



World Law Group

Competition Enforcement and Merger Control in Portugal and Elsewhere in Times of COVID-19

PANEL



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PORTUGAL

Antitrust Enforcement



Cooperation Agreements in Portugal during the COVID-19 crisis

- Publication in the PCA website of the **ECN Joint statement on the application of competition law during the COVID-19 crisis**, acknowledging that the crisis could trigger the need for companies to cooperate in order to ensure the supply and fair distribution of scarce products to consumers
- **PCA likely to follow the Commission's approach in the Temporary Framework**
Communication in relation to the assessment of cooperation projects

Antitrust Enforcement



Anticompetitive practices during the COVID-19 crisis

- However, the **PCA** has published a statement clarifying that it would remain **vigilant**, in particular regarding the detection of anticompetitive practices exploiting the current situation to the detriment of people and the economy, through **price fixing** or **market sharing**
“Suppliers, distributors, resellers from any sector of the economy, including goods and services for health protection, supplies to households and businesses or others needed by the community, must adopt responsible and lawful business behavior at any level of the supply chain, including in e-commerce”.
- So far, the PCA has not taken action in relation to specific practices, but **ASAE** (the Agency for Food and Economic Security) **has conducted raids on speculative prices** of products needed to fight COVID-19 (such as masks, alcohol or alcohol-based solutions).

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Means of interaction with the PCA during the COVID-19 crisis

- Most of the PCA staff has been **homeworking**
 - All **correspondence** shall be **sent** to the PCA by **email** (AdC@concorrencia.pt)
 - **Complaints** shall be submitted using the **PCA platform** created for that effect (available at <https://extranet.concorrencia.pt/Denuncias/Home.aspx>) or by phone to (+351)21790 2088;
 - For **leniency applications**, the following **phone line** shall be used: (+351)217902030.
 - **Meetings in person in exceptional cases only** and subject to previous scheduling



Suspension of deadlines

- **Judicial deadlines**, as well as **deadlines relative to ongoing PCA restrictive practices proceedings**, have been **suspended** as from 9 March 2020.
- **Only deadlines have been suspended, not proceedings** - the PCA has continued its investigations and has been addressing notifications/requests to the defendants, although the latter may choose to withhold their responses pending the suspension.
- **No Statements of Objections or Decisions** have been issued in this period **in the context of restrictive practices investigations**. However, a sanctioning decision was issued on 19 March on a case involving the failure to notify a merger.

Merger Control



Procedural changes

- Merger notifications shall be filed using the **SNEOC e-platform** only; counter interested parties shall use the PCA email (AdC@concorrencia.pt)
- **Tacit approval of mergers will not occur during the crisis** – temporary rules determine the suspension of deadlines for decisions by regulators. **However**, there have been **no changes in the way the PCA is dealing with merger control cases during the crisis**:
 - 8 mergers cleared both in March-April 2020 and in March-April 2019
 - No changes in the period of time between notification and decision
 - Unlike the Commission, the PCA has made no request for a delay of filings

Merger Control



Possible impact on the assessment of mergers

- Possible to obtain an **exemption from the standstill obligation** in exceptional circumstances (e.g. imminent bankruptcies)
- **Failing firm defense** could be used
- An operation of concentration which is the object of a prohibition decision by the PCA may be **authorized by a Government decision** on the basis of **fundamental strategic interests of the national economy**



BRAZIL

COVID-19 and Antitrust in Brazil



CADE's activities during Covid-19 and state of calamity

CADE has continued its activities, with necessary adaptations:

- CADE's personnel working remotely, judgment sessions and meetings being held online.
- CADE's administrative proceedings and files have been online since 2015.

Status of deadlines during Covid-19 (by force of general federal regulation):



SUSPENDED DEADLINES

Procedural deadlines imposed on defendants in investigations that can result in penalties (e.g., cartels or unilateral conducts) are suspended

Some judicial deadlines are also suspended



NORMAL ACTIVITIES

- (i) Merger control
- (ii) Launching new cases
- (iii) Furthering investigations (except deadlines)
- (iv) Leniency/settlement negotiations
- (v) Consultations

COVID-19 and Antitrust in Brazil



CADE's priorities up to this moment

CONDUCTS AND INVESTIGATIONS



In March 2020 CADE launched an investigation into alleged abusive pricing of medical and pharmaceutical products (e.g., hand sanitizer, masks and drugs) related to Covid-19. Over 50 RFIs issued in the health sector (including manufacturers, distributors, hospitals and drugstores) and more are likely.

