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NO-POACH AGREEMENTS AND COMPETITION LAW: BRIDGING INDIA'S REGULATORY GAP IN LIGHT OF GLOBAL ENFORCEMENT TRENDS

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ABSTRACT

Labour market collusion has become an active enforcement concern in several major jurisdictions since 2021. The European Commission fined Delivery Hero and Glovo €329 million for a no-poach cartel, the UK's Competition and Markets Authority issued detailed guidance on the subject, the US secured its first criminal wage fixing conviction and Canada criminalised the conduct outright. India has taken no comparable step, notwithstanding credible reports that two of its largest conglomerates entered an arrangement of exactly this kind. This paper argues that the Competition Act, 2002 already supplies the tools needed to address such conduct. Section 3(3) reaches no-poach and wage fixing agreements once "supply" is read to include labour alongside goods, a reading consistent with how the European Commission itself characterises comparable conduct. The CJEU's restriction by object doctrine offers a workable framework the Commission could adopt without legislative amendment. Drawing on comparative enforcement and India's own judicial treatment of labour restraints, the paper sets out three specific reforms available to the Commission.

I. INTRODUCTION

For most of its history, competition law watched what sellers did to buyers. Price fixing, bid rigging and market splitting among firms selling goods absorbed nearly all the enforcement effort, while collusion on the buying side, and especially collusion among employers buying labour, drew almost none.[1] That imbalance has corrected itself with startling speed since 2021,

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[1] ALESSIO ARESU, DOMINIK ERHARTER & BRIGITTA RENNER-LOQUENZ, *Antitrust in Labour Markets*, Eur. Comm'n Competition Pol'y Brief, Issue 2/2024, at 1 (May 3, 2024), https://competition-policy.ec.europa.eu/document/download/adb27d8b-3dd8-4202-958d-198cf0740ce3_en (last visited July 16, 2026).

and India has simply not kept up. The United States Department of Justice secured its first criminal indictment for wage fixing. The European Commission published a policy brief on labour market antitrust in May 2024 and, in June 2025, backed it with a €329 million fine against Delivery Hero and Glovo. The United Kingdom's Competition and Markets Authority issued a detailed guidance document titled Competing for Talent in September 2025. Canada criminalised wage fixing and no-poach agreements outright. Australia's competition regulator pushed a construction firm to abandon labour hire restrictions in November 2025. Read together, these five interventions describe something more than isolated enforcement actions: a coordinated shift in priorities across major economies that treat labour markets as markets worth policing.

India sits outside that shift. The Competition Commission of India has issued no guidance on labour market collusion and has not decided a single case squarely addressing a no-poach or wage fixing arrangement, despite credible reporting of exactly such an arrangement between two of the country's largest business houses.[2] The gap matters most where labour is scarce, skills are specialised and growth outpaces the supply of qualified workers, a description that fits India's information technology sector unusually well.[3] This paper builds on earlier work of mine on no-poach agreements under the Competition Act, 2002, and brings that analysis up to date through developments as of June 2026. The argument runs in three parts. No-poach agreements already fall within the text of Section 3(3) of the Competition Act. The restriction by object doctrine developed by the Court of Justice of the European Union, and now applied directly by the European Commission, offers a workable template the Commission could adopt without waiting on Parliament. And Indian inaction on this front reflects a shortage of institutional will rather than any genuine gap in statutory power.

Part II defines a no-poach agreement and separates it from related restraints that remain lawful. Part III surveys enforcement across five jurisdictions as matters stood in mid-2026. Part IV works through the restriction by object doctrine, its ancillary restraints exception and the limits the doctrine does not itself resolve. Part V turns to India, beginning with the Adani-Reliance reports before moving through the statutory text and the sparse judicial precedent on restrictive

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[2] *Mukesh Ambani's Reliance and Adani Group Sign No-Poaching Pact*, *The Federal* (Sept. 22, 2022), https://thefederal.com/business/adani-group-mukesh-ambanis-reliance-sign-no-poaching-pact (last visited July 16, 2026).

[3] Vinod Dixit, Ronit Rampuriya & Samrudhi Memane, *Wage-Fixing and No-Poach Agreements: Barriers to Economic Dynamism of India?*, IX INDIAN COMPETITION L. REV. 25, 39-41 (2024).

covenants. Part VI sets out recommendations for reform at the Commission, and Part VII closes the argument.

