

ETUC Submission to Commission consultation on the draft Guidelines on exclusionary abuses of dominance

The European Trade Union Confederation (ETUC) is pleased to share its observations on the draft *Guidelines on the application of Article 102 of the Treaty on the Functioning of the European Union to abusive exclusionary conduct by dominant undertakings*. The ETUC is the cross-industry European level organisation representing workers, gathering 94 national trade unions from 42 countries with 45 million members. In this capacity, the ETUC is a recognised social partner to the EU under the Treaties.

Article 102 TFEU is a key tool for ensuring fair and effective competition, and as such should also contribute to the realisation of the overarching objectives of the EU internal market, in particular when it comes “*sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress*” as enshrined in Article 3(3) TEU. To serve the general interest, it is therefore important to apply and enforce Article 102 with due regard to not only consumers, undertakings and competition authorities, but also bearing in mind the interests of other key stakeholders **including workers**.

The ETUC acknowledges the draft Guidelines as a step in the right direction, trusting that their more principled approach will translate into a more **vigorous enforcement of Article 102**, allowing for a better assessment of a more diverse range of factual situations. This is particularly important to ensure that the Guidelines will also be able to tackle new and emerging forms of dominance in the future.

The same approach should apply also to **abusive practices in the labour market** of relevance to competition policy and enforcement. In the same way as labour law, competition law aims to ensure equal treatment and a level playing field in the market, rebalancing power relations and preventing weaker parties from abuse. In this sense, also EU competition law should contribute to **restoring power balances** in the labour market, by empowering workers to hold companies to account and to collectively bargain for decent conditions. This is particularly important for competition law to address in cases of downstream dominance, where main contractors can use their market power to squeeze subcontractors, consequently resulting also in a downward pressure on working conditions for downstream workers and freelancers, who are often faced with ‘take it or leave it’ work offers in a way that does not constitute fair practice and does not meet the level of fair pay.

Specifically, when it comes to online platforms, the draft Guidelines should give due consideration also to **digital labour platforms** as regards e.g. sections 2.2.2. *Barriers to expansion and entry* and 4.2.2. *Tying and bundling*. As an important complement to the recent Platform Worker Directive¹, the Guidelines should help to tackle lock-in effects and abusive algorithms in order to effectively protect persons performing work on or through digital platforms. This is particularly needed to guarantee fair conditions for those genuinely self-employed who remain undertakings for the purposes of competition law.

More generally, the ETUC considers that the Guidelines should **address not only exclusionary but also exploitative conducts**. This is especially important to tackle abusive competition practices in the labour market. Indeed, as noted in paragraph 11 of the draft Guidelines, the principles for the assessment of dominance are relevant to both exclusionary and exploitative forms of abuse. As

¹ [EU Directive on Improving Working Conditions in Platform Work](#) (adopted by Council on 14 October 2024).

further noted in footnote 17 of the draft, the same conduct by a dominant undertaking may in fact have both exclusionary and exploitative effects.

This is especially the case when it comes to **non-compete clauses in employment contracts**, prohibiting workers from joining a competing firm or starting a similar business themselves. Similarly, in e.g. the entertainment industry, **buy-out contracts with unfair conditions** are sometimes used to cut performers out of all future revenues on their works.

Non-competes are both **exploitative towards workers** in the sense that they prevent job-mobility, as well as **exclusionary towards undertakings** in the sense that they limit their access to labour and prevent market entry for future competitors. In other words, by hampering competition, productivity and wages, these forms of clauses are bad not only for workers but also for consumers, innovation and competitors, including SMEs.

According to estimations by the OECD², up to 19% of all employees in the Netherlands might be **tied by a non-compete clause**, together with e.g. 16% of private sector employees in Italy, 20% of sales workers in Denmark and 37% of high-skilled workers in Finland. These practices are disproportionately imposed by employers without any objective justifications, and often workers do not even receive adequate compensation for their concessions. Since there are often much less intrusive instruments that could be applied, such as non-disclosure agreements or trade secret laws, the use of non-competes raises serious competition concerns regardless of whether workers would be voluntarily consenting to such contractual arrangements or not. This is especially so, given the power imbalances that already as such exist between workers and employers in the labour market.

As evidenced by the OECD³, **markets are becoming increasingly concentrated** in Europe, and as a result also labour markets, which in turn increases the risks of abuse by dominant employers. In such situations of **employer monopsony power**,⁴ dominant undertakings are able to downgrade or impose certain conditions on their workforce, which basically ends up being tied to that specific company due to lack of other opportunities in the relevant labour market (i.e. the sector or region in question, also depending on workers' skills, possibilities to commute and telework, etc.).

It is positive to see, however, that **competition authorities** around the world are increasingly taking an active interest in competition issues in the labour market, not only in connection to illegal practices under Article 101 TFEU⁵ (e.g. wage-fixing and no-poach agreements among competitors to keep wages down), but also linked to Article 102 TFEU, including with regard to non-compete clauses.⁶ Notably in the United States, the Federal Trade Commission has announced a nation-wide ban on non-competes in April 2024.⁷ The ETUC believes that the EU should be moving in the same direction to promote fair competition and well-functioning labour markets.

Against this background, the ETUC calls on the European Commission to send a strong signal to national competition authorities and undertakings in the EU internal market by ensuring that the finalised Guidelines on the application of Article 102 TFEU make **clear references also to exploitative conducts and exclusionary abuses in labour markets**.

We thank you for your consideration and remain at your disposal for any further information.

² See e.g. [Non-Compete Clauses: Policy Approaches across the OECD](#) (2023).

³ See e.g. [OECD Employment Outlook](#) (2022).

⁴ See e.g. the OECD policy paper on [Competition Issues in Labour Markets](#) (2020).

⁵ See e.g. European Commission DG COMP [Policy Brief on Antitrust in Labour Markets](#) (2024)

⁶ See e.g. joint report by Nordic competition authorities on [Competition and Labour Markets](#) (2024); UK Competition and Markets Authority report on [Competition and Market Power in UK Labour Markets](#) (2024); Portuguese Competition Authority report on [Labour Market Agreements and Competition Policy](#) (2021).

⁷ See e.g. [FTC Announces Rule Banning Noncompetes](#) (2024)