

COVID-19 NEWS OF INTEREST

# Competition Authorities Expedite Consideration of Competitor Collaborations Due to the COVID-19 Pandemic

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On March 24, 2020, the Antitrust Division of the Department of Justice (“DOJ”) and the Bureau of Competition of the Federal Trade Commission (“FTC,” and collectively with DOJ, the “Agencies”) issued a joint statement describing an expedited antitrust procedure and providing guidance for collaborations of businesses protecting the health and safety of Americans during the Coronavirus Disease 2019 (“COVID-19”) pandemic.<sup>1</sup> The Agencies also stated that they would pursue conduct that exploits the pandemic circumstances. The Agencies thus confirmed that they are “open for business” and eager to facilitate innovation and productivity and to prosecute cartelization and monopolization.

Businesses and individuals can ask the Agencies to evaluate proposed conduct through either the FTC’s “Staff Advisory Opinion” procedure or as a request for a DOJ “Business Review Letter.”<sup>2</sup> The Agencies intend “to respond expeditiously to all COVID-19-related requests” and resolve them within “seven (7) calendar days of receiving all necessary information,” a process that generally takes several months.<sup>3</sup> Noting that joint ventures may also be needed “for businesses to bring goods to communities in need, to expand existing capacity, or to develop new products and services,”

<sup>1</sup> *Federal Trade Commission and Justice Department Announce Expedited Antitrust Procedure and Guidance for Coronavirus Public Health Efforts*, FTC (Mar. 24, 2020), available [here](#) [hereinafter Agencies Joint Press Release].

<sup>2</sup> *Joint Antitrust Statement Regarding COVID-19*, FTC (Mar. 24, 2020), available [here](#) [hereinafter Agencies Joint Antitrust Statement].

<sup>3</sup> *Id.*

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the Agencies have agreed to work quickly to process filings under the National Cooperative Research and Production Act.<sup>4</sup>

The Agencies clarified that many kinds of collaborative activities designed to improve the health and safety response to the COVID-19 crisis would likely be consistent with the antitrust laws, such as: (1) collaborating on research and development; (2) sharing technical know-how; and (3) joint purchasing arrangements among healthcare providers.<sup>5</sup> At the same time, the Agencies stressed that they would not hesitate to hold accountable those who use this time as an opportunity to subvert competition or prey on vulnerable Americans.<sup>6</sup>

Overseas, the European Competition Network<sup>7</sup> (“ECN”), which includes the European Commission, also recognized that the circumstances surrounding COVID-19 “may trigger the need for companies to cooperate in order to ensure the supply and fair distribution of scarce products to all consumers.”<sup>8</sup> The ECN agreed that it “will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply.”<sup>9</sup> However, the ECN also emphasized that it would “not hesitate to take action against companies taking advantage of the current situation by cartelizing or abusing their dominant position,” as “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 sanitizing gel) remain available at competitive prices.”<sup>10</sup>

In short, the antitrust enforcement agencies throughout the world are “on the beat,” both to help and to protect.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> The European Competition Network is the forum through which the European Commission and the national competition authorities in all EU Member States cooperate with each other.

<sup>8</sup> *Antitrust: Joint statement by the European Competition Network (ECN) on application of competition law during the Corona crisis*, European Commission (Mar. 23, 2020), available [here](#).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

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Willkie has multidisciplinary teams working with clients to address coronavirus-related matters, including, for example, contractual analysis, litigation, restructuring, financing, employee benefits, SEC and other corporate-related matters. Please click [here](#) to access our publications addressing issues raised by the coronavirus. For advice regarding the coronavirus, please do not hesitate to reach out to your primary Willkie contacts.

The Antitrust Practice Group is pleased to assist with your competition questions, both specific to the pandemic and in the ordinary course of business. Please contact the authors or other members of the Antitrust Practice Group, listed below:

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