II. WHAT IS A NO-POACH AGREEMENT?

A no-poach agreement is, stripped to its essentials, a promise between two or more employers not to compete for the same pool of workers.[4] That single description covers several distinct arrangements. A no-hire agreement stops one employer from taking on the other's staff altogether, whether the worker applies unprompted or is actively pursued.[5] A non-solicitation agreement is narrower still. It forbids active recruitment but leaves open the possibility of hiring someone who approaches the other party on their own initiative. Either variant can bind one party or both. A related but distinct restraint is wage fixing, under which rival employers agree, directly or through an intermediary, on pay, benefits or other terms of employment: price fixing transplanted wholesale into the labour market. A third category, information exchange, involves competitors trading data on current or planned pay and hiring decisions, which strips away the uncertainty that would otherwise keep competitive wage setting honest.

Two related arrangements deserve to be kept off this list, because both are lawful under ordinary circumstances. The first is a non-solicitation clause genuinely tied to a legitimate commercial deal, of the kind found in a consultancy agreement where a client promises not to poach the seconded staff of its service provider while the engagement runs. Clauses of this sort are judged under the ancillary restraints doctrine, which asks whether the restriction is objectively necessary to the underlying transaction and reaches no further, in subject matter, duration or territory, than that necessity demands.[6] The second is the everyday employer-employee non-compete clause. Because it binds only one undertaking rather than two competing against each other, it falls outside Article 101 TFEU and the Chapter I prohibition of the United Kingdom's Competition Act 1998 altogether, though it may raise concerns under Article 102 TFEU where a dominant employer imposes it, and it remains answerable in any case to domestic labour and contract law.[7]

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[4] Aresu et al., *supra* note 1, at 3.
[5] *The EU Commission Imposes Fines of €329M on a "Multi-Layered Cartel" Within the Online Food Delivery Sector (Delivery Hero/Glovo)*, e-Competitions Bull. (Markus Roehrig ed., June 2025).
[6] Aresu et al., *supra* note 1, at 5-6.
[7] Case C-382/12 P, *MasterCard Inc. v. Comm'n*, ECLI:EU:C:2014:2201, paras. 89-91.

The economic case against wage fixing and no-poach agreements is by now well established. Firms that fix wages push pay down toward the monopsony rate, which shrinks output and, in time, raises the prices consumers pay for whatever those firms sell.[8] No-poach agreements cause comparable harm along a different route. Because the participating firms stop bidding against each other for staff, and because such arrangements are typically kept secret so that affected employees cannot negotiate around the risk, wages fall, job searches grow more costly and firms invest less in training workers who might otherwise take that training elsewhere.[9] There is a dynamic cost as well. Research on job ladders shows that capable workers tend to migrate toward more productive firms over time, and that this migration drives a good share of aggregate productivity growth; where job-to-job mobility slows, productivity growth tends to slow along with it.[10] One widely cited study of Silicon Valley's technology sector found that no-poaching arrangements there suppressed wages by close to 4.7 percent.[11] The precise figure is open to argument. The direction of the effect is not seriously disputed anywhere in the literature.

III. THE GLOBAL ENFORCEMENT WAVE

A. THE EUROPEAN UNION

The European Commission's Directorate-General for Competition published its policy brief, Antitrust in Labour Markets, on 3 May 2024.[12] Its conclusion left little room for doubt. Wage fixing and no-poach agreements would, as a rule, be treated as restrictions by object under Article 101(1) TFEU, would rarely survive the ancillary restraints test and would be unlikely to qualify for exemption under Article 101(3).[13] The brief places wage fixing within Article 101(1)(a), as a species of purchase price fixing, and no-poach agreements within Article 101(1)(c), as a form of market allocation achieved by dividing sources of supply. Both, read this way, are simply a buyers' cartel: employers coordinating on the purchasing side of the labour market rather than the selling side of a product market. Because both fall within conduct

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8 Aresu et al., *supra* note 1, at 3-4.

