



IMPACT OF COVID-19 ON GLOBAL MERGER CONTROL REVIEWS

LATHAM & WATKINS^{LLP}

6 July 2020

OVERVIEW OF MERGER CONTROL REVIEWS

(Click on a country below to jump to that sector)



Red: Noticeable delays/review periods prolonged/suspended

Yellow: No noticeable impact on review periods but operations interrupted

Green: No/marginal impact

EU27

EU	Ireland
Austria	Italy
Belgium	Latvia
Bulgaria	Lithuania
Croatia	Malta
Cyprus	Netherlands
Czech Republic	Poland
Denmark	Portugal
Estonia	Romania
Finland	Slovakia
France	Slovenia
Germany	Spain
Greece	Sweden
Hungary	

REST OF EUROPE

Bosnia & Herzegovina	Serbia
Iceland	Switzerland
Montenegro	Turkey
North Macedonia	UK
Norway	Ukraine
Russia	

NORTH / SOUTH AMERICA

Canada	Colombia
Mexico	Costa Rica
USA	Ecuador
Argentina	Honduras
Brazil	Uruguay
Chile	

ASIA / PACIFIC

China
India
Indonesia
Japan
Philippines
Singapore
South Korea
Taiwan
Australia
New Zealand

AFRICA / MIDDLE EAST

Botswana
CEMAC
COMESA
Ethiopia
Kenya
Morocco
Namibia
Nigeria
South Africa
Israel
Saudi Arabia



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. According to DG COMP’s website, 25 deals were notified in June: 7 under the normal procedure, and 18 under the simplified procedure. (Twenty-four deals were notified in May: 14 under the normal procedure, and 10 under the simplified procedure).



Austria – Merger notifications may be submitted electronically or during office hours. Review periods for deals notified after 22 March and before 30 April (and those already in Phase II) started running on 1 May. Review deadlines for deals notified after 30 April run as usual. Starting 18 May, meetings are held predominantly electronically unless physical meetings are arranged by prior agreement with the authority.



Belgium – The BCA is closed until further notice, 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. Merger reviews are however suspended during the state of emergency.



Croatia – The AZTN is operational and accepts merger filings (electronic or by post). Review deadlines are not suspended but some delays can be observed. The AZTN's premises remain closed for the time being.



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.



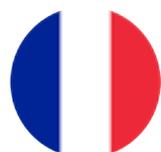
Denmark – The statutory deadlines within which the DCCA must review a merger had been suspended until 17 August (initially 13 April), although the DCCA clarified that it would try to comply with the ordinary time limits. Since the initial suspension on 18 March, the DCCA has cleared 4 deals within normal time limits.



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



Finland – The KKV has requested that notifications be postponed when possible. Merging parties should contact the KKV as soon as possible and expect delays in the review of their proposed mergers. Finland is planning to extend the statutory Phase II merger review period by an additional 23 working days (allowing a total processing time of about five months). The proposed extension would apply to all mergers notified to the KKV between the day of the entry into force of the amendment and 31 October (thus excluding transactions already under review).



France – Review periods were suspended between 12 March and 23 June and restarted again on 24 June. The FCA cleared 25 deals between 18 March and 18 May, with an average review period of 22 working days. Parties are invited to delay non-urgent notifications. Only electronic communications are possible.



Germany – Filings can be made as usual but parties are asked to consider whether a project requires immediate notification, or whether it can be submitted at a later date. A new piece of legislation – entered into force on 29 May – has been adopted pursuant to which the review periods for notifications submitted between 1 March and 31 May (and for which the review is still ongoing or is initiated before 31 May) are extended. Phase I will go from one month to two months, and Phase II will move from four months to six months. The purpose of these proposed amendments is to allow the FCO more time to conduct market surveys during the COVID-19 pandemic. No-issues deals should proceed as usual. These new longer review periods do not apply to merger filings made after 31 May.



