



Application of EU competition rules in the times of crisis

Partner [Mika Oinonen](#)'s article on the application of EU competition rules in the times of crisis has been published in the 100th anniversary issue of Defensor Legis law journal. Mika's [article](#) "EU:n kilpailusääntöjen soveltaminen kriisiaikoina" gives examples as to how the European Commission (EC) has allowed some room for the application of competition rules.

Most of the changes in application of competition rules have been possible within the current legislation. COVID-19 outbreak has again shown that competition law instruments have mechanisms to take into account market and economic developments. The European Commission and other European competition authorities have outlined what's possible during the crisis.

From the competition law perspective, state aid has played the most significant role in supporting the companies and the economy during both COVID-19 outbreak and the financial crisis over 10 years ago. However, in the context of COVID-19, the actions taken by the European Commission have been more extensive. The EC has adopted a Temporary Framework, which allows the Member States to give state aid in various forms during COVID-19. The EC has expanded the Temporary Framework several times as the crisis has evolved. The Temporary Framework has been widely used in Europe and Finland is no exception. Granted state aid has also given rise to appeals, which shows that state aid is not immune to possible competition distortions even during a crisis.

The European competition authorities have also recognized the need for companies to cooperate during COVID-19 for example in order to ensure the supply and fair distribution of scarce products to all consumers. The European Commission has adopted a Temporary Framework that sets out the main criteria for the antitrust assessment of cooperation during COVID-19. More lenient approach to necessary cooperation has been witnessed in many Member States. Interestingly, the European Commission has issued the first comfort letter in over 15 years. The EC approved the cooperation between the members of Medicines for Europe association aiming to secure the availability of critical medicines needed for treating patients suffering from COVID-19.

On the other hand, the competition authorities have constantly reminded that they do not hesitate to take action against companies taking advantage of the current situation by cartelising or abusing their dominant position for instance by using excessive prices. In several countries, it has been considered also necessary to give temporary pricing related provisions to prevent overpricing.

Furthermore, merger control has been affected by COVID-19. The most remarkable effect concerns the processing deadlines, which have been extended or suspended in several countries. When it comes to the so-called failing firm defence, at least for now, it seems that the crisis has not justified a more lenient approach to failing firm arguments.

All in all, COVID-19 has shown that competition law provides one important tool to respond to an economic emergency. European competition authorities have also well proved their readiness to apply competition rules during crisis.

PDF

[The article is available here in Finnish](#)