9 OECD, *Competition in Labour Markets*, DAF/COMP(2020)2, at 6-12 (2020), https://www.oecd.org/daf/competition/competition-concerns-in-labour-markets.htm (last visited July 16, 2026).

10 Ryan A. Decker et al., *The Role of Entrepreneurship in U.S. Job Creation and Economic Dynamism*, 28 J. ECON. PERSP. 3 (2014).

11 Suresh Naidu, Eric A. Posner & E. Glen Weyl, *Antitrust Remedies for Labor Market Power*, 132 HARV. L. REV. 536 (2018).

12 Aresu et al., *supra* note 1.

13 *Id.* at 2-5.

Article 101(1) already names, the case law running through Cartes Bancaires,[14] refined in Budapest Bank,[15] Toshiba[16] and, for buyer cartels specifically, Campine[17] and EDP, Energias de Portugal,[18] allows the Commission to treat them as by-object restrictions after a contextual inquiry confined to what is strictly necessary, without a full effects analysis.[19]

The Commission tested that framework for the first time in Delivery Hero/Glovo, decided on 2 June 2025.[20] Delivery Hero had built a minority stake in Glovo from 15 percent to full control between 2018 and 2022. Along the way the two companies wrote reciprocal no-hire clauses into successive shareholders' agreements, added a standalone non-solicitation agreement and divided EEA markets geographically, including through Delivery Hero's divestment of its own operations in Bulgaria, Croatia and Romania.[21] The Commission fined the two companies €329 million for what it called a multi-layered cartel. The ancillary restraints analysis is the most instructive part of the decision, because it is the part the companies lost. The no-hire clauses ran for an unlimited period, covered an unlimited territory, operated reciprocally and were not applied consistently across investors, so they failed both limbs of the doctrine.[22] It also appears to be the first decision anywhere to treat a non-controlling minority stake, rather than a full merger or joint venture, as sufficient to facilitate unlawful coordination. Board seats and information rights attached even to modest equity holdings can now trigger Article 101 exposure on their own.

B. THE UNITED KINGDOM

The Competition and Markets Authority's Competing for Talent guidance, published on 9 September 2025, is the fullest statement any competition regulator has yet produced on this subject.[23] It adopts the same three part taxonomy found in the Commission's brief, no-

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[14] Case C-67/13 P, *Groupement des Cartes Bancaires v. Comm'n*, ECLI:EU:C:2014:2204.
[15] Case C-228/18, *Gazdasagi Versenyhivatal v. Budapest Bank Nyrt.*, ECLI:EU:C:2020:265.
[16] Case C-373/14 P, *Toshiba Corp. v. Comm'n*, ECLI:EU:C:2016:26.
[17] Case T-240/17, *Campine NV & Campine Recycling NV v. Comm'n*, ECLI:EU:T:2019:778, paras. 295-306 (Nov. 7, 2019).
[18] Case C-331/21, *EDP - Energias de Portugal, S.A. v. Autoridade da Concorrencia*, ECLI:EU:C:2023:812, paras. 98-102 (Oct. 26, 2023).
[19] Aresu et al., *supra* note 1, at 4-5.
[20] EUROPEAN COMMISSION, Press Release, *Antitrust: Commission Fines Delivery Hero and Glovo €329 Million for Participating in Cartel in Online Food Delivery Sector* (June 2, 2025), https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1356 (last visited July 16, 2026).
[21] Case AT.40795, *Delivery Hero / Glovo* (Eur. Comm'n June 2, 2025).
[22] *Id.*
[23] COMPETITION & MKTS. AUTH., *Competing for Talent: What Businesses Need to Know When Recruiting Workers and Setting Pay and Other Working Conditions* (Sept. 9, 2025), https://www.gov.uk/government/publications/competing-for-talent (last visited July 16, 2026).

poaching, wage fixing and sensitive information exchange, and treats each as a by-object infringement of the Chapter I prohibition, meaning the Authority does not need to prove actual anticompetitive effect before it can act.[24] Two points in the guidance stand out. One-sided no-poaching undertakings are caught just as readily as reciprocal ones; mutuality offers no defence.[25] And the Chapter I framework extends explicitly to genuine collective bargaining, whether conducted by employees or by the self-employed, with the caveat that participants must not trade information beyond what the bargaining process itself requires.[26] The guidance followed real enforcement rather than preceding it. Earlier in 2025 the Authority fined five sports broadcasters and production companies more than £4 million for sharing sensitive freelance pay data about on-air presenters and pundits.[27] The stakes for getting this wrong are considerable: fines running up to 10 percent of worldwide turnover and, in serious cases, disqualification of company directors.[28]