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 if 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. Financing transactions involving Hungarian public funds and implemented as part of a dedicated COVID-19 capital programme are exempt from notification.



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 – Deals notified between 23 February and 15 May were not deemed notified until 16 May, when review periods resumed. Deals notified on or after 16 May are reviewed as per the usual timeframe.



Latvia – Business as usual, though the Competition Council is working remotely. No delays have been observed so far. The Competition Council, by law, does not have the right to stop the clock.



Lithuania – The Authority has transitioned to organising its business remotely. The Authority has confirmed that some merger reviews may take longer given the difficulties in collecting information from the parties and the market. Parties are invited to delay non-urgent notifications.



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



Netherlands – The ACM is conducting its merger reviews as usual. The ACM announced on 12 June that employees are returning to the office. If necessary, meetings and hearings can take place at the ACM premises.



Poland – Standard statutory review periods are back in force. Legislation was repealed on 23 May according to which review deadlines for (i) mergers notified before 14 March were suspended and (ii) mergers notified after 14 March would only start after the end of the state of emergency.



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. There is no noticeable impact on review periods.



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. No noticeable impact on review timelines.



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 accepting merger notifications (and parties should file within 30 days from signing to avoid fines for late filing). Slovenia lifted the state of emergency on 31 May and merger review periods are now running.



Spain – Administrative procedures, including merger control administrative procedures, are back in force, effective 1 June. (The clock will resume at the point it had stopped, rather than restarting from day one.) The CNMC reviewed 12 mergers during the state of emergency and four during the month of May. (Although review periods were suspended during the state of emergency, notifying parties could ask the CNMC to nevertheless review their transactions.)



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 — REST OF EUROPE



Bosnia & Herzegovina – The CC is accepting notifications (by post or email). The 15-day deadline to notify still applies. Merger review deadlines are not suspended but some delays may be observed (the CC meets less frequently). The CC is working with reduced capacities.



Iceland – The ICA is asking merging parties to delay new notifications. Procedures for cases that are not relevant to the response to COVID-19 may be delayed.



Montenegro – The Authority is accepting notifications (by post or email). The 15-day deadline to notify still applies. Merger review deadlines are not suspended but some delays may be observed. The Authority is working with reduced capacities.



North Macedonia – The Authority is accepting notifications (onsite, by post, or email). Filings made since 15 June (*i.e.*, since the end of the state of emergency) are subject to normal review timelines.



Norway – The Norwegian Parliament has adopted a temporary law extending the merger review deadlines by an additional 15 working days. The new deadlines entered into force on 17 April and apply both to concentrations already under review on 17 April and new notifications made between 17 April and 31 October. The NCA is encouraging its employees to work remotely. Meetings will be held by way of conference calls or video conferencing.

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



Russia – FAS is open and accepting and reviewing filings (most of the staff is working remotely). Review periods are generally complied with.



Serbia – Since 6 May, Serbia is no longer in a state of emergency, and the Serbian government has revoked the deadlines suspension regulation put in force on 24 March. Deadlines expiring between 24 March and 6 May were considered expired on 5 June. Merger filings made after 6 May are being reviewed under the normal review periods. The CPC has suspended physical meetings, and merger notifications should be filed either by post or via email.



Switzerland – The 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 TCA is up and running, accepting merger filings and complying with statutory timelines. The decision-making board is regularly meeting as before, and most of the case handlers are working remotely or on a shift basis. Merger filings will be submitted in electronic format through a designed online system during the COVID-19 outbreak.

