETWEEN COMPETING FIRMS DOWNSTREAM

REDUCE QUALITY AND VARIETY

OF PRODUCTS OR SERVICES PROVIDED

LIMIT THE ABILITY

OF A FIRM TO EXPAND PRODUCTION

REDUCE THE SALARY

OF EMPLOYEES

DAMPEN INVESTMENT

IN HUMAN CAPITAL

Competition Law and Labor Market

NO-POACH and **WAGE-FIXING AGREEMENTS** may harm employees and consumers by restricting competition in several dimensions.

NO-POACH and **WAGE-FIXING AGREEMENTS** may be subject to fines as agreements between companies, concerted practices and/or decisions by associations of companies within the meaning of article 9 of the Portuguese Competition Act and, if applicable, of article 101.^o of the Treaty on the Functioning of the European Union (TFEU).

These **AGREEMENTS** are liable to be punished with a fine applicable (i) to infringing companies and associations of companies, **UP TO 10% OF THEIR TURNOVER** and (ii) to individuals, **UP TO 10% OF THEIR ANNUAL REMUNERATION**.

They are also subject to indemnification under civil liability.

An anticompetitive labor market agreement can also be referred to as:

**NO-POACH
AGREEMENT**

**GENTLEMEN
AGREEMENT**

**NON HIRING
AGREEMENT**

**WAGE-FIXING
AGREEMENT**

**NON
AGGRESSION
PACT**

**NO COLD
CALL
AGREEMENT**

Eliminate hiring or wage setting policies that involve agreements with other companies

Do not refuse to solicit or to hire employees from another company

Do not exchange commercially strategic and sensitive information about employee hiring and compensation

OUTSIDE LEGITIMATE CONTEXTS OF SOCIAL DIALOGUES AND/OR COLLECTIVE BARGAINING AGREEMENTS, AS SOCIAL PARTNERS:

Do not participate in meetings with other companies where salaries or any other form of compensation is discussed

Do not agree with another company to fix salaries or any other form of compensation

If you have **suspicious of anticompetitive agreements** involving the hiring of employees or wage setting conditions between companies contact **Autoridade da Concorrência**

The **complaint** can be made anonymously.

When detecting a conduct that may harm competition, the AdC investigates and punishes with fines, whenever there is a practice prohibited by the Portuguese Competition Act and, if applicable, by the TFEU.

An application for **leniency** (legal framework for granting a waiver or reduction of fines) can be made.



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