

CLEARY GOTTLIB

COVID-19 Antitrust Agency Status

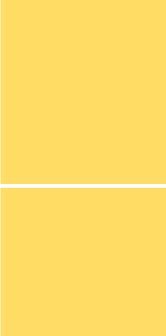
June 16, 2020



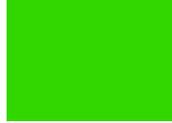
Antitrust Agency Status: EU/US/China

JURISDICTION	COMMENTS	STATUS			
 <p>Europe Commission</p>	<p>Staff working from home and fewer opportunities for engagement. No impact on statutory deadlines; Commission has asked companies to delay merger control notifications where possible, though most cases are being dealt with efficiently. Temporary preference for electronic submissions.</p>				
 <p>Europe Courts</p>	<p>Hearings progressively resuming as of May 25. Procedural time limits for instituting proceedings and lodging appeals continue to run and parties are required to comply with those time limits. By contrast, the time limits prescribed in ongoing proceedings – with the exception of proceedings that are particularly urgent, such as urgent proceedings, expedited proceedings and interim proceedings – are extended by one month.</p>				
   <p>US Agencies DOJ & FTC</p>	<p><u>Both:</u> -Staff working remotely - HSR filings moved to electronic submission - Early terminations reinstated, as time and resources allow - Expedited antitrust procedure for COVID-19 public health efforts; issues to be resolved in 7 days <u>DOJ-specific:</u> -In at least one deal, staff requested that an HSR filing be delayed -Additional 30 days requested for all timing agreements <u>FTC-specific:</u> -FTC reviewing all deadlines and seeking extensions in some cases.</p>				
 <p>China SAMR</p>	<p>All staff are now working in the office, but in-person meetings / hand deliveries not allowed. Meetings limited to teleconferences. All filings and submissions need to be made electronically.</p>				
<table border="0" style="width:100%; text-align:center;"> <tr> <td style="width:33%; background-color:#00FF00; color:#000;">No material impact</td> <td style="width:33%; background-color:#FFD700; color:#000;">Operations interrupted but no change to statutory function / timetables</td> <td style="width:33%; background-color:#FF0000; color:#000;">Statutory function / timetables suspended</td> </tr> </table>			No material impact	Operations interrupted but no change to statutory function / timetables	Statutory function / timetables suspended
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Antitrust Agency Status: Major ROW Jurisdictions (1/2)

JURISDICTION	COMMENTS	STATUS
 Australia	<p>Merger control regime is operational and ACCC accepts filings electronically, but ACCC encourages parties to consider postponing non-urgent filings. In-person meetings will be replaced by calls or video conferencing. Some delays possible due to staff working remotely, and anticipation of logistical problems with obtaining input from third-parties.</p> <p>FDI: Foreign investment threshold amounts are reduced to AUD\$0 and FIRB requests a six month extension to the review period from ongoing and new applications. Priority will be given to urgent applications that protect and support Australian businesses and jobs.</p>	
 Brazil	<p>No impact yet to CADE's timetables for merger cases, but CADE has suspended deadlines for parties to present their defenses, briefs, <i>etc.</i> in antitrust investigations. CADE is asking parties to avoid in-person meetings which can be replaced by calls or video conferences. Most staff are working remotely.</p>	
 Canada	<p>Bureau staff are working from home. The Competition Act (including its merger control provisions and normal review timeline) continues to operate in principle. However, the Bureau has warned parties to expect delays in proceedings, due to slower market testing or the need to prioritize urgent marketplace issues. The Bureau will communicate new timelines for individual cases, where relevant.</p>	
 India	<p>During the extended nation-wide lockdown (currently until May 31, 2020), the Commission is functioning on a minimal staffing basis. From April 15 onwards, the Commission accepts new merger filings electronically and accepts pre-filing consultation through video conferences.</p>	
 Israel	<p>No official measures announced.</p>	

Antitrust Agency Status: Major ROW Jurisdictions (2/2)

