



Antitrust /Mergers & Acquisitions ADVISORY ■

MARCH 25, 2020

COVID-19 Affects European Merger Control Reviews and Court Procedures: New Procedures and Delays

Every part of European legal procedure is being affected by the coronavirus (COVID-19) pandemic, and the merger control review of proposed transactions is no exception. Below we consider announcements made by the European and UK competition authorities, as well as the English and European courts.

European Commission

Effective Thursday, March 12, 2020, the European Commission sent home most of its staff across its various departments, including its antitrust arm (DG COMP). Staff in critical functions will be physically present at the European Commission, working in shifts. Wherever possible, meetings are to be held remotely via videoconferences and telephone calls.

DG COMP has made specific announcements on its homepage about the deferral of merger notifications and the temporary acceptance of electronic, rather than paper, submissions.

DG COMP [has specifically stated](#) that “companies are encouraged to delay merger notifications originally planned until further notice, where possible.” The reasons given for this are that “(i) DG COMP services are likely to face difficulties in collecting information from third parties, such as customers, competitors and suppliers, in the coming weeks and (ii) all Commission services may face limitations in terms of access to information and databases and in terms of information exchanges following the remote working measures taken as of 16 March 2020.”

As in previous crises (such as 2008), DG COMP may refocus its efforts on reviewing cases involving companies in serious financial difficulties and “State aid” cases, where Member States grant financial aid to certain sectors or specific companies.

DG COMP [has stated](#) that it will temporarily accept electronic submissions: “hand deliveries to DG COMP premises will remain possible but [it] will temporarily also accept and actually encourage all submissions in digital format, either: electronically by email to the functional mailbox of the merger registry (comp-merger-registry@ec.europa.eu), putting the case team in copy if one has been assigned, or electronically through eTrustEx,” DG COMP’s document exchange system. DG COMP added that “the delivery of paper originals will then be arranged at a later time.”

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In line with these announcements, merging parties should expect that DG COMP's review of mergers that raise antitrust issues will therefore take longer to complete, with certain transactions being suspended via so-called "stop the clock" orders.

Other national competition authorities across Europe have announced similar changes (for example, the French competition authority).

UK Competition Authority

Effective March 18, 2020, the Competition & Markets Authority (CMA) has sent its staff home to work, where possible. Meetings and hearings are taking place remotely, via videoconferencing or telephone. The CMA is complying with the binding statutory deadlines that apply to much of its work. It is monitoring its timetables and will extend them where necessary. The CMA will be transparent in doing so, making public announcements after informing the relevant parties. It is also re-allocating resources internally to where they are most urgently needed. It is reportedly discouraging companies with deals that are still to close from formally filing notifications of those deals.

English Courts

The Justice minister and the most senior judges in the English system have emphasized the need for continued access to justice. The English courts will therefore remain open, with parties requested to move increasingly toward remote working and electronic submission of documents. Time limits will be applied flexibly, with some discussion of the possible automatic suspension or extension of deadlines for two to three months. Initial and supplementary announcements have been made by the UK's Supreme Court, Judicial Committee of the Privy Council, Lord Chief Justice of England and Wales, English Court of Appeal (Civil Division), and English High Court's Queen's Bench Division in London, as well as the specialist Competition Appeals Tribunal, which hears appeals from parties challenging decisions made by the UK competition authorities. The centralized Courts & Tribunals Service has created a homepage with guidance on making applications to adjourn certain hearings, and the Ministry of Justice has issued guidance on which lawyers may be "key workers" and are therefore "essential to the running of the justice system."

European Courts

Effective March 19, 2020, the European courts based in Luxembourg hearing appeals on points of European law announced several procedural changes. The "first instance" General Court of the European Union initially adjourned hearings listed until April 3, 2020 and prioritized only particularly urgent cases. It is now dealing with other cases while prioritizing urgent cases. Its timelines remain binding, although the court's registry may adjust some of those to support certain parties in difficulty.

Similarly, the Court of Justice of the European Union, the highest EU law court, has prioritized urgent cases. The timelines for instituting proceedings remain binding but those for ongoing proceedings have been extended by one month. Hearings between March 19 and April 3, 2020 were adjourned until a later date.

Key Takeaways

Parties with pending or proposed transactions should consult with antitrust counsel for guidance on complying with the new procedures and effectively managing the risk of delay or challenge.

Those with proceedings before the English or European courts should similarly consult their relevant specialist litigators.

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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