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EVIA RESPONSE TO WORKING PAPER REGARDING OPTIONS FOR REFORM OF NON-COMPETE CLAUSES IN EMPLOYMENT CONTRACTS

The European Venues and Intermediaries Association [[“EVIA”](#)¹] appreciates the opportunity to present the considerations of UK wholesale financial markets to the Department for Business and Trade’s consultation on options for reform of non-compete clauses in employment contracts.

As we set out at recent the industry roundtable, the use of such non-compete clauses, in association with other covenants, is valued and is standard across this sector both in the UK and overseas, across companies of all scales, in order to provide the basis for investment in staff in a competitive service provision environment. Simply put, this wholesale sector is international, has few barriers to entry, a finite universe of institutional customer clients and forms the basis of the UK as the pre-eminent global financial centre. Without such protections, firms would need to either rely solely on expensive paid contractual restrictions, or rationally limit internal access to proprietary tools, to sensitive information, which could reduce workforce development, cross-selling and overall sector productivity.

We are fully supportive of the government’s [“Mansion House Agenda”](#) and [“Leeds Reforms”](#) to build international competitiveness alongside resilience and integrity, and on this basis we are concerned that statutory intervention in relation to non-compete clauses risks undermining these very objectives. The UK’s current approach to non-compete clauses is broadly aligned with other major global financial centres, whose common attribute is the use of Common Law.

Legal changes that would force firms to solely rely on contractual gardening leave would make the UK framework far more expensive for firms, whilst any such that would force firms to solely rely on *no-poaching* or *no-solicitation* clauses would effectively render recourse only to post-action tools which simply afford no protection, nor certainty to firms.

The overseas examples cited are outside common law approaches, either tied to the concept of remunerated gardening leave, small scale, or predicated on a salary threshold approximately set at the UK higher rate boundary. None of these serve as a benchmark for the UK financial services sector and diverging from international practice would risk accelerating the talent emigration our sector has been recently witnessing.

¹ [EVIA - Trade Association](#)

At the heart of the issue is that the UK already has a robust common law framework, including rich case history, governing restrictive covenants, including non-compete clauses. These English common law principles are predicated on common sense, reflect market practices and are essentially restrictive. Therefore, non-compete clauses are presumptively unenforceable and will only be upheld where they are no wider than reasonably necessary to protect a legitimate business interest and where they are reasonable in scope of application, their quantum and duration.

In this respect the relevant open question may be whether recourse to the common law framework is sufficiently available and cost-effective where required since employment tribunals or local courts are not the current *modus operandi*.

Answers to Discussion questions

(The government would welcome your views, and any evidence to support those views, on the following:)

1. Introducing restrictions on non-compete clause

We would not welcome new restrictions on non-compete clauses for businesses that compete internationally in global wholesale markets, since it would directly impact the “level playing field” sought by government under the recent series of competitive reforms including the [“Mansion House Agenda”](#) and the [“Leeds Reforms”](#).

We note that in the US, so multiple federal court decisions blocked the FTC’s 2024 non-compete rule, and in September 2025, the FTC abandoned its appeals, meaning the rule cannot take effect or be enforced in any form. It exists in Europe only in a small number of countries where subject to salary caps as cited. Noting also that France, Germany, Poland, and Italy have a requirement to compensate workers for the period of the non-compete clause.

The relevant question is the balance of business and employee adequacy of current protections. That is, “does the common law do the job?” We consider that this is evidentially the case, since any restrictions should be focused and targeted:

- a. All non-compete clauses, and other restraints of trade, are presumed to be unenforceable unless they are demonstrated to be reasonable.
- b. A non-compete clause will only be reasonable and enforceable if (i) it protects a legitimate business interest of the ex-employer, and (ii) it is no wider than reasonably necessary to protect that legitimate business interest.
- c. The onus of proving reasonableness in both these respects is on the employer. It follows that a non-compete clause is only enforceable if an employer has demonstrated, to the court’s satisfaction, that it is reasonably necessary to protect its legitimate business interest. If the court is not so persuaded, the non-compete clause is unenforceable.

Reasonable non-compete clauses can help sustain investment in employee development. They give employers the confidence to share sensitive information, provide advanced training and cultivate specialised skills. Without such protections, businesses may feel compelled to limit access to valuable knowledge to only a small group, ultimately constraining wider skills growth and overall productivity.

Statutory restrictions in this area may therefore weaken incentives to invest in training, innovation, and capability-building—particularly in knowledge-driven industries such as financial services, asset management, and alternative investment management.

2. A statutory limit on the length of non-compete clauses

We would not support any inclusion of a statutory maximum limit on the duration of non-compete clauses.