JURISDICTION	COMMENTS	STATUS
 Japan	<p>Tokyo is no longer in the state of emergency. Depending on the case handler, face-to-face appointments may be held.</p> <p>Statutory review periods have not been suspended, there is no significant delay expected in ongoing merger control reviews, and the JFTC is accepting future notifications.</p>	
 Turkey	<p>Business as usual so far. Government agencies are still open despite social disruption. Competition Board meetings are also being held as usual for now.</p>	
 South Africa	<p>South Africa has declared a national lockdown. The Competition Commission scaled down its operation and will prioritize COVID-19 complaints and enforcement of related regulations. During this period, the Commission discourages filing complaints unrelated to COVID-19 as well as all merger notifications except those involving failing firms or firms in distress.</p>	
 South Korea	<p>Generally operating as usual. The KFTC ordered all working-level officials to take turns working from home, but case handlers are taking all measures to continue their review and are keeping in contact by mobile phone and email. The KFTC is accepting new merger filings.</p>	
 Ukraine	<p>Business as usual so far, though some case handlers are working from home. We understand that remote working and public transport limitations may affect the AMC's ability to review notifications, including under the fast-track procedure for less complex cases.</p>	

Antitrust Agency Status: Europe (1/5)

JURISDICTION	COMMENTS	STATUS
 Austria	No impact on statutory deadlines. In-person meetings only in exceptional circumstances. Electronic notifications permitted.	
 Belgium	Staff working from home. The BMA have requested that non-urgent merger reviews be delayed.	
 Bulgaria	Commission has ordered all filings to be made electronically or by post (if possible). Staff currently operational and online meetings are possible. All review deadlines (which are generally non-binding) are suspended. While the authority is not prevented from issuing merger decisions, the review process of mergers might suffer some delays.	
 Croatia	The Agency is back to business as usual. In-person meetings are allowed, but parties are required to inform the Agency in advance and follow the safety measures (which include wearing a mask).	
 Cyprus	The CPC is working with skeleton staff and most officials are working remotely. No significant delays expected in the review of existing notifications. New filings still accepted, but the CPC requests that they are only made in exceptional circumstances.	
 Czech Republic	The authority's ability to gather information from third parties is limited, leading to possible delays in investigations and increased usage of the "stop the clock" mechanism. The authority is expected to resume full operation as of May 25.	
 Denmark	Staff are working from home. The DCCA is in principle fully operational.	

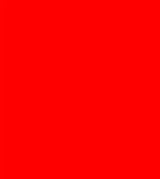
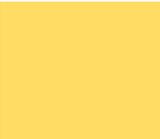
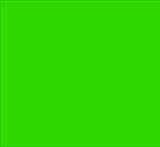
Antitrust Agency Status: Europe (2/5)

JURISDICTION	COMMENTS	STATUS
 Estonia	No in-person meetings and some staff may be working remotely. Delays in merger reviews are possible.	
 Finland	Merging parties invited to contact agency as soon as possible; notifications should be postponed where possible.	
 France	Staff working from home. FCA encouraging electronic filings. Merger Control and FDI Screening: Review deadlines are extended to at least June 24, 2020 (or longer, if the state of emergency is extended).	
 Germany	FCO continues to operate and can be reached by e-mail, telephone, fax, and mail. FCO staff has largely been working from home but is slowly returning to the office. Dawn raids have been suspended but will likely be resumed in the near future. Physical meetings continue to be replaced by telephone conferences. Companies are being asked to consider whether merger notifications can be deferred. For all notifications made between March 1 and May 31, 2020, phase 1 is extended from one to two months, and phase 2 will be six months, instead of three to four.	
 Greece	The Hellenic Competition Commission has slowed down its operations by postponing hearings, meetings, and access-to-file processes.	
 Hungary	The government has declared a state of emergency. No hearings, no in-person meetings, and staff are working remotely. Delays in merger reviews possible.	