C. THE UNITED STATES

American law arrived at this problem first and still holds the deepest body of precedent on the subject. Section 1 of the Sherman Act prohibits contracts, combinations or conspiracies in restraint of trade,[29] and federal courts have steadily read that prohibition to reach horizontal no-poach agreements between competing employers. In *Seaman v. Duke University*, a district court treated a no-poach agreement between two universities, covering their medical faculties, as functionally equivalent to a horizontal market allocation agreement and therefore open to per se condemnation.[30] *United States v. eBay Inc.* confirmed that antitrust law binds labour markets no less than product markets, reasoning that a no-poach agreement simply swaps collusive certainty for competitive risk.[31] The Department of Justice and Federal Trade Commission's 2016 joint guidance for human resources professionals labelled naked no-poach agreements, those carrying no tie to any broader legitimate business collaboration, as per se unlawful, and that guidance has since fed a run of criminal prosecutions, reinforced by fresh

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[24] *Id.* at 8-12.
[25] *Id.* at 13.
[26] *Id.* at 18-22.
[27] COMPETITION & MKTS. AUTH., *CMA Fines Sports Broadcasters and Production Companies over Freelance Pay Information Sharing* (Mar. 21, 2025), https://www.gov.uk/government/news/sports-broadcast-and-production-companies-fined-4-million-in-freelancer-pay-investigation (last visited July 16, 2026).
[28] Competition Act 1998, c. 41, §§ 2, 36 (UK).
[29] Sherman Antitrust Act, 15 U.S.C. § 1 (2018).
[30] *Seaman v. Duke Univ.*, No. 1:15-CV-462, 2019 WL 4674758 (M.D.N.C. Sept. 25, 2019).
[31] *United States v. eBay, Inc.*, No. 5:12-CV-05869-EJD, 2014 WL 1491047 (N.D. Cal. Apr. 16, 2014).

joint guidance the two agencies issued in January 2025.[32] The most significant prosecution so far is *United States v. Lopez*, in which the Department secured, in April 2025, its first jury conviction in a criminal wage fixing case. The result puts individual executives, not merely their employers, on notice of criminal exposure.[33]

D. CANADA, AUSTRALIA AND PORTUGAL

Canada has gone further than any other jurisdiction on paper. Its Competition Act was amended, effective 23 June 2023, to create a new per se criminal offence under Section 45(1.1): agreements between unaffiliated employers to fix wages or working conditions, or to refrain from hiring or soliciting each other's staff, now carry a maximum sentence of fourteen years' imprisonment.[34] Australia's competition regulator operates under a more conventional civil regime, but its November 2025 intervention shows the same appetite for enforcement. After investigating an arrangement between the construction firm John Holland and the New South Wales branch of a construction workers' union, an arrangement that restricted which labour hire businesses could supply workers to two major infrastructure projects, both parties voluntarily abandoned the arrangement and John Holland committed to competition compliance training for staff involved in industrial negotiations.[35] Portugal offers, in some respects, the most useful comparator for a jurisdiction like India that lacks a developed body of labour market case law. Its competition authority fined football clubs €11 million for agreeing not to sign players who had terminated their contracts during the Covid-19 pandemic, and separately fined technology consulting firms €3.1 million for running a seven-year no-poach arrangement that restricted staff mobility.[36] France added its own entry to this list in June 2025, when its competition authority fined four engineering and technology consulting firms €29.5 million for a general no-poach arrangement it found had no connection to any underlying commercial transaction.[37]

