

UK and EU Competition Law in times of COVID-19 and beyond Episode Guide

- Impact of COVID-19 on UK and EU Competition Law
- Dawn raid preparation

Impact of COVID-19 on UK and EU Competition Law

- While life sciences companies have been focused on preventing the spread of the virus by pooling resources and progressing the development of medicines and vaccines, competition law should still be observed.
- Competition authorities recognize that such cooperation bring benefits to consumers, but are also on the lookout for collaboration that could lead to competition problems and risks – strike a balance between upholding competition law and the need to effectively tackle COVID-19.
- Several authorities, including the European Commission, have introduced guidance and in some cases a limited, temporary relaxation of competition laws to allow businesses a certain level of flexibility to ensure the supply of medicines and essential products and services.
- At an EU level, the Commission has published a Temporary Framework Communication
 - Allocated significant resources including a dedicated webpage and email that can be used to seek informal guidance on specific initiatives.
 - Issued a comfort letter under its Temporary Framework to Medicines for Europe addressing a specific voluntary cooperation project among pharmaceutical producers to target the risk of shortages of critical hospital medicines.
- At a UK level, the UK government has announced temporary and limited measures to relax competition rules and allow competitors in certain industries to cooperate to respond to the crisis, including agreements between NHS and non-NHS providers to provide COVID-19-related health services to patients.
 - Offered reassurances that it will not take enforcement action against businesses wanting to cooperate to deal with the current crisis and ensure security of supplies of essential products and services.
- Temporary relaxation of the rules does not mean that competition law enforcement is on hold.
- Practical steps to manage compliance risks:
 - Check that the business teams that want to engage in any collaboration link up with legal early in the process - assess upfront why an arrangement has to be carried out by competitors working together; identify the benefits of the collaboration and who will benefit
 - Maintain good records of the collaboration - document all exchanges and arrangements and ensure guardrails in place; check in regularly to watch out for mission creep and de-sensitization due to frequent competitor contacts
 - Ensure employees receive regular competition law compliance training
- Competition authorities will be on the lookout for potentially problematic conduct - several investigations have already been opened in the sector on complaints about excessive prices for essential products (paracetamol, face masks and hand sanitizer).

Dawn raid preparation

- A dawn raid is an unannounced inspection by an authority, often first thing in the morning, to investigate a suspected infringement of the law with inspectors having the power to request documents and electronic files and interview employees.
- During the various lockdowns, many competition authorities suspended their dawn raid procedures. However, there have been press reports of various European competition authorities virtually meeting to discuss conducting dawn raids during the pandemic, with several competition authorities across the world having issued statements indicating that they intend to resume dawn raids.
- Practical steps to think about in relation to dawn raid policies
 - Who will be regularly on site and have they received dawn raid training?
 - Do they know who to contact in the event of a dawn raid and how to proceed if the inspectors turn up unannounced?
 - Who are the team members that can get on site quickly? Do you need to have a system in place so that people are on call in the event of a dawn raid?
 - In our recent experience, dawn raids are all about data and electronic files - think about where data is stored. Who can block email accounts and provide inspectors with access to servers and IT equipment? How easily can data be collated? Can it be done virtually or do you need IT on site?
 - Employees out of office at the time of a dawn raid may be required to return their devices for inspection. In the current climate, there may be a need to have an open and ongoing dialogue between the inspectors and internal and external lawyers about who needs to be physically present during a dawn raid and what measures may need to be put in place to protect the health of employees.
 - Many dawn raid protocols conduct dawn raids at the office but remember that raids can be conducted at people's homes as well. Do employees know what to do and who to contact if this happens?
 - We also anticipate that requests for information are likely to be more frequently used where it is not possible to conduct a dawn raid.

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