Antitrust Agency Status: Europe (3/5)

JURISDICTION	COMMENTS	STATUS
 Iceland	<p>Most staff are working from home. In-person meetings cancelled, except for exceptional cases.</p>	
 Italy	<p>Staff largely working from home. Fewer opportunities for direct engagement; hearings and meetings suspended where possible.</p> <p>Under the Law Decree published on April 8, the competition authority's procedural deadlines were suspended from February 23 to May 15, 2020. As a result, the end date of all terms was postponed for as many days as the suspension. The suspension also applied to the terms that regulate the start of the procedure. Terms for the payment of fines were also suspended (until October 1 for antitrust fines and until May 15 for consumer law fines). Therefore, any communication/notification or complaint sent in the period between 23 February and 15 May 2020 was considered received on May 16th. The terms of precautionary proceedings were excluded from the suspension. The deadlines within which companies must comply with the authority's warnings to remove an anti-competitive or consumer offense were also excluded from the suspension. Likewise, the suspension did not apply to the deadline by which companies must comply with the measures imposed in a conditional authorization of a concentration.</p>	
 Latvia	<p>Business as usual so far but in-person meetings only in exceptional circumstances.</p>	
 Lithuania	<p>Staff are working remotely. In-person meetings only in exceptional circumstances.</p>	
 Netherlands	<p>Staff working from home. In-person meetings replaced by calls or video conferences, where possible.</p>	

Antitrust Agency Status: Europe (4/5)

JURISDICTION	COMMENTS	STATUS
 Norway	Staff working from home. Agency prioritising market surveillance and ongoing antitrust investigations, but apparently no delays to merger control processes at this stage.	
 Poland	Office of Competition and Consumer Protection is functioning, though staff are working remotely. Delays in merger reviews can be expected, but no official communication on this yet.	
 Portugal	Statutory deadlines for the Portuguese Competition Authority are suspended as of March 13, 2020 in light of the state of emergency introduced in Portugal. However, with staff working remotely, the PCA will continue its operation during the state of emergency, respecting time limits set by the Competition Act as much as possible.	
 Slovakia	The authority's ability to gather information from third parties is limited, leading to possible delays in investigations and increased usage of the "stop the clock" mechanism. The authority is expected to resume full operation as of May 25.	
 Slovenia	The Agency is back to business as usual.	
 Spain	<p>The national state of emergency (estado de alarma) has been declared until June 21. On June 1, however, the suspension of administrative deadlines throughout the duration of the state of emergency was lifted.</p> <p>FDI: The Spanish government has suspended the liberalized regime for certain foreign direct investments, which will now require an ex-ante authorization. Although adopted in the context of the COVID-19 pandemic, this measure is expected to remain in force in the long term.</p>	 

Antitrust Agency Status: Europe (5/5)

JURISDICTION	COMMENTS	STATUS
 Sweden	Staff is allowed to work from home but otherwise it is business as usual. Note that Sweden has so far not issued a general quarantine, but people are encouraged to work from home if possible.	
 Switzerland	No impact on statutory deadlines. Pre-notifications may take longer than in normal circumstances. Some in-person hearings have been cancelled. Electronic notifications permitted.	
 UK	CMA continues to operate, although staff generally working from home. Hearings and external meetings are being held remotely and some are being suspended or postponed. CMA encourages companies to hold off on filing merger notifications where feasible and has used “stopped the clock” powers in some cases.	

Antitrust Agency Status: Other Countries (1/4)

JURISDICTION	COMMENTS	STATUS
 Argentina	<p>Antitrust terms for ongoing procedures are suspended. While the Antitrust Commission is working remotely and reviews are continuing, cases may experience delays due to submissions and/or notices that must be made in physical format. Antitrust claims and post-closing merger filings can still be lodged by e-mail.</p>	
 Botswana	<p>Activities have resumed since May 20.</p>	
 Chile	<p>FNE offices are closed and all staff are working remotely. It is asking parties to only notify transactions that are urgent/essential. The FNE will consider waiving certain documentary requirements in the circumstances. Submissions can be made via email or through a virtual documents-reception office.</p>	
 Colombia	<p>As of May 12, 2020, local merger control procedures have fully resumed, including deadlines for ongoing applications and new filings. The SIC is only accepting new merger filings electronically at present.</p>	
 COMESA	<p>Parties are encouraged to submit notifications, filings and certified copies of filings electronically. The Commission has suspended onsite investigations and in-person meetings. The authority acknowledges the difficulty for parties to gather all information in order to complete a notification within the usual 30 day time-period. Therefore as long as the parties have engaged the Commission on the notification process, they shall not be penalized for failure to submit complete information within 30 days of the parties' decision to merge. The review period may be extended in some cases where it may not be practicable to complete an assessment within 120 days.</p>	

