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Covid-19 pandemic

**The reactions of
competition authorities to
the Covid-19 pandemic –
an IBA contribution
IBA Antitrust Committee**





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Daniel Swanson
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Introduction

The pandemic caused by the new coronavirus (Covid-19) has also affected the antitrust universe. In a way never imagined, in a very short period of time, the authorities have had to adapt themselves to a new world in which lawyers, economists and companies work from home, face-to-face meetings are not possible and resources are limited.

Suddenly, companies have an interest in exchanging sensitive information or launching joint activities in order to react to the health and economic crisis. Overnight, agencies, accustomed to their regulatory frameworks, are called upon to provide answers in markets they may never have analysed before.

In light of this new reality, the International Bar Association Antitrust Committee recognised the need to gather, in a single document, a compilation of competition agency reactions to the Covid-19 pandemic.

To this end, the Committee enlisted the help of antitrust lawyers in 44 jurisdictions, who have provided admirably prompt responses to our survey:

#	Jurisdiction	Lawyer	Law firm
1	Albania	Bojan Vučković, Rastko Petaković, Bojana Miljanović and Veljko Smiljanić	Karanovic & Partners
2	Australia	Paul Schoff and Miranda Noble	MinterEllison
3	Argentina	Julian Peña and Federico Rossi	Allende & Brea
4	Brazil	Leonor Cordovil, Jessica Ferreira and Giovanna Mezher	Grinberg Cordovil
5	Belgium	Tone Oeyen and Thomas Janssens	Freshfields
6	Bosnia and Herzegovina	Bojan Vučković, Rastko Petaković, Bojana Miljanović and Veljko Smiljanić	Karanovic & Partners
7	Bulgaria	Zoya Todorva and Rositsa Vasileva	Dimitrov, Petrov & Co.
8	Canada	Randal Hughes, Alysha Pannu and Beth Riley	Bennett Jones
9	Chile	Juan Cristóbal Gammucio and Tomas Labbe	Cariola Díez Pérez-Cotapos
10	China	Janet Hui and YangChen	JunHe
11	Estonia	Triinu Järviste and Andra Rubene	TGS Baltic
12	European Union	Catriona Hatton	Baker Botts
13	France	Lionel Lesur and Andrea Hamilton	McDermott Will & Emery AARPI
14	Germany	Marc Reysen	Reysen Competition Advice & Advocacy
15	Greece	Dimitris Loukas, Alexandros Lymperopoulos and Eirini Marnera	Potamitisvekris
16	Hungary	Zoltan Marosi and Gabor Fejes	Oppenheim
17	Ireland	Philip Andrews and Niall Fitzgerald	McCann FitzGerald
18	Israel	Hagai Doron	S. Horowitz & Co

#	Jurisdiction	Lawyer	Law firm
19	Italy	Sabrina Borocci	Hogan Lovells
20	India	Samir Gandhi and Aakarsh Narula	AZB & Partners
21	Japan	Yoshi Ikeda and Koki Tanaka	Ikeda & Someya
22	Latvia	Vladlena Rudusane-Simica and Andra Rubene	TGS Baltic
23	Lithuania	Darius Miniotas and Andra Rubene	TGS Baltic
24	Mexico	Amilcar Peredo and Carmina Paredes Vásquez	Basham, Ringe y Correa, S.C.
25	Montenegro	Bojan Vučković, Rastko Petaković, Bojana Miljanović and Veljko Smiljanić	Karanovic Partners
26	Netherlands	Christof Swaak and Simone Evans	Stibbe
27	New Zealand	Andrew Matthews	Matthews Law
28	North Macedonia	Bojan Vučković, Rastko Petaković, Bojana Miljanović and Veljko Smiljanić	Karanovic & Partners
29	Portugal	Ricardo Oliveira and João Prata Rodrigues	PLMJ
30	Romania	Gelu Goran and Radu Jianu	Biriş Goran
31	Serbia	Bojan Vučković, Rastko Petaković, Bojana Miljanović and Veljko Smiljanić	Karanovic & Partners
32	Singapore	Ameera Ashraf	WongPartnership
33	Slovakia	Peter Oravec	PRK Partners
34	Slovenia	Janja Zaplotnik and Maja Činč	Jadek & Pensa
35	Spain	Andrew Ward and Marta Simón Martín	Cuatrecasas
36	South Korea	Youngjin JUNG	Kim & Chang
37	South Africa	Heather Irvine and Nazeera Mia	Falcon & Hume Inc.
38	Sweden/ Finland	Kristian Hugmark, Ami Paanajärvi and Christian Wik	Roschier
39	Switzerland	David Mamane and Vanessa Rügger	Schellenberg Wittmer
40	Turkey	Gonenc Gukaynak and Ceren Ozkanli	ELIG Gürkaynak
41	Ukraine	Vladimir Sayenko and Maksym Nazarenko	Sayenko Kharenko
42	Russia	Vassily Rudomino, German Zakharov, Ruslana Karimova and Ekaterina Vasenkova	ALRUD
43	United States	Logan Breed	Hogan Lovells
44	United Kingdom	Anna Morfey	Hausfeld

