



COVID-19: Managing operational challenges and enforcement risks for competition authorities

The challenges that the COVID-19 pandemic creates to performing normal working activities will also impact the enforcement of competition laws. Courts and public administrations will be forced to slow down (if not stall) their working pace because of the measures governments take to contain the dissemination of COVID-19. As a consequence, enforcement activities by competition authorities will suffer across the board. Mergers will continue to be notified, and some of them will be rather urgent since they may involve firms in severe economic distress. Investigations of cartel and abuse of dominance cases will be ongoing. However, the suspension of courts' activities and difficulties with performing investigative activities during the pandemic will affect the ability of enforcers to effectively pursue cases.

Decreased enforcement may negatively impact firms' incentives to comply with competition laws and, if the crisis persists over time, it may hamper effective competition in markets. While competition authorities face the same limitations as everyone else in terms of confinement and eventual workforce availability, the exercise of their enforcement powers meets additional limitations, and will require the adjustment and prioritisation of procedures and actions.

Limitations to effective enforcement actions

Limitations to effective enforcement action can be found in all main enforcement areas:

Hard-core cartels

Dawn raids may not be a viable instrument in times of confinement and disease prevention. Even when they are an option, it may be more difficult to obtain a search warrant by a court, where required, or to have police support. Ongoing cartel investigations may be delayed due to lack of staff and/or lack of remote access to IT and physical evidence. Employee and management interviews may have to be delayed as remote communication may not be a viable alternative to face-to-face meetings. Legal deadlines or limitation periods for cartel proceedings may become difficult to meet.

Mergers

Merger regimes operate under tight legal deadlines, which may be harder to meet due to staff limitations and limitations on market investigations. Many relevant market players may not be as responsive to requests for information as they may be in normal times.

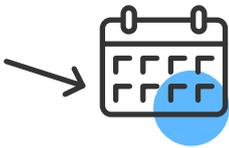
Abusive conduct

Ongoing abuse cases may suffer from similar limitations as cartel cases and mergers when it comes to investigations, including the risk of missing legal deadlines when applicable and limitation periods. Interim measures and preliminary injunctions may be harder to issue or to obtain, in particular when they require the involvement of courts.

Common challenges

Common challenges to all enforcement areas include the fact that due process requirements, such as access to file, granting effective right to be heard, and serving of decisions, need to be respected. Remote working and electronic processes may not yet be in line with the legal requirements and/or increase the risk of procedural mistakes. Effective (high) fines for violations may be harder to argue when firms are in severe financial distress.

Governments should:



Temporarily adjust legal deadlines for time-bound procedures, to account for periods of lock-down.

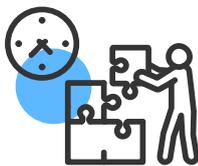
Competition authorities should:



Prioritise enforcement actions and the use of resources to ensure that essential enforcement activities continue in light of containment measures taken by government to limit the pandemic.



Communicate the crisis-related adjustments of procedures and priorities and be transparent.



Look for flexibility within given procedures to speed up reviews of mergers where necessary, make use of expedite derogations when justified (e.g., simplified procedures), advise on gun jumping, prioritise investigations by deferring non-urgent cases, and make use of e-filings and videoconferences.



Adjust the depth of investigations and the scrutiny of formal requirements according to the enforcement priorities and the objective restraints that businesses face, while respecting essential procedures and safeguarding due process rights.

Examples of recent national responses to tackle enforcement challenges

Many European authorities, including the [Commission](#), advise to defer **merger notifications**, where possible, this is also true for [Australia](#). Some jurisdictions have adjusted or lifted legal deadlines for merger filings ([Austria](#), [Spain](#), [Denmark](#)), while others point out that early termination will not be available, and re-filing could become necessary ([United States](#)). A number of agencies allows for electronic filing of merger notifications, and use telephone or video conferences to communicate with merging parties and market participants (for example [France](#), [US](#), [Germany](#), [Brazil](#)).

Some jurisdictions have halted or postponed **legal deadlines** and statutes of limitations for non-merger competition procedures ([Spain](#), [Mexico](#), [Argentina](#)).

[Portugal](#) has agreed to a deferred payment of a fine to facilitate effective operations of two hospitals in the time of crisis.

The [UK CMA](#) has introduced a **dedicated task force** to advise the government on measures to ensure markets function as well as possible. [Iceland](#) has also advocated for pro-competitive government interventions.

Related OECD work

[OECD Hard Core Cartel Recommendation](#)

[OECD Competition Assessment Toolkit](#)

[OECD Access to the Case File and Protection of Confidential Information \(2019\)](#)

[OECD Gun Jumping and Suspensory Effects of Merger Notifications \(2019\)](#)

[OECD Investigative Powers In Practice – Due Process in Relation to Evidence Gathering \(2018\)](#)

[OECD Competition and Sanctions in Antitrust Cases \(2016\)](#)

[OECD Unannounced Inspections in Antitrust Investigations \(2013\)](#)

[OECD Procedural Fairness and Transparency \(2012\)](#)

[OECD Procedural Fairness - Competition Authorities, Courts and Recent Developments \(2011\)](#)

[OECD Procedural Fairness: Issues in Civil and Administrative Enforcement Proceedings \(2010\)](#)

This note is prepared based on the work of OECD Competition Committee, which formulates and promotes best practices in the area of competition law and policy.

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The OECD is compiling data, information, analysis and recommendations regarding the health, economic, financial and societal challenges posed by the impact of Coronavirus (COVID-19). Please visit our dedicated page for a full suite of coronavirus-related information – www.oecd.org/coronavirus.