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[32] U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, *Antitrust Guidelines for Business Activities Affecting Workers* (Jan. 16, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/p251201antitrustguidelinesbusinessactivitiesaffectingworkers2025.pdf (last visited July 16, 2026).
[33] *United States v. Lopez*, No. 23-cr-00055 (D. Nev. Apr. 15, 2025).
[34] Competition Act, R.S.C. 1985, c. C-34, § 45(1.1) (Can.).
[35] AUSTL. COMPETITION & CONSUMER COMM'N, *John Holland Ends Agreements with CFMEU After ACCC Investigation* (Nov. 12, 2025), https://www.accc.gov.au/media-release/john-holland-ends-agreements-with-cfmeu-after-accc-investigation (last visited July 16, 2026).
[36] AUTORIDADE DA CONCORRENCIA, *Labour Market Decisions* (2022-2025).
[37] AUTORITE DE LA CONCURRENCE, Decision No. 25-D-05 of 11 June 2025 Regarding Practices in the Engineering, Technology Consulting and IT Services Sector.

IV. THE RESTRICTION BY OBJECT FRAMEWORK AND ITS LIMITS

A. THE DOCTRINE

The restriction by object doctrine developed by the Court of Justice of the European Union supplies the analytical backbone for the enforcement trend surveyed above, and it is also the part of the European framework best suited to being carried into Indian law. Under settled case law, an agreement restricts competition by object where its content, read on its own terms and without any inquiry into actual or likely effect, reveals a sufficient degree of harm to competition.[38] Cartes Bancaires sets out a three part inquiry: the content of the agreement's terms, its objectives and the economic and legal context, including the nature of the goods or services involved and the real conditions under which the relevant market operates.[39] Because wage fixing and no-poach agreements sit within conduct Article 101(1)(a) and (c) name expressly, Toshiba and Campine let the Commission keep that contextual inquiry narrow, sparing it a full rule of reason effects analysis. A legitimate sounding justification, protecting training investment or trade secrets for instance, does not rescue the agreement. Budapest Bank makes clear that the parties' subjective intentions cannot turn an objectively restrictive agreement into a lawful one.[40]

B. THE ANCILLARY RESTRAINTS EXCEPTION

Employers seeking the shelter of the ancillary restraints doctrine face a demanding four part test. There must be a main, non-restrictive transaction. The restraint must relate directly to it. The restraint must be objectively necessary to carry out that transaction, in the sense that the transaction would be impossible, not merely less convenient or less profitable, without it. And the restraint must be proportionate, meaning no less restrictive alternative, such as confidentiality obligations, training cost clawbacks or gardening leave, would achieve the same legitimate end.[41] Delivery Hero/Glovo shows how that test bites in practice. The no-hire clauses were open ended in time and territory, ran both ways and were not applied evenly to every investor, and none of that could be squared with the doctrine's narrow terms, even though the clauses arose out of a genuine minority investment.[42] For any authority applying this

[38] Case C-67/13 P, Cartes Bancaires, *supra* note 14, paras. 49-58.
[39] *Id.* paras. 53-58.
[40] Case C-228/18, Budapest Bank Nyrt., *supra* note 15, para. 76.
[41] Aresu et al., *supra* note 1, at 5-6.
[42] Case AT.40795, Delivery Hero / Glovo, *supra* note 21.

framework to shareholders' agreements, joint ventures or merger transactions, the Commission included, duration, territorial reach, personnel scope and reciprocity are the variables that separate a defensible ancillary restraint from an unlawful standalone cartel.

C. WHAT THE DOCTRINE DOES NOT RESOLVE

It is worth pausing on what the restriction by object framework leaves unsettled. Presumptive illegality is administrable precisely because it dispenses with proof of effect, but that same feature means it can catch arrangements that cause little real harm. A genuinely reciprocal secondment clause between two small firms with no market power looks identical on paper to a clause between two dominant employers, even though the competitive stakes differ enormously. European enforcers manage that risk through the ancillary restraints doctrine and through prosecutorial selectivity rather than any formal effects screen, an approach that leans heavily on enforcement discretion, a resource the Commission does not yet possess in comparable measure given its limited experience with labour markets. Any Indian adaptation of this framework should stay alert to that gap rather than assume it will close on its own.