- New development due to crises, no track-record on abusive/excessive pricing - *number 1 priority of the agency now*

MERGER REVIEW



CADE's goal is to maintain the 2019 average time of analysis: 17 days for fast track and 90 days for regular filings

- *"Agency open to discuss requests from companies or carry out specific actions in the context of the Covid-19 crisis".*
- Possible trends: More deals due to financial difficulties? Requests for faster clearance? Crises collaborations and JVs?

COVID-19 and Antitrust in Brazil



Exemptions, proposals and advocacy

No antitrust exemptions so far, BUT:

Draft Bill in Congress to temporarily amend competition laws. Main antitrust impacts, if approved:

- Suspension of the obligation to notify collaborative contracts, joint ventures and consortia for CADE's clearance until October 31, 2020 (or while the current state of calamity lasts). May be examined later to check if related to the fight against Covid-19.
- Investigated practices adopted during the public calamity shall be assessed by CADE taking into account "*the extraordinary circumstances resulting from the pandemic.*"

Advocacy in the ongoing legislative proposals for "freezing prices" in the health and energy sectors. CADE has opposed price freezes, warning about the risk of shortages.



CHINA

Antitrust Enforcement



SAMR Guidelines During COVID-19 Period

- China's antitrust regulator, the State Administration of Market Regulation ("SAMR") issued the *Notice on Antitrust Enforcement to Support the Pandemic Prevention and Control and the Resumption of Work and Production* (the "Notice") on April 5, followed by *its official interpretations on the Notice* on April 17.
- Instead of slowing down its pace, the Notice announced certain measures to accelerate review of certain filings and other workstreams during outbreak period.
- The Notice and its official interpretation are part of Chinese government's efforts to facilitate the resumption of work and production following a nationwide shutdown due to COVID-19.

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SAMR Guidelines During COVID-19 Period (Cont'd)

- These measures include:
 - Continued adoption of online merger filings which was first introduced on February 5 2020, and online meetings and calls instead of physical meetings for consultation and other needs to meet
 - Fast-track review in sectors related to pandemic control and work resumption
 - Exemption of certain cooperative agreements to facilitate combatting pandemic and resuming work
 - Stepped-up enforcement against antitrust violations hampering pandemic control and work resumption
 - Streamlined support for fair competition review
 - Proactive guidance on antitrust compliance of businesses



INDIA

Antitrust Enforcement



Cooperation Agreements in India during the COVID-19 crisis

- The Competition Commission of India ('CCI') has issued an [Advisory to Businesses in Time of COVID-19](#)
- The Advisory acknowledges that businesses may need to coordinate in order to ensure continued supply and fair distribution of products and services.
- However, coordinated conduct must be "*necessary and proportionate*" to address concerns arising from COVID-19.
- No statutory amendment required since the existing law allows "efficiency-enhancing" joint ventures; and requires an assessment of potential pro-competitive efficiencies for horizontal agreements.

Procedural Changes



Suspension of deadlines and means of interaction with the CCI during the COVID-19 crisis

- Most CCI staff have been **working from home**. Senior members attend office as required.
- **Information/Complaints** shall be sent to the CCI by **email** (atdregistry@cci.gov.in).
- All filings, proceedings and compliances have been suspended until May 3, 2020.
- For all compliances due up to May 3, 2020 in respect of pending cases, as well as the matters listed for hearing before the CCI, fresh dates will be notified.

Merger Control



Procedural changes

- E-Filings of merger notifications are permitted @ comb.registry@cci.gov.in
- Filing fee shall be paid electronically.
- Pre-filing consultation meetings are conducted through video conferencing on request.
- Fast track or “Green Channel” approvals to non-problematic transactions are being issued.
- All other transactions are being reviewed as usual – 30 days for approval in phase I; or 210 days for phase 2 (approx. 7 mergers have been cleared in March-April 2020).



GERMANY

Merger Control



- The review periods in merger control will be extended. The extension applies to merger control notifications which are received by the FCO from March 1st to May 31st, 2020. For so-called 1st phase-reviews of these notifications the FCO will now have 2 months, for 2nd phase-reviews 6 months.
- To facilitate electronic communication, the Federal Cartel Office (FCO) created additional specific e-mail addresses for each of its Decision Divisions.
- The case handlers of the FCO are working remotely.

