



IMPACT OF COVID-19 GLOBAL MERGER CONTROL

LATHAM & WATKINS^{LLP}

27 March 2020

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EUROPE



EU – DG COMP is encouraging merging parties to delay notification until further notice. Electronic (rather than paper) filings are encouraged. DG COMP has started to accept simplified notifications again and case-teams have confirmed that simplified procedures should go on as usual. Long form notifications should however be delayed. DG COMP has justified this on the grounds that proper market testing cannot be usefully carried out in the current situation. DG COMP is making internal adjustments so it can take on new cases without delays in the coming days.



Austria – Merger notifications can now be submitted electronically. Review periods for deals notified between 23 March and 30 April (and those already in Phase II) will only start running on 1 May. This does not affect the possibility of an examination being waived in justified cases. Review deadlines for deals notified before 20 March are not impacted. All physical meetings have been suspended.



Belgium – The BCA is closing, and its staff is teleworking. Ongoing merger reviews may be delayed. The BCA is also inviting parties to delay notifications.



Cyprus – No decisions have been made, but the Authority is likely to take the same approach as the EC, encouraging parties to delay notification and to file electronically.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EUROPE



Czech Republic – The Authority has not asked companies to postpone new merger notifications. Normal time limits should be complied with, despite the unusual conditions.



Denmark – The statutory deadlines within which the Danish Competition and Consumer Authority must review a merger have been suspended for 14 days. The suspension enters into force from 18 March and will be reassessed at the end of the 14-day period.



Estonia – The Authority is working remotely and accepting notifications. Authority officials have not indicated that there will be a suspension of deadlines.



Finland – The Finnish Competition and Consumer Authority has requested that notifications should be postponed where possible. Businesses planning to submit a notification should contact the Authority as soon as possible.



France – Review periods for all deals notified between 12 March and up to one month following the end of the sanitary state of urgency are suspended. Only electronic communications are possible.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EUROPE



Germany – Filings can be made as usual, although face-to-face meetings with the Authority have been suspended. Parties are asked to consider whether a project requires immediate notification, or whether it can be submitted at a later date.



Greece – The HCC has adjusted its opening hours for the public. Parties must submit documents via email. Meetings and conferences will be held via a video-conferencing platform. The HCC has not communicated on the impact on timelines.



Hungary – The HCA has asked parties to postpone their merger filings where possible. Pre-notifications and formal filings can only be made electronically. Review of no issues cases, eligible for the fast track procedure, should not be impacted. More complex cases are likely to be delayed, notably through the issuance of information requests that stop the clock.



Iceland – The ICA is asking merging parties to delay new notifications by at least three weeks (*i.e.*, until mid-April). Procedures for cases that are not relevant to the response to COVID-19 may be delayed.



Ireland – The CCPC is encouraging notifying parties when possible to delay filing planned merger notifications until further notice. The CCPC requests that notification forms and all supporting documentation be submitted in electronic format. The CCPC has confirmed that its statutory timetables for all pending review processes remain binding.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EUROPE



Italy – The administrative deadlines are suspended for the period 23 February-15 April. The AGCM has not taken an official position but it is understood that deals notified between 17 March and 15 April will not start being reviewed before (at least) 16 April.



Latvia – Business as usual. The Authority will likely continue to work from the office. The Authority, by law, does not have the right to stop the clock.



Lithuania – The Authority has transitioned to organising its business remotely. There is only a limited number of ongoing reviews, therefore there should be no shortage of resources. The Authority has confirmed that it does not expect any significant delays.



Moldova – The CC has suspended all legally-prescribed deadlines for merger proceedings during the COVID-19 pandemic. Unclear whether new merger filings are possible (but in any event the clock would not start).



Netherlands – For the ACM, it is business as usual. Virtually all ACM employees work from home, and the ACM has cancelled all of its meetings. Delays in procedure are not excluded.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EUROPE



Norway – The Authority is encouraging its employees to work remotely. Meetings will be held by way of conference calls or video conferencing. Merger control rules, including both notification thresholds and deadlines, remain in place.



Poland – No official communication by the UOKiK yet, but in practice merger reviews are slower and there is an increased use of requests for information to stop the clock.