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



UK – The CMA will continue to progress ongoing merger investigations and has issued guidance on its approach to merger assessments during the COVID-19 pandemic. The CMA is not asking merging parties to delay notifications, but nevertheless encourages parties to consider whether some filings could be postponed (e.g., if a merger is not particularly well-advanced and may not ultimately proceed). Pre-notification talks may take longer because of difficulties in obtaining information from the merging parties and from third parties. The CMA will continue to use its power to issue mandatory information requests with deadlines. However, the CMA recognises that staffing shortages or remote working environments may make it harder for companies to meet mandatory deadlines for producing information. The CMA is unlikely to exercise its statutory finding power in such cases. However, the CMA may stop the clock if merging parties are unable to provide information in due time. In terms of substance, the CMA has confirmed that its review standard will not be relaxed and that interim measures will still be imposed when necessary. Given the economic impact of COVID-19, the CMA has also restated its approach to the “failing firm” defence (the CMA expects firms to claim more frequently that the target is failing, but will maintain the established (demanding) standard for establishing that a firm is “failing”). All meetings are being conducted remotely via videoconferencing or telephone, and the CMA is well prepared for remote working following a recent upgrade in technology infrastructure.

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



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. There is no observable trend of merger filings being rejected or requests for analysis under the fast-track procedure being denied.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — NORTH / SOUTH AMERICA



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.



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.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — NORTH / SOUTH AMERICA



USA – FTC and DOJ have introduced a temporary e-filing system. The FTC resumed granting early terminations (ETs) – effective 30 March – and appears to be processing filings with minimal delays.

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 — NORTH / SOUTH AMERICA



Argentina – All reviews have been suspended until 17 July (at the earliest). In practice, the CNDC has been accepting new notifications (irrespective of whether the transaction is closing during lockdown or at a later stage) and has restarted issuing informal requests for information in deals already notified.



Brazil – CADE's officials are working remotely, face-to-face meetings are being replaced by video conferencing, and judgment sessions of CADE's Tribunal are being held virtually. There have been no requests so far for parties to postpone notifications, and CADE's review periods remain unchanged. CADE has introduced a new online system allowing for a quicker payment and processing of the filing fee. The average time for merger reviews by CADE from January through May was 31 days, compared with 35 days in the same period last year. Deadlines for gun-jumping investigations have been suspended.

A bill that entered into force on 12 June establishes that associative agreements, consortia, or joint ventures concluded between 20 March and 30 October (or through the duration of the state of emergency) will not be subject to pre-merger control. However, CADE has advised that companies should notify their deals to the authority regardless of the bill.



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 encouraged to ensure the notification form is complete. Once the clock starts, the FNE is conducting its merger reviews as usual.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — NORTH / SOUTH AMERICA



Colombia – Merger proceedings have been fully reactivated since 12 May. Merger filings should only be made electronically.



Costa Rica – COPROCOM is conducting its merger reviews as usual and there are no noticeable delays. Filings must be submitted electronically and all in-person meetings have been cancelled until further notice.



Ecuador – For already-notified mergers, review deadlines are resumed if the SCPM has sufficient information to issue a decision (parties will be informed). If not, deadlines will resume only after the end of the state of emergency. New merger filings should be submitted by e-mail, so parties can comply with the eight-day filing deadline. Review deadlines will only start running if the SCPM has sufficient information on relevant markets and the deal is eligible for the newly established fast-track procedure. If not, the clock will only start when the state of emergency is lifted.



Honduras – The CDPC has reopened and merger filings can now be submitted. Parties should coordinate with the CDPC officials before submitting any documents.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — NORTH / SOUTH AMERICA



Uruguay – The new pre-closing merger control regime has entered into force. The Authority is open and merger filings can be submitted electronically. However, COVID-19 and the lack of implementing regulations regarding the new merger regime cast doubt on how the Authority will comply with the merger review periods.



China – SAMR has been working normally since mid-February, accepting notifications and with no delays to timetable reviews. SAMR maintained the pace of merger reviews and clearances in the first five months of 2020. It cleared a comparable number of deals unconditionally compared with this time last year. It is currently approving deals on similar timelines as before: 2-3 months from filing in simple cases, 4-5 months in standard cases with either no issues or some resolvable issues, and 9+ months in complex deals resulting in remedies. Simplified mergers were even reviewed 4% quicker during Q1 2020 (12.79 days) compared to Q1 2019 (13.39 days).