By sharing the measures taken by each jurisdiction, we hope to address – or even mitigate – the problems caused by Covid-19 in the antitrust community. By producing this document, with the invaluable help of our colleagues worldwide, we hope to encourage best practices and quick solutions that may bring some relief to companies and consumers around the globe.

Summary

1. Have your authorities launched formal investigations against abuses in the context of Covid-19? For example, Poland, Italy and Brazil have formally opened investigations of abuse in sales of hand sanitisers and masks. Please explain, in no more than three paragraphs, what kind of procedure was initiated, what are the possible penalties and expected actions taken by the authorities. Any other detail will be much appreciated. 5
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- 1. Have your authorities launched formal investigations against abuses in the context of Covid-19? For example, Poland, Italy and Brazil have formally opened investigations of abuse in sales of hand sanitisers and masks. Please explain, in no more than three paragraphs, what kind of procedure was initiated, what are the possible penalties and expected actions taken by the authorities. Any other detail will be much appreciated.**

Albania

The Albanian Competition Authority launched a preliminary formal investigation on 18 March 2020 for abuse in the sale of hand sanitisers, masks and alcohol. The investigation will cover the period 1 January 2020 – 31 May 2020 and will be focused on whether there are indications that there has been a breach of Article 4 of Albanian competition law (prohibited agreements) or Article 9 of the law (abuse of dominance). The investigation report should be presented to the Albanian Competition Commission within two months from the end of the investigation period. In parallel, the authority adopted temporary measures to restore competition in this market by ordering wholesalers and retailers to avoid abuse in the trading chain, cost-orientated pricing and publication of prices. The undertakings will be fined up to 10 per cent of their turnover if they do not comply with the temporary measure.

Australia

Australia's antitrust and national consumer law regulator, the Australian Competition and Consumer Commission (ACCC), has readjusted its regulatory focus in light of Covid-19. So far, the ACCC's enforcement activities relating to Covid-19 have primarily focused on compliance with the Australian Consumer Law and any behaviour that seeks to exploit the crisis that may be unconscionable or misleading.

Similar to other jurisdictions, access to personal protection equipment, hand sanitiser and alcohol wipes has been a significant matter of concern in Australia. In response, emergency regulations were made under the Biosecurity Act 2015 to target price gouging and the export of essential goods. These emergency powers are enforced by federal law enforcement agencies.

While, to date, the ACCC has primarily focused on enforcement of Covid-19-related issues as consumer law matters, competition law compliance remains a priority and it has flagged that maintaining competition in the long term is critical for consumers and the economy. It will actively consider antitrust issues arising in relation to Covid-19, including in a merger context and those arising from coordinate or unilateral conduct. For example, the ACCC has initiated an investigation into the Australian flag carrier, Qantas, to test whether Qantas misused its market power to lessen competition in relation to statements it made about the second carrier, Virgin Australia.

Argentina

The Secretary of Domestic Trade, which enforces the Antitrust Law, has ordered the National Commission of Competition Defence (Comisión Nacional de Defensa de la Competencia or CNDC) to launch a sector inquiry into the beef market in light of the alleged shortage and price hikes experienced in the distribution and commercialisation of beef. Interestingly, the CNDC issued a market report in relation to the same market in 2017, which found a low degree of concentration and low entry barriers.

At least from publicly available information, no other antitrust investigation has been launched in the context of Covid-19.

It is important to mention that the Secretary of Domestic Trade is not only the enforcement authority of the Antitrust Law, but it is also entrusted with the enforcement of the Supply Law, which grants broad regulation, intervention and inspection powers to the Secretary, including mandating maximum prices and levels of production, among others, in relation to any sector of the economy or industry.

Since the beginning of Covid-19, the Secretary has applied the Supply Law to hand sanitisers, masks and a basket of 'essential goods' (comprising chiefly of food, cleaning products and personal hygiene products). In that regard, it has fixed maximum prices for these products for a certain period and has commanded companies to increase their production to the maximum level.

