



## Antitrust ADVISORY ■

**MARCH 25, 2020**

### Competition Authorities Across Europe Relax Competition Law Enforcement During COVID-19 Outbreak

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#### **European Union**

On March 23, 2020, the European Competition Network (ECN), consisting of the European Commission, European Surveillance Authority, and national competition authorities of the EU/EEA, have issued a joint statement on behalf of all European competition authorities concerning the application of competition law during the coronavirus pandemic. The ECN [stated](#) that European antitrust authorities “will not actively intervene against necessary and temporary measures” that allow companies to cooperate to ensure the supply and fair distribution of scarce products to all consumers. Nevertheless, the ECN stressed that the authorities will take action against any companies that take “advantage of the current situation by cartelising or abusing their dominant position,” especially if these companies are active in the health products sector (e.g., facemasks and sanitizing gel).

This joint statement serves as a response to the statement issued by EuroCommerce on behalf of the European retail and wholesale sectors, urging all European governments and competition authorities to relax the enforcement of competition rules and allow the cooperation and exchange of information on supplies and deliveries between retailers in all parts of the supply chain.

#### **EU Member States**

The German government and competition regulator have decided to adopt some competition restrictions concerning the cooperation and exchange of information between the food industry and retailers in order to avoid potential food shortages, but without changing any laws. This approach has been followed by the Danish competition authority, which published a communication on the application of antitrust rules during the coronavirus pandemic.

The French government has suggested that regulators should focus on emergency measures relating to COVID-19 and suspend their legislative agenda. As a result, the update of French competition rules to include stricter merger notification requirements on digital platforms, which was scheduled for this spring, will be delayed.

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The Greek competition authority has issued informal guidelines relaxing antitrust enforcement in certain situations. These include the imposition of maximum resale prices by manufacturers of personal hygiene products or by Internet platforms and marketplaces on products sold through them, the recommendation of resale prices in the food distribution network, and in general the imposition of maximum resale prices or recommended resale prices in the sale of goods and services of all kinds, even in vertical agreements where the suppliers or the buyers have market shares of more than 30%, provided that these restrictions are reasonably justified. However, the Hellenic Competition Commission (HCC) has stressed that it will not accept any unlawful restrictions to competition that go beyond what is necessary for current purposes. It is noteworthy that the HCC has already launched an investigation into companies active in the production, import, and marketing of health care products, in particular surgical masks and disposable gloves, as well as other products such as antiseptic wipes and antiseptic solutions.

### EEA Member States

The Norwegian government has granted providers of transportation services for passengers and goods a three-month exception from the prohibition against anticompetitive agreements and practices in the Norwegian Competition Act as a measure to maximize the efficient use of resources and to benefit consumers.

### United Kingdom

The UK government has decided to amend the Competition Act 1998 in order to relax the competition rules temporarily and enable the cooperation and sharing of information between retailers. This initiative is part of a package of measures aimed at helping supermarkets and retailers provide supply and delivery services to people as efficiently as possible during the current health emergency. Other measures include the relaxation of drivers' hours rules to allow supermarket delivery drivers to meet the increased demand for home deliveries and waiving the 5p plastic bag charge for online purchases to speed up deliveries.

The UK competition authority has welcomed the government's statement and announced that it will not be taking any enforcement action against cooperation between businesses or rationing of products in order to ensure security of supplies, as long as this is in the interest of consumers. Nevertheless, the UK competition authority stressed that it will not tolerate any sort of exploitation of the current situation, for example the exchange of longer-term pricing information or business strategies between competitors. The UK competition authority [has published an open letter](#) to the pharmaceutical and food and drink industries stating the vital importance of these sectors and warning all actors in these markets not to "capitalise on the current situation by charging unjustifiably high prices for essential goods or making misleading claims around their efficacy."

Today, the UK competition authority also [published a guidance](#) for businesses that need to cooperate during the coronavirus pandemic to ensure the supply of scarce products. Once again, the authority stressed that it will not tolerate unscrupulous businesses exploiting the crisis as a "cover" for nonessential collusion.

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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