The current approach balances the relevance and fairness required by the Courts with the flexibility required by both firms and employees to agree appropriate arrangements according to the pertaining specific circumstances. Any introduction of a statutory maximum limit would cut across the flexibility required to compete internationally. It would also likely result in the unintended consequence that any such becomes a default and a de-facto market standard when none is sought or required.

The most common length of non-compete clauses used by wholesale brokers and trading venues is 6-12 months, but for certain cases of significant influence functions this could be as long as 24 months. We understand that UK Courts tend to enforce non-compete restrictions of up to 12 months, depending upon the seniority of the employee concerned and their access to confidential information and clients. Notably it is not uncommon for in the casa of senior employees to mutually agree to longer non-compete periods in exchange for specific contractual economic terms. It is hard to understand what benefits any pro-forma maximum limit could offer in these situations.

3. A statutory limit that differed according to company size

We would not support any inclusion of a statutory maximum limit that differed according to company size. This would be unhelpful given that smaller companies will always compete with larger companies, whose operating units [or “desks”] in financial services would not reflect the size of either the operating entity, nor its parent group or company.

Indeed, smaller firms typically operate with compact teams and overlapping duties, which result in staff across multiple functions having greater access to sensitive commercial information than might be the case for larger firms. In this sense, deploying company size as a basis for determining the validity or permitted length of non-competes would be as likely to penalise the very firms the policy would be aimed to protect.

Furthermore, the approach to company size adds definitional complications as to the company structure, the location of employees and the approach to contracted staff, all of which could only add frictions and costs to effective operations.

4. The length and company size thresholds should be set at, for example:
 - a. A statutory limit of 3 months for companies with more than 250 employees and a limit of 6 months for companies with 250 or fewer employees
 - b. A statutory limit of 3 months for companies with more than 50 employees and a limit of 6 months for companies with 50 or fewer employees
 - c. Other – please explain

EVIA would not support any of the proposed threshold-based options, largely for the reasons already set out that neither the 3-month or 6-month statutory limits are appropriate, and nor is any approach to company size.

In financial services, companies with 50 or fewer employees provide everyday material competition for larger firms, so no such thresholds are appropriate, even before the discussion around the metrics for corporate structures, overseas activities, and outsourced or contracted activities are added as layers of complexity.

For internationally competitive firms servicing wholesale clients, marginal increases in operating costs make disproportional impacts. We note again that stated policy objectives under recent reforms to confer more such operating rules from statute to the level of the firm.

5. *A ban on non-compete clauses in contracts of employment*

EVIA would not support a ban on non-compete clauses in contracts of employment, which commonly act as preventative measures rather than post-event remedial recourses which frequently offer only time-consuming and costly litigation not directly relevant to business contiguity

Individuals performing senior influence functions (“Code Staff”) in authorised firms generally hold access to highly sensitive customer data. Non-compete periods provide an essential cooling-off interval, allowing such information to lose relevance and thereby reducing the potential for improper use. A statutory ban or significant limitation would remove a key compliance mechanism relied upon by regulated entities and could put the Treasury’s reforms at odds with established FCA conduct requirements.

In the absence of effective non-compete safeguards, firms would have reduced incentives to disclose confidential information internally, nor to fund the development and training of specialist capabilities. The result would be slower skills growth and diminished innovation, particularly in financial services where expertise is cultivated through ongoing interaction with clients as well as to proprietary tools and systems, to ongoing training and internal support.

We note the prior comments as the value these offer to both firms and to employees, but even was legislative action deemed warranted, any such would still be unhelpful unless imposed internationally or at least on a pan G20 basis. Imposition on a national basis would simply deter the contracting of frontline staff in the UK.

We note that the working paper alludes to the roles played by “non-dealing” or “non-solicitation” clauses which would not be affected under any ban on non-compete clauses in contracts of employment. However, whilst these provide for some utility, and may be commonly used in employment contracts, they are very hard to define and to enforce, and could only take effect once employees have left a firm, which provides for few tangible benefits. The same can be said of Intellectual property law and confidentiality clauses.

6. A ban on non-compete clauses in contracts of employment below a salary threshold

We do not support a ban on non-compete clauses below a salary threshold, largely because this reduces the business relevance to the financial services sector were that threshold to emulate those in Austria and Spain, yet would still impose the regulatory complexity and burdens.

Using base salary as a threshold for determining the appropriateness of non-compete clauses would also be an imprecise and unreliable proxy. Remuneration in wholesale financial brokerage is typically skewed towards variable, discretionary and performance-based pay, with base salary often forming a variable share of overall compensation depending upon the role; whilst frequently fluctuating with performance and market conditions.

A bright-line rule tied solely to base salary may overlook critical elements of total reward and deferred compensation; whilst job descriptions and responsibilities can differ markedly between firms for equivalent roles due to differing compensation structures.