On a separate front, the government has suspended the application of antidumping duties for certain critical inputs for the health industry (such as medical serums and syringes) to allow their import at a lower cost.

Brazil

On 18 March 2020 the Administrative Council for Economic Defence (Conselho Administrativo de Defesa Econômica or CADE), the Brazilian antitrust authority, launched preparatory proceedings for an administrative inquiry to investigate the medical-pharmaceutical products sector, given the high demand for these products motivated by the increase of Covid-19 cases in Brazil. CADE based its decision on the grounds that it is necessary to ascertain whether companies in the health sector would be increasing prices and profits in an arbitrary and abusive manner, which is punished based on Article 36 of Law No 12,259/2011.

Preparatory proceedings have the purpose of verifying the competence of the Brazilian competition policy system. Thus, it is incumbent on CADE's investigative body, the General Superintendence (GS), to collect elements of the practice and subsequently to decide whether to shelve it or to launch an administrative inquiry or an administrative proceeding (when there is strong evidence of the anti-competitive practice).

The GS has already sent several official letters to healthcare companies (such as hospitals, laboratories, distributors and manufacturers of surgical masks, alcohol gel, and manufacturers of drugs to treat the symptoms of Covid-19), requesting bill of sale of their products and other information. The authority is still waiting to receive all responses.

Belgium

There have not been any public reports suggesting that the Belgian Competition Authority (BCA) has launched any antitrust investigations in relation to Covid-19-related conduct.

Bosnia and Herzegovina

No. As far as we are aware, the Bosnia and Herzegovina Competition Council (BHCC) has not launched any formal investigation against abuses in the context of Covid-19.

Bulgaria

Yes, the Bulgarian Commission for Protection of Competition (CPC) launched one such investigation on 16 April 2020. It refers to suspected prohibited agreements between undertakings and/or abuse of dominance, in violation of Article 15 (cartels) and Article 21 (abuse of dominant position) of the Bulgarian Competition Protection Act (CPA) and/or Article 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

The investigation concerns local entities in the oil and fuel sector (including local subsidiaries of the international market leaders Lukoil, Rompetrol, Eko, OMV, Petrol and Shell). The alleged violations include collusion in relation to pricing of mass automobile fuels throughout the supply chain (production, import, storage, wholesale and retail) in the context of the Covid-19 pandemic. The focus of the CPC will be both vertical and horizontal agreements on separate levels of the supply chain.

The investigation has been launched after significant media attention which led to a signal being filed to the CPC by the Supreme Cassation Prosecutor's Office. The signal is related to the discrepancy between the significant reduction of the price of the raw petrol on a worldwide basis (47.4 per cent according to the Bulgarian Customs Agency) during March 2020 and the inadequate drop of the retail price of fuels in Bulgaria (approximately 11 per cent) in the same period.

No other procedures directly tied to Covid-19 have been initiated.

Canada

The Canadian Competition Bureau (CCB) has not made any public announcements regarding the launch of any formal investigations under the Competition Act (Canada) against abuses in the context of Covid-19. The vast majority of investigations conducted by the CCB are on an informal basis and are largely conducted in a confidential manner. However, on 17 April 2020, the CCB announced that it is actively monitoring the marketplace and has taken action to stop deceptive marketing claims related to Covid-19, including issuing compliance warnings to businesses to stop false or misleading claims that their products and services can prevent the disease or protect against coronavirus. For example, the CCB has issued warnings to a major national retailer as well as regional businesses making claims that air filters or air purifiers filter out coronavirus and that herbal remedies, bee-related products and

vegetables or other foods could prevent Covid-19, with the result that most of these businesses have taken corrective action to remedy the CCB's concerns.

The CCB has also advised that, while charging high prices for goods and services in the pandemic is not contrary to the Competition Act, it will scrutinise evidence of high prices that may be the result of criminal conspiracy or bid-rigging among firms.

Many other authorities in Canada are also responding to abuses in the context of protecting the public in light of Covid-19, including Health Canada, the Canada Revenue Agency and the Canadian Anti-Fraud Centre, which are responding to complaints of misleading claims, frauds and scams associated with the pandemic. In addition, the Ontario and British Columbia provincial governments have introduced measures under the powers granted to them by their respective emergency legislation to respond to price gouging of essential goods and supplies during the pandemic.

