

Covid - 19: AdC imposes precautionary measure on the Portuguese Football League that suspends no-poach agreement

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The AdC ordered the Portuguese Professional Football League (LPFP in Portuguese) to immediately suspend the no-poach agreement, an agreement to not recruit or hire another clubs' football players of the First and Second Leagues, who unilaterally terminate their employment contract, invoking issues caused by the Covid-19 pandemic.

The precautionary measure was decided today by the AdC in view of the potential serious and irreparable impact of a practice that could harm the competition rules and which was the subject of the opening of an investigation aimed at the LPFP.

Previously, on April 8, LPFP issued statements that refer to a resolution adopted by agreement between First and Second Leagues clubs, as LPFP members, and with the participation of the respective president, defining that the clubs will not hire players who unilaterally terminate their employment due to issues caused by the Covid-19 pandemic.

Through a no-poach agreement, companies abstain from hiring each other's workers, thereby renouncing competition for the acquisition of human resources, in addition to depriving workers of labour mobility.

The identified practice distorts normal functioning of the market and may have a negative impact on the economy and consumers. No-poach agreements, taking the nature of horizontal restrictions, between competing undertakings, have been considered serious restrictions of competition by the American and European competition authorities.

The AdC takes the opportunity to aware companies to the fact that exceptional measures to deal with the Covid-19 pandemic should not be subject to consultation between competitors.

Undertakings continue to be prevented from entering into agreements to share markets, set prices or other commercial conditions or, as in the case of football clubs, no-poach agreements, since these agreements are punishable under the terms of the Competition Law.

In conclusion, the LPFP's resolution of 8 April ends its effectiveness with immediate effect, does not enter into force or produce any effects, under the terms of the AdC decision.

The AdC further decides that the LPFP will communicate to all its member clubs the suspension of the decision of April 8 and to issue a press release giving notice of the same fact.

For each day of delay in adopting the precautionary measure determined, the LPFP is ordered to pay 6.000 euros.

What are non-hiring or "no-poach" agreements?

"No-poach" agreements are horizontal agreements whereby companies commit to not making spontaneous offers or hiring workers from other companies with whom they have entered into the agreement.

These agreements can arise in any sector of economic activity and are sanctioned under the terms of the Competition Law, since they disturb the individual freedom of companies to define their strategic commercial conditions, in this case, the hiring of human resources.

Non-hiring agreements have an impact on labour markets and result in a reduction in workers' bargaining power regarding employers. To that extent, no-poach agreements can have the potential effect of reducing the wage level of workers, as well as depriving workers of labour mobility.

The topic has taken on greater visibility in the face of several cases held by international competition authorities, with prominence on, among others, cases involving several technological giants (e.g., Adobe, Apple, Google, Intel, eBay). Just recently, a US court upheld the complaint of a former McDonald's employee against the fast food restaurant for having a no-poach agreement with its franchisees.

This type of agreement can also lead to a reduction in the competition between companies in the downstream market, namely, by reducing innovation, reducing the quantity traded on the market or increasing the price charged to consumers. To that extent, non-hiring agreements can fail the conditions of competition and efficiency in the markets, to the detriment of consumers' well-being.



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