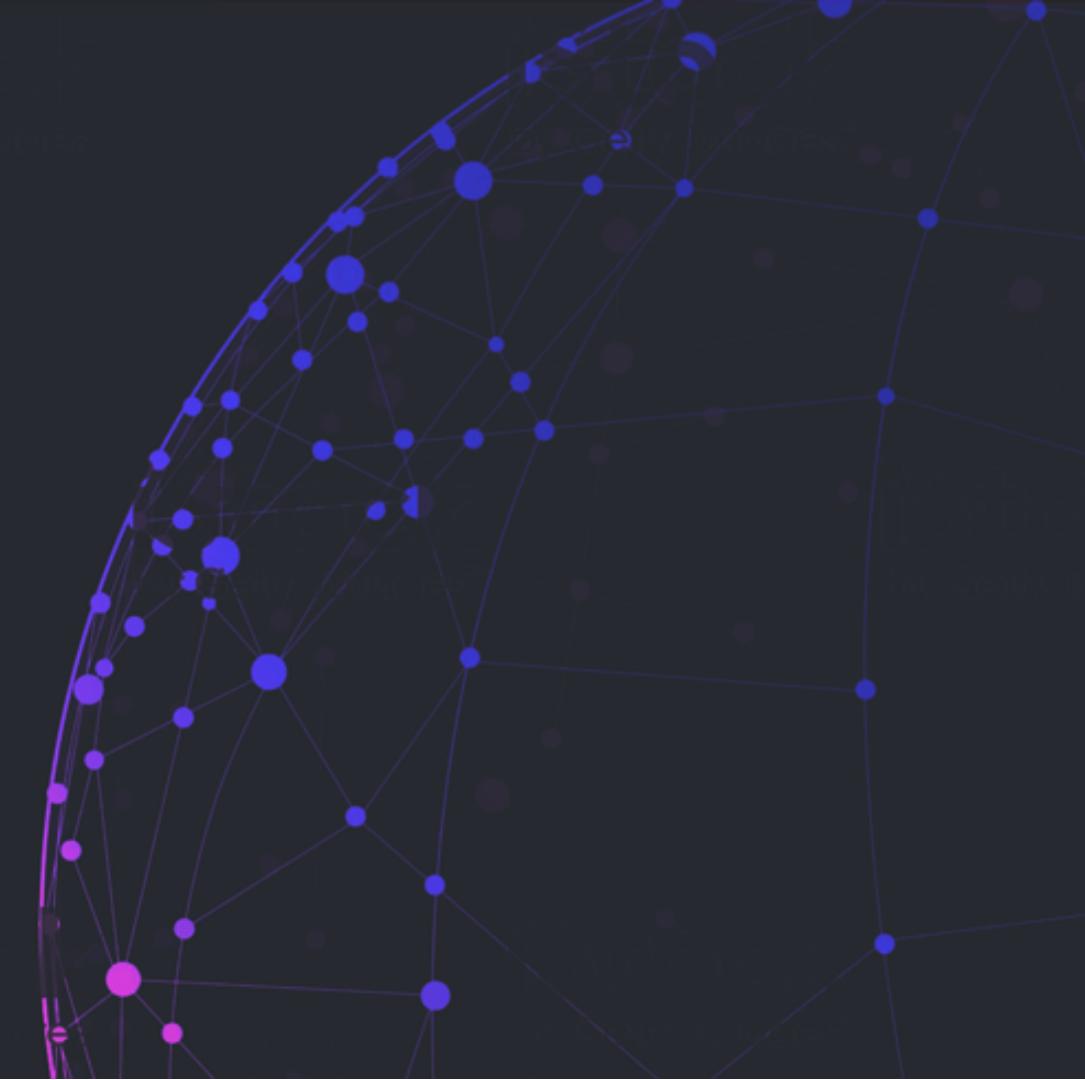


- Federal Minister of Economics Altmaier thought aloud about facilitating more cooperation between retail chains to ensure the supply of the population.
- The FCO does see any need for legislative adjustments. The FCO currently manages crisis-related cooperations with the existing means of competition law. The FCO expects – as always - to be informed of cooperations. The FCO monitors the process and the companies very closely.
- Post-Corona, these cooperations must be discontinued. According to Mr. Mundt, the president of the FCO, the cooperating companies should not “overdo it”.
- The national heads of all European competition authorities are in lively exchange.
- The obligation to pay interest on antitrust fines will be suspended until June 30, 2021 - insofar as the FCO has facilitated payment (e.g. deferral payments). By waiving the interest, the companies concerned will be relieved of economic burden.

Thank You!

QUESTIONS?

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