With regard to foreign investments in Canadian businesses, the Canadian Minister of Innovation, Science and Industry announced that investments by state-owned enterprises and investments in Canadian businesses relating to public health or involved in the supply of critical goods and services will be subject to enhanced review scrutiny under the Investment Canada Act until the economy recovers from the effects of the Covid-19 pandemic.

Chile

We are not aware of any formal investigation opened against abuses in the context of Covid-19. Please note, however, that the investigations are usually reserved at the start and they are made public at a later stage. The authorities have declared, however, that they will prosecute any anti-competitive behaviour that takes advantage of the crisis.

China

Based on the publicly available information, it is not clear whether the State Administration for Market Regulation (SAMR) or its provincial-level counterparts have formally launched any investigation against abuses or monopoly agreements in the context of Covid-19.

However, pursuant to the Antimonopoly Enforcement Announcement of the SAMR on Supporting the Prevention and Control of Epidemic and Resumption of Work and Production (the 'Announcement') released on 5 April, the antitrust agencies will focus investigations on suspected antitrust conducts (eg, coordinated price increases, production restriction, market division and abuses) that hinder the prevention and containment of the Covid-19 pandemic, in the industries and fields such as masks, drugs, medical devices, disinfection-related products and their raw materials.

Although there are currently no published antitrust penalties imposed in the context of Covid-19, many undertakings have been punished by the administrations for market regulation at different levels for spiking the prices of commodities for the prevention of the Covid-19 pandemic under the price-gouging rules such as the Price Law and the relevant regulations.

Estonia

The Estonian Competition Authority (ECA) has not initiated any proceedings in connection with the spread of Covid-19. In Estonia, abuse of dominant position is punishable by a fine of up to €400,000. The most severe cases of cartels are punishable by a pecuniary punishment of up to 10 per cent of the turnover of the legal person.

European Union

No.

France

On 6 April 2020, the French Competition Authority (FCA) closed an initial investigation into exclusive import practices in the medical equipment sector intended for hospitals in French Guiana and the French West Indies.

Initially, the FCA started an investigation into exclusive import practices likely to be implemented by the Fisher and Paykel Healthcare Group (the 'Group'), active in the supply for hospitals of respiratory systems and products intended for patients suffering from respiratory disorders, in particular for patients suffering from Covid-19. The Group was suspected to import medical products to only one company based in the US, preventing any other alternative from supplying local distributors.

During the investigation, the Group took the initiative to clarify its distribution rules to avoid any risk of supply disruption with sensitive medical product in the French overseas territories concerned. Therefore, the FCA decided to close the investigation.

Based on the information publicly available, we are not aware of any formal investigations against abuses in the context of Covid-19 that the FCA would have launched, but it was confirmed on an informal basis by an FCA official that the FCA is looking with great attention to such potential abuses. The FCA's doors remain fully opened to receive potential complaints (electronically) and handle them as a matter of urgency should it be indeed a need in a significant case.

Germany

No such investigations have been publicly launched. In general, the Federal Cartel Office (Bundeskartellamt) is fully aligned with the message of the European Competition Network (ECN) regarding the conduct of competition cases during the crisis and is willing to take action against undertakings that may try to take advantage of the situation by cartelising or abusing their dominant position by setting excessive prices.

Greece

The Hellenic Competition Commission (HCC or the 'Commission') has launched an investigation into the medical supplies market by sending 3,859 online questionnaires to businesses operating in the market. More specifically, requests for information were sent to a large number of businesses operating in the production, import and trade of

medical supplies and in particular of surgical masks and disposable gloves, as well as of other products such as antiseptic wipes and solutions.

This action was deemed necessary because of numerous consumers' complaints and newspaper articles, significant price increases of the products in question in various retail outlets and the deficiency of those products, which may have been caused by business practices in the distribution chain that may be subject to the provisions of Law No 3959/2011. There is also a need to collect data and develop databases in order to be able to implement measures that may be needed in the future to face the impact of potential problems in effective competition.

Through this initiative, the Commission has decided to investigate whether the requirements for the launch of an investigation and the imposition of sanctions, within the framework of its competences, are met regarding the price increases in the medical supplies market. The undertakings concerned are required to respond within a period of ten days by completing a specific online questionnaire form. In case any infringement occurs, after the launch of the investigation, the sanctions that the Commission is able to impose are described in Article 25 of Law No 3959/2011 (recommendations, cease and desist orders, conduct measures and fines).