Portugal – The AdC is ensuring the continuity of its activities. Meetings and contacts shall take place through phone or videoconference. Merging parties should only use the AdC's electronic mergers notifications system (SNEOC) when notifying their deals.



Romania – Notifications shall be submitted by email, through the Council's website, or by post. All contact with parties shall be made through phone or by email. The Council is closed to visitors until mid-April. No noticeable impact on review timelines.



Russia – FAS has taken some measures to address COVID-19 and will neither accept nor review merger filings during (at least) the week of 30 March – 3 April.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EUROPE



Serbia – The Serbian government has enacted a decree addressing deadlines during the COVID-19 pandemic. The 15-day deadline to notify has been relaxed (*i.e.*, no fine for late filing) and review periods for recently notified deals will only start after the end of the state of emergency. The CPC has suspended physical meetings. Communications for all submissions except merger notifications shall be made electronically.



Spain – All administrative procedures, including merger control administrative procedures, have been suspended. However, parties can request time limits not to be suspended. Pre-notification for new deals remains advisable as the CNMC is technically fully operational.



Sweden – There is currently no impact on merger notifications and review periods. The SCA staff are to a large extent working remotely. Physical meetings have been replaced by calls or videoconferences.



Switzerland – Official position is that the merger control procedures should not be delayed or impacted by COVID-19. In practice, pre-notification discussions tend to be longer. Merger filings can be submitted electronically.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EUROPE



UK – The CMA will continue to progress ongoing merger investigations – including by issuing information requests (with deadlines) to meet statutory deadlines. The CMA has asked some parties engaged in pre-notification to hold off formal filing due to concerns that the CMA will be unable to carry out an effective market test in the present circumstances (a market test is carried out in all cases). All meetings are being conducted remotely and all CMA staff are working remotely too if possible. The CMA operates a largely paperless filing environment and it is well set up for remote working, following a recent upgrade in technology infrastructure.



Ukraine – The AMC’s merger unit is working as usual and accepting merger filings (which shall be delivered physically). No request to postpone filings have been made and no disruptions or delays have been observed so far. However, rejection of merger filings on formalistic grounds or shifts from the fast-track to the normal procedure can be expected.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — USA



USA – FTC and DOJ have introduced a temporary e-filing system. No early termination during the use of the temporary e-filing system – all deals must observe 30 day waiting period.

Substantive analysis, engagement, and feedback from the government are likely to be slower.

- Both FTC and DOJ are teleworking. As staffs of both agencies work from home, delays should be expected because there is much that gets accomplished face-to-face that will not happen as quickly.
- Latham’s experience with the government shutdown in 2019 and prior shutdowns (and what can currently be observed) suggests that all phases of the government’s reviews/investigations will happen at a slower pace.
- During the 2019 shutdown, when the government maintained a skeletal staff in place, the agencies’ practice was to issue placeholder Second Requests to pause the clock on deals that the agencies didn’t have time to review, even if they didn’t raise any issues.
- This time is different because all FTC/DOJ staff attorneys are still working, albeit from home. Nevertheless, it is expected that the agencies will fall behind and that there is a prospect of the government issuing Second Requests in deals with very limited (or perhaps no) issues the agencies don’t have time to rule them out.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — ROW



Argentina – All reviews have been suspended until 31 March. In practice, notifications will not be possible until 1 April given the nationwide lockdown. Regime is post-closing.



Australia – The ACCC remains open and merger control laws continue to apply as usual but current reviews may be more time intensive. Regime is voluntary.



Brazil – CADE’s officials are working remotely, face-to-face meetings are being replaced by video conferencing, and judgment sessions of CADE’s Tribunal will be held virtually. There have been no requests so far for parties to postpone notifications, and CADE’s review periods remain unchanged, although delays in merger review cannot be excluded in the coming weeks (especially when market testing is necessary). Deadlines for gun-jumping investigations have been suspended.



Canada – The Bureau encourages merging parties to contact case teams and management in the Mergers Directorate as early as possible on complex matters and throughout the conduct of a review. Timelines may be impacted. Notifications should be submitted via email or online forms. The Notification Unit is not reachable by telephone.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — ROW



Chile – The FNE issued specific guidelines on 25 March to address COVID-19. Parties are requested to postpone merger filings and only notify deals that are urgent and essential. Some formalistic requirements have been relaxed. Pre-notification is still possible but only through email.



