

Beware of antitrust rules also in times of COVID-19

March 2020

Authors: [Dr. Justus Herrlinger](#), [Dr. Tilman Kuhn](#), [Axel Schulz](#)

[Beware of antitrust rules despite alarming economic threats of the COVID-19 outbreak: no general “crisis” defense; governments grant \(few\) specific exemptions; further developments to be followed.](#)

[Antitrust laws prohibit anti-competitive agreements and concerted practices between enterprises, including the exchange of competitively sensitive information and certain other types of relevant bi- or multilateral contacts among competitors. The scope of these rules is broad, covering, among others, agreements or information exchange on prices and price components \(e.g., surcharges, cost elements, rebates\), capacity reductions, suspension of production, output planning or customer allocation.](#)

Natural disasters and crises can have severe and even devastating effects on businesses. This is also true for the COVID-19 outbreak and its consequences for the economy (see our: [Facing the risks or even experiencing such effects might directly or indirectly stimulate agreements or concerted actions between competitors in order to address the uncertainties and financial consequences arising from the crisis, which may have the effect of softening competitive pressure.](#)

Antitrust rules, however, do not allow for an “anti-competitive self-defense” in case of crisis. Companies have to obey to the rules as long as the legislator has not taken action to mitigate or limit the laws’ applicability. Whereas various measures of financial support have been implemented or announced by governments, antitrust rules have not been changed or suspended so far. Competition authorities will investigate and pursue antitrust violations and can finally impose significant fines on the offenders, as is illustrated by various authorities investigating companies’ price increases for hand sanitizers and other products that face sudden increases in demand during the crisis.

Over the recent days, governments and antitrust authorities have indicated they may consider specific exemptions or other measures to help companies in crisis. This may include accelerated state aid assessments (see our recent state aid Client Alert [here](#)), and at least informally allowing or tolerating cooperation between competitors with respect to the products and services desperately needed during the crisis. These days, several of such generally rare cases occur: the Norwegian transport sector has been exempted from the antitrust laws by the Norwegian industry minister for three months. The possibility of a specific exemption in the field of information exchange concerning food supply chains has been raised in the public debate. The Australian competition authority ACCC has just publicly stated it does anticipate the

application of such exemptions by way of notification and (interim) authorization. More of such waivers and exemptions might follow.

Absent specific exemptions, however, any reactions to the crisis need to steer clear of antitrust infringements.

Companies with a relevant risk profile should consider the following key messages:

- No general waivers or exemptions from antitrust rules exist for affected companies in times of crisis. Offenders have still to expect to be investigated and fined.
- Ramp up compliance measures in order to minimize the risk of antitrust infringements during the crisis. Focused messages to the relevant employees (marketing, sales, distribution, purchase, production) and a recap of the corporate compliance statement might raise the level of awareness.
- Certain options to adapt the business and competitive environment to the current circumstances are already available. This might be collaborations between competitors in specific areas (e.g., purchase, production, logistics) or additional information tools in order to follow recent market developments in a compliant manner. Such measures shall be developed, legally assessed and implemented in a transparent way. Where helpful, competition authorities can be consulted for additional legal certainty.
- We cannot exclude that additional exemptions or temporary waivers of antitrust rules will be announced for specific sectors or more broadly by the legislators or governments during the next days and weeks.

We will closely follow all current developments and will be available for guidance and advice for our clients at any time.

Find out more about business response to the Coronavirus outbreak: [Coronavirus: Managing business impact and legal risks](#).

White & Case LLP
Valentinskamp 70 / EMPORIO
20355 Hamburg
Germany

T +49 40 35005 0

White & Case LLP
Wetstraat 62 rue de la Loi
Belgium

T +32 2 239 26 20

White & Case LLP
Graf-Adolf-Platz 15
40213 Düsseldorf
Germany

T +49 211 49195 0

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.

© 2020 White & Case LLP