The HCC has also launched an inquiry on the e-commerce sector. More specifically, on 11 March 2020 the Commission, taking into account the importance of e-commerce for Greek consumers as a reliable system for distributing products and services, but also the ability of modern technological means to facilitate distortions of competition in the digital environment, launched an inquiry on the e-commerce sector, exercising the relevant competence that it has undertaken under Article 40 of Law 3959/2011. As the HCC has noted, incidentally, the launch of the inquiry coincides with a period in which the pandemic of Covid-19 has significantly increased the dependence of Greeks on the commercial activities of online retailers. In this sense, it is part of the broader action taken by the Commission to protect consumers during this difficult time.

The interim report of the sector inquiry in basic consumer goods has been published. The report takes into account the recent Covid-19 developments and examines their effects with respect to the supermarkets' market segment. The inquiry will be updated in the future also having as a reference the Covid-19 pandemic. A public consultation has been launched in the light of the publication of the interim report.

The HCC has announced that no actions will be taken against practices imposing maximum resale prices or suggested prices in vertical agreements, given that the conditions set forth in the Vertical Block Exemption Regulation (Regulation 330/2010) do apply. However, the HCC will continue to examine serious vertical restraints, such as resale price maintenance or minimum resale price maintenance, imposing the sanctions that the Greek law provides for, especially in the light of the pandemic.

Hungary

We are not aware of any formal antitrust investigations initiated by the Hungarian Competition Authority (Gazdasági Versenyhivatal or GVH) so far specifically related to Covid-19.

However, we note that, based on the GVH's consumer protection powers (eg, in relation to the enforcement of the Hungarian equivalent of the EU's Unfair Commercial Practices Directive), the GVH undertook several active steps to protect consumers, including:

- a consumer protection sweep of various websites offering anti-viral products, hand sanitisers and masks to the general public to check for any misleading statements or advertisements;¹
- an investigation into a TV programme promoting the sale of hand sanitisers to check whether the consumers were provided with false statement and were subject to undue pressure; and²
- the ordering of the suspension of a premium rate SMS service aimed at children by an interim injunction (expressly referring to the fact that due to the closure of schools as a result of the pandemic, children at home are more at risk to falling prey to the misleading practices).³

Ireland

The Irish competition law enforcement agency, the Competition and Consumer Protection Commission (CCPC), has not made public the instigation of formal (or informal) investigations against abuses in the context of Covid-19, nor are we aware (either from news reports or other sources) that the CCPC has done so. The CCPC has established a webpage on Covid-19, available at www.ccpc.ie/consumers/Covid-19.

Israel

On 5 April 2020, the Israel Competition Authority (ICA) published a statement where it emphasised that it would closely monitor the food and drug shop/toiletry sectors during the Covid-19 crisis, given the sensitivity and importance of these industries to consumers during this period, ensuring that there would be no exploitation of the consumers' dependency in order to harm competition or the public. It was also stated that the Director-General would not hesitate to use any enforcement measures against such anti-competitive behaviour, even at this time, but did not initiate any public investigations to our knowledge.

The Ministry of Economy and Industry (MEI) announced that it is enforcing price-gouging of products (mainly basic foods such as milk and eggs) whose prices are

¹ Hungarian Competition Authority, 'The GVH investigated the online sales of anti-coronavirus products' (30 March 2020), www.gvh.hu/en/press_room/press_releases/press-releases-2020/the-gvh-investigated-the-online-sales-of-anti-coronavirus-products accessed on 23 April 2020.

² Hungarian Competition Authority, 'A competition supervision proceeding has been initiated due to the sale of hand sanitisers on the ÉkszerTv programme' (14 April 2020), www.gvh.hu/en/press_room/press_releases/press-releases-2020/a-competition-supervision-proceeding-has-been-initiated-due-to-the-sale-of-hand-sanitisers-on-the-ekszertv-programme accessed on 23 April 2020.

³ Hungarian Competition Authority, 'The GVH has temporarily suspended the Ask Bongo! premium rate service' (1 April 2020), http://www.gvh.hu/en/press_room/press_releases/press-releases-2020/the-gvh-has-temporarily-suspended-the-ask-bongo-premium-rate-service accessed on 23 April 2020.

regulated by law as essential consumption goods. This may result in criminal charges and fines of several tens of thousands of shekels (equivalent to \$10,000 or more).

The Israel Consumer Protection and Fair Trade Authority (CPFTA) published that it initiated enforcement measures and imposed administrative fines in sums of ILS 30,000–108,000 (approximately \$8,333–30,000) on certain businesses that falsely advertised products as having medicinal qualities of treating or preventing the coronavirus infection.