China – Since the week of 10 February, SAMR has been working normally — accepting notifications and with no delays to review timetables. No face-to-face meetings are permitted, and only electronic communications may be made.



Colombia – The SIC has suspended all case deadlines from 17 to 31 March. Communications should only be made electronically. Case handlers at the SIC have confirmed they are not taking any new notifications during that period.



COMESA – The CCC is up and running as usual. Formal filings are accepted (note that the CCC seldom adheres to its declared review time periods). The regime is not suspensory.



Costa Rica – For now, it is business as usual. However, more and more members of the Authority are working remotely, and it is not unreasonable to think that the Authority could extend review periods.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — ROW



Ecuador – All review periods have been suspended until further notice. The Authority is nevertheless accepting merger filings by e-mail, so parties can comply with the 8-day deadline. The Authority will review the filings and issue unofficial requests for information so the parties can complete their filings during the lockdown. But the clock will only start when the state of emergency is lifted.



El Salvador – The Authority announced on 25 March the all merger review periods have been suspended since 14 March for a period of (at least) 30 days.



Honduras – The Commission is closed until 29 March. Ongoing merger reviews have been suspended and no new filings can be made. It is likely that the Commission will continue to be shut until 3 April (but not official communication has yet been made).



India – The CCI has formally suspended all filings, submissions, and proceedings until 31 March. The suspension applies to all proceedings as well as any new merger filings and pre-filing consultations with the CCI. The CCI will be working with skeletal staff.



Indonesia – The KPPU is temporarily closed. Review periods are suspended until 2 April. No new notifications can be made (but no penalties for late filing). Regime is post-closing.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — ROW



Israel – The Authority is functioning as usual. It has announced that parties to a transaction can approach the Authority if the COVID-19 crisis is likely to cause irreversible harm to the merging entities.



Japan – The JFTC is running as usual and has not communicated otherwise.



Kenya – The CAK is fully operational though most of the staff is working remotely. It is still receiving and processing merger notifications without noticeable delays. Electronic filings are encouraged.



Mexico – COFECE has taken measures against COVID-19. However, merger reviews will continue as usual and deadlines will be met.



Morocco – All submissions – including new merger filings – should be made electronically. Meetings and hearings will be done remotely. Impact on review timelines of recently or soon to be notified deals is uncertain.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — ROW



New Zealand – The CC is aiming to carry out its current merger applications within the timeframes agreed with the parties. Extension may be needed if there are delays in responding to information requests due to COVID-19. Parties are still able to file any new merger applications at any time. The CC will seek to prioritise merger approvals where the financial viability of a firm is in jeopardy because of COVID-19.



Nigeria – No impact on the functioning of the FCCPC for the time being. Filings and supporting documentation can be submitted electronically.



Saudi Arabia – The GAC is closed since mid-March with all staff working remotely. Nevertheless, new merger filings are accepted and review processes are handled in time.



Singapore – The CCCS has issued restrictions to visitors. For the rest, the CCCS seems to be running as usual.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — ROW



South Africa – The South African President has announced a 21-day lockdown starting at midnight on 26 March and ending on 16 April. The CC will continue working remotely and has called for new merger filings to be deferred. New merger filings will nevertheless be accepted but the CC will immediately seek extensions to 60 business days for intermediate mergers and 120 business days for large mergers. CC investigations are taking longer than usual, prolonging review timelines. Very complex mergers that are opposed by the CC will not be set down during the lockdown period.



South Korea – The KFTC is running as usual, and new filings are being accepted. Requests for information that stop the clock can however be expected.



Taiwan – The TFTC is fully operational. All staff is working from the office and merger filings are accepted as usual. TFTC officials are considering dispersing staff into different offices or rotating working hours to prevent the impact of COVID-19, but no action has yet been taken.



Turkey – The Authority is up and running, and business is as usual. The decision-making board is regularly meeting as before and most of the case handlers are working remotely or on shift basis. Electronic filings are encouraged.