



# Antitrust and Competition: Impact of Coronavirus COVID-19

As new national restrictions on free movement of citizens are being imposed every day and a number of other measures are being implemented by governments, the national and EU regulatory landscape is challenging for companies to navigate. In light of the current situation, several competition authorities around the world announced specific points of focus for the coming weeks.

## **Beware of stepped-up antitrust enforcement!**

Certain competition authorities have even already started investigations related to the coronavirus COVID-19 outbreak. In particular, the Spanish competition authority announced increased scrutiny of price-fixing affecting first-need goods while the Italian competition authority has started two investigations for misleading advertisements and excessive rise of the price of sanitary products on online platforms. Likewise, the Dutch and the UK competition authorities have issued statements urging retailers to behave responsibly during the outbreak, to not make misleading claims about the efficacy of protective equipment or charge excessive prices. The UK regulator has stated an intention to use all available tools to enforce competition law, and to urge the Government to step in where necessary. Companies giving the impression – rightly or wrongly – to take advantage of the situation, risk particularly harsh enforcement. If there is an objective need for price adjustments, make sure they are carefully documented and consider seeking legal advice. In China, amidst the Chinese government's broader response to the coronavirus COVID-19 outbreak, the State Administration of Market Regulation (SAMR) has adjusted its enforcement priorities under the Antimonopoly Law (AML) and Anti-Unfair Competition Law (AUCL). On March 18, 2020, SAMR announced that it will work with ten other central level authorities to launch a nation-wide enforcement campaign against false-advertising across many sectors. The local counterparts of SAMR in Beijing, Shanghai, and many other provinces also have announced to increase the enforcement against price-gouging and false-advertising in e-commerce and retail sectors.

The crisis may prompt economic operators in all sectors to engage in new or more intense horizontal or sector-wide collaborations. For example, pharmacies may wish to pool their stock and supermarkets may wish to cooperate in home delivery of groceries. Collaboration between competitors is always sensitive. While the

exceptional circumstances caused by the coronavirus COVID-19 outbreak may provide more margin for justifying horizontal collaboration, it remains important to document justifications and to seek legal advice.

Further, unilateral conduct of companies may also need to be adjusted. Companies supplying key products that become scarce, should be careful in handling demands exceeding supply. Generally, is it safe to ensure a non-discriminatory treatment of all customers, and in a situation of shortage, a pro-rata allocation of available resources (as "opposed to the first gets it all") is considered antitrust-compliant.

On 23 March, the EU competition authorities issued a joint statement declaring that they "will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply", as the "extraordinary situation may trigger the need for companies to cooperate in order to ensure the supply and fair distribution of scarce products." However the competition rules stay in force.

Companies with questions should turn to their advisers, but if necessary the authorities themselves are open to give guidance in borderline cases. At the same time, the regulators emphasized that they will not hesitate to come down on companies trying to restrict or increase the cost of essential medical supplies, or "taking advantage of the current situation by cartelising or abusing their dominant position."

In the current situation, competition authorities will not likely carry out surprise inspections (dawn raids). However, if companies engage in sensitive conduct, evidence thereof can easily be detected during raids carried out at a later date when things are back to normal.

### **Delays in merger and acquisition clearances**

Clearance of merger filings will also face substantial delays. In Europe, many European Commission employees will be teleworking. In this context, DG Competition already announced that it will encourage parties at the pre-notification stage to delay filings until further notice. The new measures will probably not affect the simple cases that can be managed electronically. However, complex mergers requiring vast document production, questionnaires to be answered by customers and competitors and many state of play meetings will likely be delayed significantly. At a national level, the UK regulator has no current plans on stopping or extending any of its merger cases, but is keeping this under review and exploring remote working arrangements. The Dutch competition authority also will try to process merger filings as usual, but has asked for understanding for possible delays. It announced that, in return, it will be lenient in applying terms and deadlines to undertakings. In Germany, the Federal Cartel Office has set up additional e-mail inboxes to ensure accessibility but at the same time has urged all companies to consider delaying any submissions to the Federal Cartel Office if the matter is not highly time sensitive. In China, SAMR has also modified its merger review system to permit online submission of notification materials and questions. Where online submission and communication is not convenient, SAMR encourage the applicants to mail relevant materials to the Beijing office site of SAMR; face-to-face consultation services provided by SAMR have been cancelled and will re-open upon further notices; notifications and other official documents in SAMR's merger review (such as notifications of acceptance and requests of supplementary documents) will be delivered to applicants through email or fax.

Also keep in mind that countries will likely try to use foreign direct investment reviews to limit foreign takeovers in the life science sector out of fear that valuable assets capable of combating the virus may fall into foreign hands.

## **Emergency support available**

Governments around the world will provide massive financial support to the economy in distress. In Europe, national subsidies of any sort are normally scrutinized by the Commission and require some form of authorization. Government support, whether through subsidies or tax breaks, must conform to strictly defined criteria. The European Commission already declared that it will relax its standards on subsidy control based on a treaty provision allowing derogations in the event of a “serious disturbance”; it stated that notification of “ample” support measures will be approved under a “swift” Commission approval process (i.e. decisions could be taken within days where deemed necessary by the European Commission). Earlier this week, the European Commission already approved a Danish state aid scheme to compensate organizers of events for loss or damage caused by cancellations of large public events due to the coronavirus COVID-19 outbreak. DLA Piper has published [a separate note on this topic](#).

Before engaging in risky conduct, or whenever you have a question or need advice, please contact your DLA Piper contact partner or any of the team contacts listed hereafter should you have any questions or require legal advice on any antitrust and competition law related issues.

*Article originally appeared [here](#).*