

# **The European Commission is Ready to Provide Ad Hoc Antitrust Guidance to Allow Cooperation Necessary in the COVID-19 Crisis**

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In a joint statement on the application of EU and national competition law during the coronavirus disease 19 (COVID-19) crisis, the European Competition Network (ECN) recognized that competitors, supplier and distributors may need to cooperate with each other to ensure the supply and fair distribution of scarce products to all consumers.

For example, a few days ago, several companies joined forces in a consortium (Ventilator Challenge UK) to manufacture additional ventilators in the UK.

In these circumstances, the ECN said that it will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply. Such measures are unlikely to be problematic from an antitrust perspective, since they would either not amount to a restriction of competition or they would generate efficiencies that would most likely outweigh any such restriction.

At the same time, the European Commission warned that the crisis is not an opportunity for companies to dodge antitrust enforcement by cartelizing or price gauging. Therefore, each company remains responsible for ensuring that its conduct is compatible with competition law. The consequences of getting it wrong could expose it to the risk of serious consequences, including hefty fines.

The need for self-assessment and the serious consequences of getting it wrong could potentially have the effect of delaying urgent cooperation projects between competitors or between suppliers and distributors in the grey areas of competition law, including for example urgent joint production and commercialization agreements, such as Ventilator Challenge UK.

To try to avoid such delays, the European Commission's department in charge of competition law, DG Competition, has set up a dedicated email address open to companies, associations and their advisors: [COMP-COVID-ANTITRUST@ec.europa.eu](mailto:COMP-COVID-ANTITRUST@ec.europa.eu). This email address can be used to seek informal guidance on specific initiatives with an EU dimension, that need to be swiftly implemented in order to effectively tackle the COVID-19 pandemic, and where there is still uncertainty about whether such initiatives are compatible with EU competition law.

In order to facilitate a swift follow-up, DG Competition encourages all companies, associations and their legal advisors to provide upfront as much detail as possible on the initiative, including at least the following information:

- The firm(s), product(s) or service(s) concerned;
- The scope and set-up of the cooperation;
- The aspects that may raise concerns under EU antitrust laws; and
- The benefits that the cooperation seeks to achieve, and an explanation of why the cooperation is necessary and proportionate to achieve those benefits in the current circumstances.

Messages should not exceed 30MBs.

Businesses or associations contemplating new cooperation projects to avoid a shortage of supply should discuss with their advisors whether to contact DG Competition or a member of the ECN as soon as possible to avoid delays.

Note: the ECN includes the European Commission, the EFTA Surveillance Authority and the National Competition Authorities of the EU Member States. At least until the end of the Transition Period for the UK's exit from the EU, the ECN also automatically includes the UK's Competition and Markets Authority.

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National Law Review, Volume X, Number 98

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