Taken together, these factors show that a blanket salary-based ban would be arbitrary and misaligned with the genuine commercial risks firms must manage. The current common-law approach permits non-compete clauses to be crafted and evaluated individually, based on an employee’s functions and exposure to sensitive information, and ensures courts can invalidate provisions that go beyond what is reasonably required.

7. How the government could ensure that a ban below a salary threshold also supports higher-paid innovators, experts, and entrepreneurs in the UK

We do agree that any ban below a salary threshold could support higher-paid innovators, experts, and entrepreneurs within the Wholesale financial services sector. In fact, such proposals may encourage further brain-drain from UK by dint of adverse consequences upon competitiveness.

We would suppose that higher-paid innovators, experts, and entrepreneurs in the UK are not reliant on legislation in addition to the working Common Law in order to negotiate the terms of their employment contracts, including non-compete clauses.

8. A combination of a ban below a salary threshold and a statutory limit for those who earn above the threshold

We do not support a ban below a salary threshold, combined with a statutory limit for those who earn above the threshold as this is likely both overly complex as well as providing for an uncompetitive framework for international competition and maintaining a world leading global financial centre. The established common-law reasonableness standard already provides a balanced and adaptable mechanism for assessing non-compete clauses.

The established common-law reasonableness standard already provides a balanced and adaptable mechanism for assessing non-compete clauses. Any route that combines and so compounds complexity, even prior to any consideration of the merits appears a less attractive option. The working paper notes difficulties in calculating pay, especially in cases where staff work across different group entities, are based overseas, are paid principally as commission, are contractors or are subject to clawbacks. The concept of total compensation can only be solely historical.

9. Whether restrictions should be limited to non-compete clauses only or should also apply to other restrictive covenants

Given that we do not support a ban on non-compete clauses, we would also not support a further ban on other restrictive covenants around employment. Wholesale market intermediaries and brokers routinely rely on restrictive covenants; including non-dealing, non-poaching and non-solicitation provisions, both as a basis for employment contracts and to protect their legitimate commercial interests.

We note again that reliance solely on fully compensated 'gardening leave' would be a very costly option for firms and therefore at odds with the current Treasury policy for financial services competitiveness.

10. How the government can ensure that other restrictive covenants, for example non-dealing clauses, are not used in a way that would have a similar effect as a non-compete clause, if restrictions were limited to non-compete clauses only

We understand that as a condition of further employment, employers would generally not want to hire individuals until free of all non-dealing restrictions. This is especially the case for wholesale financial services where there is a very finite set of customers across these market segments, which underpins the value in building front-office customer trust and confidence.

Valuable for businesses to remain competitive, wholesale market intermediaries and brokers routinely rely on covenants; including non-dealing, non-poaching, and non-solicitation provisions, together with non-compete clauses as a related set. As already stated, these other covenants are generally capable of being enforced only after employment contracts have ceased and only by dint of litigation or other costly and slow applications.

11. Whether restrictions on non-compete clauses should be limited to employment contracts or whether the government should consider applying them to wider workplace contracts.

Whilst restrictions on non-compete clauses should not be applied to employment contracts (including Partnership agreements) in the first instance; we understand that there are no common wider workplace & additional applications across the wholesale financial services.

12. Any evidence demonstrating that a ban, or restrictions, on non-compete clauses could impact inward investment or investment in training and upskilling.

We have noted above that a ban, or restrictions, on non-compete clauses would impact both the ability of firms to share proprietary information and tools with key staff who should be best equipped to enhance competitiveness, but would also deter investment in staff such as in proprietary tools, cross-selling and ongoing training, and upskilling.

13. Any obstacles to bringing claims on restrictive covenants, including non-compete clauses, in the courts.

We are not aware of any specific obstacles to bringing court claims on restrictive covenants. Indeed, as set out in HMG 2020 consultation, English Common Law takes a very pragmatic approach to such claims and has an extensive body of case law to draw upon.

14. Whether these obstacles are related to concerns about the costs of bringing a claim, and whether there are barriers to prospective claimants accessing mechanisms to reduce or predict costs (for example, FRC, LEI, CFA or DBA).

We do see a case in general for a lower primary forum for contentious non-compete claims, such that High Court (King's Bench Division) or Appeals Court would only be a route for escalation. Therefore, junior courts or employment tribunals could be those preferred primary for a in order to mitigate for the cost of access where cited as a barrier.

15. Any suggestions for what the most appropriate response would be, and how it might be implemented.

EVIA considers that legislative reform is unnecessary and that the existing common-law framework remains the most appropriate approach, especially in relation to building the UK's international competitiveness wherein recourse to the legal framework remains perhaps it is principal single strength.

Further non-binding guidance and industry best practice should be considered in light of developments in Artificial Intelligence and novel distributed ledger technologies.

Ends.