

**COVID-19**  
**Effects on competition law**

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# Effects of COVID-19 on competition law



## Introduction

The corona virus leads to exceptional circumstances for companies, including the area of competition law. The European competition authorities of the European Competition Network (ECN) already recognised this and published a joint statement on 23 March 2020 on possible loosening but also with warnings ([joint statement on the BKartA website](#)). The authorities explicitly warn not to exploit the situation for charging excessive prices in the health care sector, but also announce possible loosening in some areas of competition law. In the following, we provide an overview of this statement and summarize the impact of the Corona crisis on competition law:

### Loosening of competition law

The authorities said they are aware of the social and economic consequences of the Corona virus. Cooperation between competitors to ensure the distribution of scarce products might be possible, the authorities announced in their joint statement. Companies willing to cooperate could contact the competition authorities if they had any concerns.

The German Federal Minister of Economics Altmaier had

already considered the loosening of the anti-trust law in Germany, at least for retail chains, due to the border closures, and allowing cooperation between the food industry and retail trade. In the UK, food retailers could be allowed to exchange information on stock levels and cooperate on transport, storage capacities and personnel to ensure deliveries (see also the CMA's notification).

### Relationship to competitors

Many cartels in the past had their origins in crisis. Corona already has a huge impact on the German and worldwide economy. However, the crisis does not give any "right of self-defence" for competition law violations. Coordinated actions with competitors are critical from a competition law perspective. Discussions and agreements between competitors on how to deal with the crisis, e.g. with price increases for increased costs or concerted rejection of supplier/customer claims, are considered to restrict competition. This also applies, of course, when competitors meet in associations. There is great risk that the common misery may result in a prohibited agreement. Companies should therefore check possible contacts with competitors to ensure that they are permitted under competition

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law. E.g. discussions on possible protective and hygiene measures in companies may be permissible.

## Impact on dealers' prices

In their joint statement, the authorities clarify that manufacturers may use price caps to force their dealers not to exploit the situation for "unjustified price increases". The ban on cartels still applies with regard to minimum prices. Should the dealer decide to reduce prices to stimulate business, suppliers may not counteract this or even prohibit it. Suppliers may also issue non-binding price recommendations. But this only applies as long as the recommendations do not lead to a fixed price, e.g. by granting incentives or threaten with disadvantages.

Note: The Corona virus often also affects the supply relationships between suppliers and customers. "Force majeure" can lead to a suspension of contractual performance obligations (we will be happy to send you a Fieldfisher overview on request).

## Abusive Prices

In their joint statement, the authorities also issue a warning not to take advantage of the situation to charge excessive prices, especially in the health care sector. The problems in the supply chain and the shortage of essential products are already leading to significant price increases of certain products due to the enormous demand. Some companies already charge four times the average price for certain hygiene products. Such practices are currently being monitored by the cartel authorities. For example, the English CMA has already established a COVID-19 task force to combat negative effects on competition (CMA's notification). The CMA fears that companies could exploit the current situation by charging excessive prices or giving misleading statements about their products. The CMA has already contacted companies and platforms on suspicion. The Greek HCC also initiated investigations following numerous consumer complaints and already sent questionnaires to various companies active in the production, import and marketing, especially for surgical masks and disposable gloves. In Germany, especially market-dominant companies are subject to special obligations, but also every other company is subject to the limits of usury in its pricing, which is even punishable under criminal law in Germany. The authorities warn that they will not hesitate to take immediate action should they become aware of such conduct.

## Scarce goods

The Corona virus can lead to the disruption of supply chains and thus cause shortages of certain products. In this case market-dominant companies must serve their customers without discrimination.

## Merger control

In the context of merger control, companies must expect longer waiting periods. Various competition authorities have already announced delays. For this reason, the German Bundeskartellamt, the European Commission and the French Autorité de la concurrence for example ask companies and their representatives to reconsider whether it is necessary to submit proceedings and to postpone notifications as far as possible (Commissions's notification/ notification of the BKartA).

## Cartel damages: longer duration of proceedings

Companies planning to claim for cartel damages must be prepared for longer proceedings. On the one hand, courts are already largely occupied with ongoing proceedings. On the other hand, courts in many federal states are in course of the crises required to take measures to prevent the spread of the Corona virus. This includes the closure of court rooms and the cancellation of hearings (announcement of the Dusseldorf Regional Court). As a result, a considerable proportion of the proceedings already scheduled are postponed. The management may be obliged to examine possible claims for damages. When considering whether to sue for damages (as well as evaluating settlement proposals), the longer duration of proceedings may become relevant.

## Cartel detection

The Corona crisis will have no impact on the disclosure and prosecution of cartels by the authorities. The cartel authorities remain operational. The Bundeskartellamt already announced that the authority's ability to work is assured (notification of the BKartA). The Bundeskartellamt's whistleblower system also remains open. Companies can receive a 100% immunity from fines if they are the first to approach the Bundeskartellamt and uncover a cartel or play a decisive role in uncovering it through their contribution. All other cartel members can receive a reduction of up to 50% if they cooperate with the Bundes-

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kartellamt on a permanent and unrestricted basis.

