Flexibility within a Crisis: The European Competition Network’s Response to COVID-19

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On March 23, 2020, the European Commission announced that all competition authorities in the European Competition Network (ECN) (the Commission, the European Surveillance Authority, and the national competition authorities of each EU/EEA Member State) issued a joint statement on how to apply the European competition rules during the COVID-19 crisis.

More specifically, the joint statement underlines that European competition rules (along with the domestic rules of each EU/EEA Member State) are flexible enough to take into account changes in market circumstances such as those caused by the crisis. The joint statement states that:

- The ECN it is fully aware of the social and economic consequences triggered by the COVID-19 outbreak in the EU/EEA.

- The different EU/EEA competition instruments have mechanisms to take into account, where appropriate and necessary, market and economic developments. Competition rules ensure a level playing field between companies. This objective remains relevant also in a period when companies and the economy as a whole suffer from crisis conditions.

- The ECN understands that this extraordinary situation may trigger the need for
companies to cooperate 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 to avoid a shortage of supply.

- Considering the current circumstances, such measures are unlikely to be problematic, since they would either not amount to a restriction of competition under Article 101 of the Treaty on the Functioning of the European Union (TFEU) / Article 53 of the EEA Agreement or otherwise generate efficiencies that would most likely outweigh any such restriction. If companies have doubts about the compatibility of such cooperation initiatives with EU/EEA competition law, they are encouraged to contact the European Commission, the EFTA Surveillance Authority or the applicable national competition authority concerned at any time for informal guidance.

- At the same time, the ECN makes clear that it is of utmost importance to ensure that products considered essential to protect the health of consumers in the current situation (such as face masks and sanitising gel) remain available at competitive prices. The ECN will therefore not hesitate to take action against companies taking advantage of the current situation by cartelising or abusing their dominant position.

- In this context, the ECN points out that the existing rules allow manufacturers to set maximum prices for their products. This could prove useful to limit unjustified price increase at the distribution level.

Outside of the ECN’s joint statement, many competition authorities are implementing legislative changes or otherwise made temporary changes to the rules to ensure their respective competition law regimes have the necessary flexibility to permit relevant conduct required due to the extraordinary circumstances caused by the crisis. See here for more information on certain international changes to applicable competition rules.

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