

CLIENT ALERT

B2B Relations in the Events Industry in Europe and COVID-19 Pandemic: the Stakeholders' View – Part 3

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We started this series of alerts by sharing our view on the legal consequences of COVID-19 on B2B relations in the events industry. Our [first two alerts](#) set the scene. But of course, law is not applied in a vacuum, and to supplement our analysis we thought it would be useful to understand how different stakeholders from the events industry have been experiencing the pandemic. So, in our most recent alerts, we have been reaching out to different industry representatives, asking them five key questions and inviting them to share their perspective.

In this edition, Jan Jacobs, owner of J&M Catering, explains how one of the best-known event caterers in the Benelux area has been dealing with the consequences of COVID-19. J&M Catering recently acquired the high-end caterer Silverspoon, and it also owns Nobel Catering, a subsidiary that specializes in public events and trade conventions. And, with JMTerim, the group runs its own academy to train temporary staff and ensure quality consistency from start to finish – sometimes literally, as J&M Catering caters for numerous sporting events. Although they also have a B2C division, the center of gravity of the group's activities is clearly B2B, making Mr. Jacobs very well positioned to take part in our series.



Jan Jacobs

The challenges posed by COVID-19 are unprecedented in business terms. But any company that has been in business for some time must have experienced other crises. What do you think is an important legal lesson that can be drawn from the past?

J&M Catering was founded almost three decades ago, so we have indeed seen our share of crises and we have learnt from every single one of them. The COVID-19 crisis, or rather the measures taken as a consequence thereof, have been however of a nature, scale and speed for which not a single event caterer was prepared. By the end of Q1/2020 all the events scheduled during that period had been cancelled. Not postponed. Cancelled. To be clear, in the past we have had events that were cancelled or postponed, but what has happened now is unprecedented.

And, unfortunately, with 'unprecedented' often comes 'unprepared.' Obviously, we operate using general terms and conditions, and we also have a specific cancellation policy. But I am certain that we are not the only company in this industry that has not always strictly or fully enforced its contractual rights, for instance, for mere commercial reasons or in order to avoid legal disputes where the costs outweigh our potential gain.

Looking back, we realized that having a more solid or flexible *force majeure* clause would not have hurt. We have therefore updated it, and now reserve the right to claim payment for any expenses that we incur up front. We have also learnt that we need to exclude the right to refund for advance payments made to reserve our event venues. Prior to the COVID-19 crisis, we

already experienced events getting cancelled too late for the venue to be sold to another party. With the constantly changing rules and regulations as a consequence of COVID-19, we expect cancellations to come in even later. So going forward we will assume that once cancelled the resale opportunity for the event venue is to be considered 'lost'.

Everyone is gradually aware that after the lockdown it will not be business as usual. The government is trying to respond to this by announcing numerous support measures and new regulations, temporary or otherwise. If you could amend the existing regulations on one point today, what would that be?

Although the government has implemented some support measures, these are not tailored to the unprecedented nature of what our industry is facing. Without wishing to appear greedy, in our view amendments are required in at least two areas: social security and tax.

I am aware that what I am saying is nothing new. But I feel that because of COVID-19 it should be said again, and louder than ever before. The current 'sliding-scale' calculation of social security contributions should be changed for a 'lump sum' system. The social security administration of both the industry and the government would become much simpler, leaving room for cost savings and more social security inspections for those who wrongly try to trump the system.

Tax reforms are required on two levels. First, the costs of organizing events should become fully tax deductible for companies and private individuals. This would, without any doubt, stimulate the rebooting of the events sector. The same can be said for lowering the VAT tariffs applied to events industry related services, or at least to those in the catering niche. Second, the fiscal authorities should give some serious thought to approving a carry back regime that would enable us to compensate for some of the huge losses that we expect to suffer this year by relieving the tax pressure on positive results of prior years.

What do you expect from your commercial and legal partners in anticipation of a normalization of the market in the short or medium term?

We all know that the following months will be very challenging for all stakeholders in the events industry. They may well be decisive. That is why we expect our partners to be true partners.

On a commercial level this means respect, more than ever before, for agreements that have been made. The last thing we need is 'partners' taking advantage of the situation by putting pressure on prices or categorically refusing to be flexible. Nobody knows exactly what the future holds, let alone where we might end up in the near, mid or long term. Whereas a company might today be in a position of power, next month it might be in the exact opposite position. Now is the time to demonstrate clearly that this sector and all its stakeholders can act as one. Loyalty, dialogue and commitment are more crucial now than ever.

The last thing we need is for legal conflicts to add to the challenges that we're already facing. That's where I expect our legal partners to step in. Just managing legal risks will no longer do. We must reduce them as much as possible. We need proactive legal support that spots and resolves legal issues before they crystallize into real legal problems.

When talking about risk management, a first reflex is often: insurance. It may be assumed that it will not be easy to get COVID-19 related risks insured. How do you nonetheless try to limit COVID-19 related risks as much as possible?

Any company would have loved to be able to rely on turnover insurance, as Wimbledon has done. But that type of protection never came cheap and, even if it remains an option in the future, it will be impossible to afford. So we need to create our own insurance. That is why, on the supplier side, we are now insisting that our leasing and rental agreements can be suspended in case of *force majeure*, to cover situations like the one that we are currently facing.

Internally, and in particular with regard to food safety, we already are reducing risks, and we have been for many years. We are HACCP compliant, pass audits by the Federal Food Safety Agency with flying colors, have full control over our production chain, etc. When the COVID-19 crisis started, our internal team, backed by external specialists, developed an extensive 'code of conduct.' This allows us to offer safe (read: corona-proof) catering services at any type of event. Our only real limitation is the size of the public gatherings allowed by local or federal policy.

Virtual or hybrid events, new sponsorship techniques, performance on screen rather than live, augmented and virtual reality... Many see the COVID-19 crisis as a catalyst for innovation. Does this also apply to you? If so, should this innovation be a common good for the whole sector (e.g., through free licenses) or a means for each stakeholder to stay ahead of the competition (e.g., by enforcing exclusive rights)?

J&M Catering is known to cater to any type of public, but always in a creative and innovative manner. In this respect COVID-19 has not had a significant impact. We always strive to set the trends rather than to follow them, and to invest in continuous and high-paced innovation so as to stay ahead of the competition. That's why we do not own any patents, for instance. Our innovative strength lies in our collective know-how and how we put it to creative use. We combine creativity with our ambition to be the best and our willingness to take bold decisions. So even if we wanted to share our innovation with other caterers, they would never produce the same results as ours because they are not us.

As far as the virtual/hybrid trend is concerned, it is admirable and impressive how some companies in our industry have managed to turn around their operational and even business model. Just as is the case for many other COVID-19-innovation we are curious to see what will remain of that once things go back to normal. For a group like ours virtual/hybrid cannot be more than a detour. From the outset J&M Catering has systematically bet on offering unique and live experiences. Yes we could now weave in some virtual or hybrid elements, but for us we see this really as temporary and fallback solutions. The public we literally cater to wants a real, not a virtual experience. Delivering a food box with all the attributes you need to participate in a VR-online event from your home will remain a one-off gimmick. We believe that it will never be a substitute for the real thing: the joy of sharing a culinary experience together.

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

Jan-Diederik Lindemans

Partner – Brussels

Phone: +32.2.282.1832

Email: jlindemans@crowell.com

Jo Vanwittenbergh

Business Manager – Brussels

Phone: +32.2.214.2871

Email: jvanwittenbergh@crowell.com