

CLIENT ALERT

European Competition Authorities Provide Guidance on Application of Competition Rules in Times of COVID-19

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As the economy in Europe is facing serious challenges due to the COVID-19 outbreak, the European competition authorities are ready to assist and advise companies on the application of the competition rules in these exceptional circumstances. Several competition authorities have already adopted a more lenient approach to collaboration between competitors in the healthcare, transport and food sectors. However, companies taking advantage of the crisis to increase prices or mislead consumers should expect no mercy from the authorities.

On March 23, the European Competition Network (ECN) issued a joint statement on the application of competition law during the coronavirus crisis. The ECN understands that this extraordinary situation may trigger the need for companies to cooperate in order to ensure the supply and fair distribution of scarce products to all consumers. In the current circumstances, the ECN will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply.

If companies have doubts about the compatibility of their cooperation initiatives with EU/EEA competition law, they can reach out to the European Commission, the EFTA Surveillance Authority or the national competition authorities for informal guidance. Several competition authorities, such as the Dutch and the German authorities, already indicated their willingness to discuss with companies, associations and policy makers any collaboration they wish to launch in order to combat the crisis. Likewise, the Belgian competition authority provides informal guidance to companies about possible collaboration to deal with the consequences of the COVID-19 crisis.

Relaxation of the Competition Rules in Times of Crisis

Since last week competition authorities all over Europe have been responding to questions on collaborative measures taken to address shortages and other challenges resulting from the current crisis. The German competition authority confirmed its willingness to favorably consider initiatives to avoid potential food shortages in Germany. However, it believes there is no need to change existing regulations. Competition law permits extensive cooperation between companies if there are good reasons for this, which is the case in the current situation, according to the president of the authority.

On the contrary, the UK government announced on March 19 the temporary relaxation of competition law for supermarkets to allow the retailers to collaborate in response to the coronavirus crisis. Supermarkets are allowed to share data with each other on stock levels, cooperate to keep shops open and share distribution depots and delivery vans. Retailers can also pool staff with one another to help meet demand.

In a separate announcement, the UK Competition and Markets Authority (CMA) welcomed the temporary relaxation and issued an assurance that it has no intention of taking competition law enforcement action against cooperation between businesses or rationing of products to the extent that this is necessary to protect consumers.

The president of the [Dutch](#) Competition Authority also indicated that he will take into account the COVID-19 crisis in his enforcement approach. In particular, he mentioned the following opportunities for collaboration:

- Supermarkets can inform each other about their stocks.
- Drug wholesalers can inform each other of the quantities of products they sell.
- Logistics providers can cooperate to provide citizens with vital supplies.
- Trade associations can agree to have a lenient approach towards debtors.

Norway and Iceland Grant Exemption to the Transport and Travel Industry

[Norway](#) is going one step further, [granting a temporary exemption from the competition rules to the transport sector](#). The exemption entered into force on March 18 and will apply for the next three months. Parties must notify the Norwegian competition authority if the exception is being used. The press release specifically mentions that the airlines SAS and Norwegian can collaborate on their flight route offerings to ensure that citizens have access to necessary goods and services.

In [Iceland](#), the competition authority [already granted several exemptions on account of COVID-19 to travel agencies and distributors of pharmaceuticals](#). Companies wishing to take advantage need to notify their cooperation to the authority and the sector regulator. Applications for exemptions will be processed in less than 48 hours.

Investigations into Price Hikes for Healthcare Products

On the other side of the spectrum, there are unfortunately also companies which are taking advantage of the current situation to increase prices for health care products such as masks, gloves, and sanitizers. The ECN stated it will not hesitate to take action against these companies cartelizing or abusing their dominant position. In this context, the ECN points out that manufacturers can set maximum prices for their products to limit unjustified price increase at the distribution level.

The CMA [already warned companies in the pharmaceutical and food industries](#) on March 20 not to capitalize on the pandemic by charging excessive prices for essential goods or making misleading claims about their products and [launched a task force to tackle the negative impact of the pandemic](#). The CMA contacted traders and platforms regarding excessive pricing of hand sanitizer.

Several other competition authorities have started investigations into price hikes for health care products. In [Italy](#), a [request for information was sent about the marketing of hand sanitizers and masks](#) following numerous complaints regarding price increases and product efficacy. Lastly, the [Greek](#) competition authority [sent requests for information to companies active in the production, import, and marketing of surgical masks and disposable gloves](#) in relation to significant price increases and shortcomings of these products. It will [monitor and prioritize enforcement actions against companies which exploit the COVID-19 crisis to the detriment of consumers](#).

Crowell & Moring will continue monitoring developments in this area and provide regular updates.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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