Besides coping with the economic challenges and losses caused by the Corona crisis, those responsible in companies are still required to ensure compliance with competition law, because even in times of crisis the risk of a violation of competition law is not reduced. In particular, the challenges of dealing with competitors needs to be kept in mind. You can find further information in our Corona Executive Update on our website.

## International Overview

**Europe:** The European Commission has launched a website on coronavirus and rapid response ([the Commission's website](#)). Here the Commission publishes measures against the coronavirus, but also provides information, for example, about fraudulent practices on the Internet. The German Minister of Economics, Altmaier, told Commission's head of competition, Margrethe Vestager, that the current aid programmes would not be sufficient. He said that further emergency measures were necessary to support EU companies during the Covid-19 pandemic.

**France:** The French Autorité de la concurrence informs that the time limits for proceedings before the authority will be adjusted due to legal orders in the context of the health emergency. This concerns merger cases, establishment of regulated legal professions, filing of observations and briefs, leniency applications, transmission of procedural documents, prescription, appeals and the execution of commitments and injunction ([see here](#)).

**Netherlands:** The Dutch ACM provides information on coronavirus on their website ([link to the ACM's notification](#)). However, the authority is doing "business as usual" and remains available. Companies that want to cooperate could contact the authority as several companies already did. Additionally the ACM also stresses that companies must not take advantage of the crisis.

**Norway:** The Norwegian Konkurransetilsynet also warns not to take advantage of the current situation after receiving information about disproportionate price increases for certain products. The Authority is considering applying the 'Price Policy Act', which prohibits unreasonable prices and business conditions and allows the Authority to regulate prices for important goods and services ([link to notification](#)). In principle, however, the authority is of the opinion that free competition is best for society and consumers.

**Austria:** The BWB also recognises the need for cooperation and is currently prioritising complaints from the health sector ([link to BWB's press release](#)). The deadlines for merger control procedures have been changed by law: For all notifications filed after 21 March 2020 and before 30 April 2020, Phase I will end on 29 May 2020. Early clearances remain possible upon request. Notifications additionally can now be made electronically (more information here)

**Spain:** Similarly to France, the Spanish CNMC also refers to Spanish legislation which provides for the suspension of time limits and deadlines for the completion of procedures of public bodies ([link to CNMC's notification](#)). The CNMC has set up a special e-mail account to deal with complaints and requests relating to Covid-19. Given the exceptional circumstances, certain anti-competitive practices may be justified ([Information \(in Spanish\)](#))

**Czech Republic:** The Czech competition authority has stated that during the pandemic, access to files will be provided electronically or via flash drive. The measure mainly aims at public procurement cases, but it also covers cartel cases. Documents that would not be accessible in a normal scenario will not be made available even now.

**Turkey:** The Turkish authority has announced "zero tolerance" for abusive prices in the food sector due to the corona outbreak.

**UK:** After the British CMA published a guidance regarding business cooperation under competition law, the FCA (Financial Conduct Authority) and the PSR (Payment Services Regulator) have confirmed their support in the context of the pandemic and a consistent approach in the financial services sector ([link to FCA's website](#)).

**US:** The Antitrust Division of the Department of Justice (DoJ) and the Federal Trade Commission (FTC) have issued a joint antitrust statement on Covid-19 ([link to Statement](#)). The authorities want to make it clear to the public that there are many ways in which companies, including competitors, can engage in pro-competitive cooperation that does not violate antitrust law. For this reason, the authorities will attempt to respond to all COVID-19-related inquiries, and inquiries concerning public health and safety, within seven calendar days after receiving all necessary information.

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## Your contact persons for questions on competition law in times of COVID-19



**Dr. Christian Bahr**

Partner | Dusseldorf

+49 (0) 211 950 749 22

+49 (0)177 747 3880

christian.bahr@fieldfisher.com



**Dr. Sascha Dethof**

Partner | Dusseldorf

+49 (0) 211 950 749 21

+49 (0)172 181 8158

sascha.dethof@fieldfisher.com



**Anita Malec**

Counsel | Dusseldorf

+49 (0) 211 950 749 23

+49 (0) 173 186 2533

anita.malec@fieldfisher.com



**Solvei Hartmannsberger**

Senior Associate | Dusseldorf

+49 (0) 211 950 749 24

+49 (0) 176 1987 0924

solvei.hartmannsberger@fieldfisher.com



**Pia Meetz**

Associate | Dusseldorf

+49 (0) 211 950 749 13

+49 (0) 151 1761 8875

pia.meetz@fieldfisher.com



**Catharina Richter**

Associate | Dusseldorf

+49 (0)211 950 749 52

+49 (0)176 1878 8914

catharina.richter@fieldfisher.com



**Raoul Schätzler**

Associate | Dusseldorf

+49 (0)211 950 749 58

+49 (0)170 557 9824

raoul.schaetzler@fieldfisher.com