V. INDIA'S REGULATORY GAP

A. THE ADANI-RELIANCE REPORTS

The clearest illustration of what is at stake in India comes from reporting on an arrangement between the Adani Group and Reliance Industries, the country's two largest conglomerates, who are reported to have mutually agreed not to recruit from each other's workforce.[43] Commentators have pointed out that an arrangement of this kind, between undertakings of this scale, raises precisely the buyer cartel concern the European Commission addressed in Delivery Hero/Glovo. Two employers competing hard for the same specialised talent agreed instead to stop competing for it. The Commission has neither opened a formal investigation into these reports nor issued any public statement addressing them. That silence fits a broader pattern. Where non-compete or non-solicitation issues have surfaced at the margins of merger review or conduct proceedings, the Commission has generally treated them as employment law matters outside its remit rather than examining them under Section 3. That characterisation sits uneasily with the statutory text, and its practical cost falls on Indian workers, particularly in talent scarce sectors like information technology, who go without the protection Section 3 was written to

[43] *Supra* note 2.

give them, even as reports point to wage stagnation persisting alongside record corporate profitability.[44]

B. THE STATUTORY FRAMEWORK

The Competition Act, 2002 does not use the phrase no-poach agreement anywhere, and the Commission has not, as of this writing, decided a case squarely on either a no-poach or a wage fixing arrangement.[45] That silence is an interpretive gap rather than a jurisdictional one. Section 3(3) of the Act presumes an appreciable adverse effect on competition for horizontal agreements between enterprises in identical or similar trade of goods or provision of services that, among other things, limit or control production, supply, markets, technical development, investment or provision of services under Section 3(3)(b), or share the market or source of production or provision of services by allocation of geographical area of market, or type of goods or services, or number of customers in the market under Section 3(3)(c).[46] A no-poach agreement between rival employers is, functionally, an agreement to allocate the source of a critical input, skilled labour, and so falls within the conduct Section 3(3)(c) was written to capture. A wage fixing agreement, by restricting the terms on which that input is purchased, falls instead within the control language of Section 3(3)(b).

The parallel to European law is close enough to be genuinely useful. The Commission's own characterisation of wage fixing and no-poach agreements as purchase price fixing and supply source sharing under Article 101(1)(a) and (c) maps almost exactly onto this statutory structure, which suggests the Commission does not need Parliament to amend the Act before it can reach these agreements. It needs only to read supply as covering labour and not just physical goods.[47] The European Commission's own Horizontal Guidelines already treat wage fixing as a form of buyer cartel, on the premise that competition law protects rivalry among buyers just as much as it protects rivalry among sellers.[48] By that same logic there is no textual reason to read Section 2(c) of the Competition Act, which defines a cartel by reference to agreements

[44] INTERNATIONAL LABOUR ORGANIZATION, *Global Wage Report 2024-25: Is Wage Inequality Decreasing Globally?*, at 45-52 (2024), https://www.ilo.org/publications/flagship-reports/global-wage-report-2024-25-wage-inequality-decreasing-globally (last visited July 16, 2026).
[45] Competition Act, No. 12 of 2003, Preamble (India).
[46] Competition Act, No. 12 of 2003, §§ 3(3)(b)-(c) (India).
[47] Id. §§ 2(c), 3(3)(b)-(c).
[48] EUROPEAN COMMISSION, *Guidelines on the Applicability of Article 101 of the Treaty on the Functioning of the European Union to Horizontal Co-operation Agreements*, 2023 O.J. (C 259) 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023XC0721(01) (last visited July 16, 2026).

concerning the production, supply, distribution, storage, acquisition or control of goods, as excluding agreements over the acquisition of labour.

C. JUDICIAL PRECEDENT ON RESTRICTIVE COVENANTS

Indian courts have said nothing directly about labour market cartels, but they have built a modest body of contract law precedent worth reading for what it reveals about judicial attitudes toward restraints on labour mobility. Section 27 of the Indian Contract Act, 1872 voids any agreement restraining a person from exercising a lawful profession, trade or business, subject to a narrow exception for the sale of goodwill.[49] In *Gujarat Bottling Co. v. Coca-Cola Co*., the Supreme Court held that individuals remain free to pursue any lawful trade so long as doing so does not offend public policy, and confirmed that Section 27's restraint of trade doctrine reaches beyond conventional employment contracts.[50] The Delhi High Court applied the same reasoning in *Pepsi Foods Ltd. v. Bharat Coca-Cola Holdings Pvt. Ltd*., striking down a one year post termination non-compete and describing durable restraints of that kind, in unusually forceful language, as a species of economic terrorism.[51] Both decisions establish, at minimum, that Indian public policy is hostile to arrangements, even those made directly with an employee, that restrict labour mobility. That hostility ought to apply with at least equal force to horizontal agreements between competing employers, who stand entirely outside the employment relationship and give the affected worker nothing at all in return.