SAMR has established a “green channel” for expediting its review of mergers in key sectors in the battle 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).



India – According to the CCI’s notice of 20 April, merger filings may be notified electronically. The CCI also allows pre-filing consultations through videoconferencing. The CCI will review new filings subject to the availability of necessary information and material. Delays cannot therefore be excluded.



Indonesia – The KPPU has resumed its activities (since 7 April). Merger filings can be made and review periods are running again. KPPU staff returned to work at the agency’s offices on 2 June but office buildings will be operating at 50% capacity. Regime is post-closing.



Japan – The JFTC is running as usual and has not communicated otherwise.



Philippines – Merger control reviews have resumed after being suspended between 16 March and 15 May. The National Capital Region (NCR) — where the PCC is located — is under General Community Quarantine, but the previously issued interim guidelines, regarding the operation of the PCC’s merger unit during the Modified Enhanced Community Quarantine, are still applicable (as amended). The guidelines cover various topics, including how to submit documents and how the PCC will evaluate the sufficiency of merger filings. The 30-day notification period has been relaxed, on the condition that the deal is notified before implementation. The PCC is accepting letters of non-coverage from compulsory notification (to be submitted in hard and electronic format).

According to a bill passed by the House of Representatives, all mergers and acquisitions involving enterprises engaged in essential businesses entered into during the quarantine period and for a year after it, would be exempted from compulsory notification.



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.



South Korea – The KFTC is running as usual, and new filings are being accepted. Requests for information that stop the clock can be expected.



Taiwan – The TFTC is fully operational. Staff is working from the office and merger filings are accepted as usual.



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.



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.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — AFRICA / MIDDLE EAST



Botswana – The CCA has reopened and is now accepting new merger filings. Merger notifications that were being investigated prior to the lockdown have resumed.



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.



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.



Ethiopia – Ethiopia is in its third month of a five-month nationwide state of emergency (ending mid-September). The TCCPA has suspended its merger review activities and is currently not accepting new merger filings.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — AFRICA / MIDDLE EAST



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.



Morocco – The state of emergency has been prolonged until 8 August. 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. Review deadlines for complex/Phase II mergers may be suspended during the state of emergency.



Namibia – The NCC has resumed normal operations since 11 May, although stakeholders are encouraged to continue using electronic means of communication. Physical documentation such as merger filings are accepted at the NCC's offices.



Nigeria – Non-essential staff from the FCCPC is working remotely. The FCCPC will accept time-sensitive and urgent merger notifications for review. The FCCPC issued further guidelines according to which it will prioritise the review of merger notifications if there is a risk of firms failing, if there are time limitations in a host jurisdiction (other than Nigeria), and if the application is otherwise time-sensitive, e.g., if other regulatory or similar approvals may expire or lapse. Filings and supporting documentation can be submitted electronically.

IMPACT OF COVID-19 ON MERGER CONTROL REVIEWS — AFRICA / MIDDLE EAST



South Africa – The country remains in a state of emergency, due to expire on 15 July. The CC continues to work remotely and has called for new merger filings to be deferred. New merger filings are accepted, but the CC will immediately seek extensions of 60 business days for intermediate mergers and 120 business days for large mergers. In practice, no undue delays have been experienced. Very complex mergers set down for hearing before 1 August are provisionally removed from the roll of the Competition Tribunal. The CC has also announced that priority will be given to mergers in sectors of the economy that have been severely impacted by the pandemic.



Israel – The ICA is conducting its merger reviews as usual. The ICA has also announced that parties to a transaction can approach the ICA if the COVID-19 crisis is likely to cause irreversible harm to the merging entities.



Saudi Arabia – GAC offices are still closed, and all staff is working remotely. Nevertheless, new merger filings are accepted, and review processes are handled in time.