



EU, COMPETITION AND REGULATED MARKETS

Competing with COVID-19: Competition Law During the COVID-19 Outbreak

by **Marco Hickey**

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23rd March 2020 | by Marco Hickey

The impact of COVID-19 cannot be underestimated, but even during this global pandemic, it is important for businesses to be aware that competition law rules and procedures still apply. At the time of publication of this article, no competition authority has relaxed the rules around competition law.

We examine the key competition law issues, risks and considerations facing businesses at this extremely challenging time.

Some businesses are seeing a steep decline in demands from consumers, while others are seeing unprecedented demand across the supply chain, forcing businesses to explore alternative options for easing this pressure.

One approach which businesses might be considering exploring is collaborating with competitors. However, until such time as competition law rules are relaxed allowing for competitors to collaborate, the normal competition law rules continue to apply.

Key points for businesses to bear in mind:

- Always adhere to competition law rules and procedures when working alongside competitors, including maintaining proper documentation of any meetings held between competitors.
- Those holding a dominant position in a relevant market should carefully consider the introduction of any price hikes for products, as this action could potentially be viewed by competition authorities as breaching competition law. Non-dominant position businesses should also err on the side of caution when considering price hikes during this crisis.
- Exclusionary practices, such as refusal to supply a group of customers over another or bundling products that are in demand will not be justified.
- If in doubt as to whether you are engaging in an anti-competitive practice, contact the national competition authority for guidance. In Ireland, the Competition and Consumer Protection Commission (the CCPC) oversees the implementation and surveillance of competition law.
- If you are contemplating proceeding with a transaction and fall within the statutory financial thresholds for regulatory approval, do not proceed with the transaction without having first obtained approval, as to proceed without approval will render the transaction void (see below for further information on this point).

Efficiency justification

Competition law rules can be relaxed where there is an efficiency justification. There have been very few European Commission decisions on this area, but it is possible that a justification could be appropriate on the grounds of public health or the provision of essential supplies.

Practical implications for merger control notifications

The CCPC has released a statement seeking parties, where possible, to delay the filing of non-urgent transactions until further notice, in light of the COVID-19 pandemic. The collection and review of data by the CCPC during the merger review would become increasingly more difficult.

The formal notification regime and the timelines applying to filings remains the same, and mergers can still be notified to the CCPC during the COVID-19 crisis. Although there will be a delay in the review of notifications over the coming weeks.

At the time of publication of this article, the CCPC has no power to extend the statutory review deadlines for notifications. It is likely that the CCPC will extend the 30-working day Phase 1 review period for deals currently under review and/or notified during the COVID-19 crisis.

In the event that filings must proceed, the CCPC has requested that the notification of mergers be filed electronically, including all supporting documentation.

Most importantly, businesses should note that the applicable statutory thresholds required for filing a notification still apply, and businesses cannot proceed with a transaction without having first obtained the approval of the CCPC. Failure to obtain CCPC approval is a criminal offence and the transaction will be deemed void.

Thoughts

During a time of crisis, coordinated efforts of businesses are required, yet at the same time, the risks associated with coordination from a competition law perspective must be considered. Unless guidance is issued from competition authorities to the contrary, it is business as usual as far as competition law is concerned.

The key takeaway for businesses is that competition law rules still apply during COVID-19, and businesses should bear this in mind when joining forces with each other to curb the effects of COVID-19.

For further information please contact [Marco Hickey](#). To read our cross-disciplinary coverage on business continuity during COVID-19, please visit [our dedicated special insights page](#).

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