Where the clause is narrowly drawn, Indian courts have taken a more permissive view. In *Embee Software Pvt. Ltd. v. Samir Kumar Shaw*, the Calcutta High Court held that a clause barring a former employee from soliciting his former employer's clients did not fall foul of Section 27, treating a breach as potentially tortious rather than automatically void.[52] The Delhi High Court reached a similar result in *Wipro Ltd. v. Beckman Coulter International S.A.*, upholding a non-solicitation clause agreed between two commercial entities.[53] Read together, these decisions track much the same distinction that European and British competition law draw between narrow, transaction ancillary non-solicitation clauses and open ended, standalone no-hire arrangements, though their precedential weight for a future Section 3 case remains limited, since both arose in contract law and neither court asked whether a reciprocal

[49] Indian Contract Act, No. 9 of 1872, § 27 (India).
[50] *Gujarat Bottling Co. v. Coca-Cola Co.*, (1995) 5 S.C.C. 545 (India).
[51] *Pepsi Foods Ltd. v. Bharat Coca-Cola Holdings Pvt. Ltd.*, 2003 SCC OnLine Del 724 (India).
[52] *Embee Software Pvt. Ltd. v. Samir Kumar Shaw*, 2012 SCC OnLine Cal 1328 (India).
[53] *Wipro Ltd. v. Beckman Coulter Int'l S.A.*, 2006 SCC OnLine Del 660 (India).

non-solicitation agreement between competitors, aimed at suppressing wage competition rather than protecting a genuine commercial relationship, would itself infringe Section 3.

VI. RECOMMENDATIONS

Three reforms deserve priority, and each is achievable without any amendment to the Competition Act.

First, and most urgently, the Commission should use its Section 26 powers to open a market study or a formal inquiry into reported no-poach arrangements in concentrated, talent scarce sectors, beginning with the widely reported Adani-Reliance arrangement and extending to hiring practices across the information technology sector. An inquiry of this kind would signal that the Commission now treats labour market collusion as an enforcement priority, and it would build the evidentiary record any future infringement case would need.

Second, the Commission should issue interpretive guidance, modelled on the Authority's Competing for Talent guidance and the European Commission's policy brief, confirming that no-poach and wage fixing agreements between competing employers fall within Section 3(3)(b) and (c), and adopting the restriction by object framework so such agreements are treated as presumptively anticompetitive without a full effects inquiry. This would not require legislative change; it would simply state what the statute already says, much as the European Commission's own policy brief did before any infringement decision existed there..

Third, the Commission's leniency framework should be extended specifically to labour market cartels, along the lines of the Authority's treatment of no-poaching as a serious cartel category in its own right. Employers who currently treat these arrangements as a human resources matter rather than a competition law risk need a concrete incentive to self report, and a leniency programme remains the most direct way to supply one.

VII. CONCLUSION

Between the European Commission's May 2024 policy brief and the Australian regulator's November 2025 intervention in the construction sector, labour market collusion moved from an academic curiosity to a mainstream enforcement priority across the European Union, the United Kingdom, the United States, Canada, Australia and Portugal. The restriction by object framework, together with its narrow ancillary restraints exception, rests on statutory language governing purchase price fixing and the allocation of supply sources, language that has a direct counterpart in Section 3(3)(b) and (c) of India's Competition Act, 2002. Indian courts have already shown in Gujarat Bottling and Pepsi Foods a clear public policy hostility to restraints on labour mobility, even where those restraints arise from ordinary bilateral employment contracts rather than horizontal agreements between rivals. What India lacks is not statutory authority but institutional will. The reported arrangement between the country's two largest conglomerates, set against a backdrop of wage stagnation in its most talent intensive sectors, shows what that institutional silence costs and who ends up paying for it. The Commission does not need Parliament's help to act. It needs only to read Section 3(3) the way regulators on five continents have already read their own, structurally similar, statutes.