

ARTICLE

EUROPEAN COMPETITION AUTHORITIES ARE UNDERSTANDING BUT REMAIN FIRM IN THE CONTEXT OF COVID-19

Competition, Retail and Consumer Law Commercial and International Contracts | 23/03/20 |

LIFE SCIENCES & HEALTHCARE

Today, every competition authorities belonging to the European Competition Network (the European Commission, the European Free Trade Association Surveillance Authority and EU/EEA national competition authorities, including the French Competition Authority) are publishing a joint statement on how applying the competition rules during the crisis. Together, authorities recognize the social and economic impact of the crisis. At the same time, they stress that the competition rules are sufficiently flexible to take account of changing market circumstances such as these and recall that they will not hesitate to take action against companies that try to take advantage of current circumstances to breach the competition rules for example by setting up anti-competitive agreements (in particular on prices or quantities) or by abusing a dominant position.

- The ECN 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 in order 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 in order 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 TFEU/53 EEA or 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 can reach out to the Commission, the EFTA Surveillance Authority or the national competition authority concerned any time for informal guidance.
- At the same time, it is of utmost importance to ensure that products considered essential to protect the health of consumers in the current situation (e.g. 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 would like to point out that the existing rules allow manufacturers to set maximum prices for their products. The latter could prove useful to limit unjustified price increase at the distribution level.