Antitrust Agency Status: Other Countries (2/4)

JURISDICTION	COMMENTS	STATUS
 Dominican Republic	PRO-COMPETENCIA has suspended all terms and deadlines until the end of the state of emergency	
 Honduras	The CDPC has reopened and is accepting merger filings. Merger parties are encouraged to coordinate with CDPC officials before submitting any documents.	
 Indonesia	Activities have resumed since April 7, 2020. Contact with KPPU is only available through KPPU's online service system. Staff are working remotely.	
 Kenya	Officials of the Competition Authority of Kenya are working off site and are limiting external meetings. Merger parties are encouraged to file electronically.	
 Mauritius	The agency is operational.	
 Mexico	COFECE and IFT have suspended certain terms and deadlines until June 12 (COFECE) and June 30, 2020 (IFT). However, COFECE's merger review terms and deadlines are not suspended	
 Morocco	All regulatory deadlines are suspended during the state of emergency. The Competition Council will continue to process filings in order of priority. Non-urgent filings are likely to be suspended. The MSS is temporarily accepting electronic filings on the understanding that hard copies will follow after the lifting of the state of emergency.	
 Namibia	The Competition Commission is encouraging merger parties to file electronically. Until May 5th, operations continue through digital modes of communication. Merger filings should be submitted via email correspondence. The authority's telephone lines are operational and calls will be directed to the relevant staff members.	

Antitrust Agency Status: Other Countries (3/4)

JURISDICTION	COMMENTS	STATUS
 Nigeria	<p>The Commission accepts electronic filings if the parties can demonstrate sufficient grounds as to why the merger review cannot be postponed (i.e. timing constraints due to a cross border filing or failing firm defence). Parties who wish to amend their documents subsequent to clearance by the Commission will be subject to an additional processing fee of one million Naira; any non-approved changes will be sanctioned.</p>	
 Panama	<p>Competition agency is functioning as normal, albeit with shorter working hours and only essential in-person meetings.</p>	
 Paraguay	<p>CONACOM's offices are open for administrative matters but staff are encouraged to work remotely. Legal deadlines have resumed since May 4, 2020.</p>	
 Peru	<p>Indecopi has suspended all terms and procedures (including merger control procedures) until June 10, 2020 (further extensions likely). It has however continued some activities, including issuing a merger approval decision, and has provided an online service for submitting documents and complaints.</p>	
 Philippines	<p>PCC has partially resumed operation. It accepts new filing and it has resumed preliminary merger control review procedures during the quarantine period, although formal review periods may only begin after the quarantine. The situation is scheduled to terminate on June 15, 2020, although extension is possible.</p>	
 Russia	<p>FAS are not carrying out inspections, except important cases. Hearings are conducted remotely. The statutory deadlines have not been modified.</p>	

Antitrust Agency Status: Other Countries (4/4)

JURISDICTION	COMMENTS	STATUS
 Singapore	<p>The CCCS has announced that it remains operational with the vast majority of its officers telecommuting. Merger review timelines remain the same, although the CCCS may reassess timelines on a case-by-case basis depending on the severity of the Covid-19 situation.</p>	
 Taiwan	<p>TFTC operates as usual for now. All staff are still in the office and there is generally no delay in ongoing cases. As the Taiwan CDC has lifted most of restrictions on June 7, local counsel do not expect the TFTC to take any special measure in response to the COVID-19 in the near future.</p>	
 Thailand	<p>While the OTCC has not announced the imposition of any antitrust review delays, officers are largely working remotely. Businesses should therefore anticipate that OTCC may take up the full duration of time allowed by law to review their cases.</p>	
 Tanzania	<p>The Tanzanian Fair Competition Commission is functioning as usual.</p>	
 Uruguay	<p>The Competition Commission is operating with half of the staff working remotely, and filings and submissions are still accepted in person. There are no official suspensions of review periods. However, non-priority cases may experience delays <i>e.g.</i>, as the Commission takes longer to respond to questions. Filings should be made electronically.</p>	
 Zambia	<p>The Zambian Competition and Consumer Protection Commission is functioning as usual.</p>	

Credits

We thank all the firms who contributed to this chart, including the following:

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