



# IMPACT OF COVID-19 ON GLOBAL MERGER CONTROL REVIEWS

LATHAM & WATKINS<sup>LLP</sup>

9 April 2020

# IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EU27



**EU** – DG COMP is encouraging merging parties to delay notifications and discuss timing of transactions with the relevant case teams, as DG COMP is facing difficulties in collecting information from the parties and the market (e.g., customers, competitors and suppliers). Requests for information that stop the clock or instances of “pull and refile” cannot be excluded. However, DG COMP will review cases in which parties can show very compelling reasons to proceed with a merger notification without delay (DG COMP has been accepting simplified filings in the last days).



**Austria** – Merger notifications may only be submitted electronically. Review periods for deals notified after 22 March and before 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 urgent 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.



**Bulgaria** – The CPC is still accepting merger filings though electronic filings are recommended. The state of emergency applies until 13 April. Merger reviews are suspended during that time.

# IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EU27

---



**Croatia** – The AZTN is operational and accepts merger filings (electronic or by post). Review deadlines do not seem impacted.

---



**Cyprus** – The CPC is functioning normally and accepting notifications. Its staff is working on rotation or remotely. Deadlines have not been suspended. However, the CPC is expecting parties to only notify necessary deals.

---



**Czech Republic** – The Authority has not asked companies to postpone new merger notifications. So far the Authority is complying with normal time limits.

---



**Denmark** – The statutory deadlines within which the Danish Competition and Consumer Authority must review a merger have been suspended until 13 April.

---



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

# IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EU27



**Finland** – The Finnish Competition and Consumer Authority has requested that notifications should be postponed when possible. Businesses planning to submit a notification should contact the Authority as soon as possible and expect delays in the review of their proposed mergers.



**France** – Review periods have been suspended since 12 March until up to one month following the end of the sanitary state of urgency. Parties are invited to delay non-urgent notifications. Only electronic communications are possible.



**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.

# IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EU27

---



**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.

---



**Italy** – The AGCM has confirmed that deals notified between 23 February and 15 April are deemed notified only on 16 April. Review periods will only start then.

---



**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.

---



**Malta** – The MCCA is now operating by remote working. The MCCA is requesting all merger filings and supporting documents to be submitted in electronic format by email.

# IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EU27

---



**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.

---



**Poland** – Legislation has been passed according to which review deadlines for (i) mergers notified before 14 March are suspended and (ii) mergers notified after 14 March will only start after the end of the state of emergency. In practice, the Authority is accepting and reviewing merger notifications but there may be some delay in adopting clearance decisions as the Authority is technically not bound by statutory deadlines.

---



**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.

# IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EU27

---



**Slovakia** – The Slovak Antimonopoly Office is up and running. It is accepting merger filings and deadlines are being adhered to. However, some delays might occur if market reviews are necessary. The Office has asked all parties to submit filings electronically or via post (and thus avoid in-person submissions).

---



**Slovenia** – The CPA is technically still accepting merger notifications (and parties should file within 30 days from signing to avoid fines for late filing) but the CPA encourages parties to postpone their filings where possible. In any event, the merger review periods will not start before 1 July.

---



**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.

# IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EUROPE

---



**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.

---



**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).

---



**Norway** – The Authority is encouraging its employees to work remotely. Meetings will be held by way of conference calls or video conferencing. The NCA is considering extending the review deadlines by an additional 15 working days.

---



**Russia** – FAS was closed and neither accepted nor reviewed merger filings during the week of 30 March – 3 April. FAS has since reopened and is technically accepting and reviewing filings, but delays can be expected in view of FAS' latest working arrangements.

---



**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.

# IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — EUROPE



**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.



**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.



**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. The FTC has announced it is resuming granting early terminations – effective 30 March – but only as time and resources allow.

Substantive analysis, engagement, and feedback from the government are still 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 12 April included. In practice, notifications will not be possible until 13 April given the nationwide lockdown. Regime is post-closing.



**Australia** – The ACCC has cancelled all non-essential meetings and is transitioning to a larger proportion of staff working remotely. Merger filings are still accepted. Timelines for some reviews/applications may be extended where there are challenges in conducting the necessary market inquiries. The ACCC is asking parties to postpone mergers that are not urgent, more speculative or at a very early stage with no sale agreements in place. Regime is voluntary.



**Botswana** – The CCA's services are closed. The CCA is not accepting any new merger filings and merger notifications that were being investigated prior to the lockdown will be temporarily suspended until after the state of emergency has ended.



**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.

# IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — ROW

---



**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.

---



**CEMAC** – Merger notifications can still be submitted (also electronically). However, non-essential staff are working remotely and, as such, delays in the merger review can be expected.

---



**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** – SAMR has been working normally since mid-February, accepting notifications and with no delays to review timetables. SAMR has further established a ‘green channel’ for expediting its review of mergers in key sectors for fighting against COVID-19 (e.g., pharmaceuticals, medical equipment, food production) as well as other sectors severely impacted by the pandemic (e.g., catering and tourism).

# IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — ROW

---



**Colombia** – The SIC suspended its merger reviews from 17 March until the end of the state of emergency. 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 encourages electronic filings. Onsite investigations and in-person meetings have been suspended. Engagement with the CCC on the notification process within 30 days of the decision to merger is sufficient to avoid a fine for late filing. The CCC has announced that it may not be able to complete its assessment of mergers and acquisitions within the statutory 120 days. The regime is not suspensory.

---



**Costa Rica** – For now, it is business as usual and there is no noticeable impact on reviews. Filings must be submitted electronically and all in-person meetings have been cancelled.

---



**Ecuador** – All review periods have been suspended since 16 March 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 parties can complete their filings during the lockdown. But the clock will only start when the state of emergency is lifted.

# IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — ROW



**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 12 April. Ongoing merger reviews have been suspended and no new filings can be made.



**India** – The CCI has formally suspended all filings, submissions, and proceedings until 14 April. The suspension applies to all proceedings, as well as to any new merger filings and pre-filing consultations with the CCI. However, “green channel” merger filings are possible but must be submitted electronically. The CCI also allows pre-filing consultations through videoconferencing.



**Indonesia** – The KPPU has now resumed its activities (since 7 April). Merger filings can be made and review periods are running again. The KPPU staff is working remotely. Regime is post-closing.



**Israel** – The Authority 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. A draft bill has also been put forward granting the Authority 90 additional days to review mergers where the initial 30-day statutory deadline ends before 30 June 2020.

# IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — ROW

---



**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. The CAK is trying to fast-track merger reviews where the merging parties are trying to bring a product faster to the market in response to the COVID-19 crisis.

---



**Mexico** – COFECE has taken measures against COVID-19. However, merger reviews will continue as usual and deadlines will be met. COFECE has announced that it will expedite the review of transactions that consolidate production capacity to address increased demand for popular consumer goods and the fight against COVID-19.

---



**Morocco** – All submissions – including new merger filings – should be made electronically. Meetings and hearings will be done remotely. No-issues cases should be reviewed within the standard timeframes. Delays are expected for the review of more complex mergers.

# 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. Regime is voluntary.

---



**Nigeria** – Non-essential staff from the FCCPC is working remotely. The FCCPC will accept time sensitive and urgent merger notifications for review. 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 announced new measures in light of increasing local transmission of COVID-19. The CCCS remains operational and most of its staff is teleworking. Merger filings are still accepted, though prior contact with the CCCS is encouraged to obtain guidance on how to notify. The CCCS has not issued any communication providing for extended review periods.

# 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.