Italy

The Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato or ICA) seems particularly vigilant for any kind of ‘virus-profiteering’ conduct, that is, when companies try to take advantage of the pandemic. This is clearly shown by a number of investigation proceedings for alleged unfair commercial practices in violation of the Italian Consumer Code, launched recently along with interim measure orders (ie, the shutdown of websites or the suspension of promotion/marketing of the product), against online marketplaces and shops active in the sale of products (typically, but not only, face masks, hand sanitisers, medical devices and test kits for home diagnosis) with allegedly untrue claims about their effectiveness against Covid-19 and the sale of the same type of products at excessive/exploitative prices (see cases PS11716–PS11717; PS11722; PS11727; PS11733–PS11735; PS11732; PS11734; PS11736).

Also, proceedings have been opened against a US crowdfunding website that charged donors with a credit or debit card, and it included paying a commission as the default option though it advertised its services as free (see case PS11726). The investigation proceedings in question may lead to the imposition of administrative pecuniary fines of between €5,000 and €5m.

India

No. The Competition Commission of India (CCI) has not yet launched any formal investigations in the context of the Covid-19 pandemic.

Japan

As far as we are aware of from press releases of Japan Fair Trade Commission (JFTC) and information publicly available, the JFTC has not launched any investigation in relation to Covid-19. It has requested that trade associations notify their members that a tying sales of unnecessary products with face masks can be a violation of the antitrust law.

If the JFTC formally initiates an investigation against a case in relation to Covid-19, the investigation may lead to a cease and desist order and a surcharge order. However, given that the JFTC may want to redress a problem quickly in this urgent situation, a more likely outcome would be a caution or a warning without monetary surcharges.

Latvia

The Latvian Competition Council has issued several statements warning undertakings that competition regulations continue to apply during the Covid-19 outbreak and that this situation cannot justify noncompliance with competition laws.

The competition authority did not adopt any specific procedures or guidelines due to Covid-19, meaning that the existing competition law framework, which regulates abuse of dominance and restrictive agreements, applies. The most severe fines are up to 10 per cent of the net turnover in the preceding business year, which can be applied to cartelists, and up to 5 per cent of the net turnover in the preceding year, which can be applied to dominant undertakings that abuse their dominant position.

To this date, no ongoing investigations into Covid-19-related competition law breaches have been announced.

Lithuania

The Lithuanian Competition Council (LCC) has on numerous occasions warned undertakings that the Covid-19 outbreak cannot be used as a cover for businesses to collude on prices for goods and services or to conclude other restrictive agreements.

The Council started looking into allegations that members of the Lithuanian Basketball League might have conspired not to pay their players' salaries due to the fact that the season was cancelled. This is an ongoing matter that started on 14 April 2020, so this case is developing. No other investigations into Covid-19 related practices have been announced.

There are neither new tools nor sanctions available to the LCC due to Covid-19. However, in this case, or other violations, the LCC has the tools established by the existing legislation, the most substantial being a fine of up to 10 per cent of the gross annual income in the preceding business year.

Mexico

The Federal Economic Competition Commission (FECC or the 'Commission') has not launched publicly any formal investigation. However, it issued two fair warnings to some sugar and alcohol companies and the National Chamber of the Sugar and Alcohol Industry (CNIAA). The second one was issued to the National Association of Real Estate Developers (ADI).

In the first fair warning, the FECC pointed out that it had knowledge that the CNIAA and some of its members could be increasing the price of pure alcohol, molasses and some other inputs for the production and this increase could be the result of agreements between competitors.

The ADI received the second fair warning after promoting among its members the granting of discounts to tenants, which may be established or fixed through an agreement between developers with the object or effect of establishing a quota or a maximum discount to be granted.

Montenegro

No. As far as we are aware, the Montenegrin Competition Agency has not launched any formal investigation against abuses in the context of Covid-19.

Netherlands

On 3 April 2020, the Authority for Consumers and Markets (ACM) indicated that it will take no further action in its investigation against Roche Diagnostics for refusing to cooperate with expanding the capacity for testing people for Covid-19. According to the ACM, Roche has a key position in the Netherlands with regard to test equipment and test materials.

After discussions with the ACM, various government agencies and experts about the shortage of lysis buffer and other testing materials, Roche has committed itself to sharing its recipe of lysis buffer with the Dutch government. Under the direction of the government, Roche, together with manufacturers and laboratories, is now working to scale up the production.

The ACM has stated that it has worked closely with the European Commission on this issue.

New Zealand

There are currently no formal Commerce Commission (NZCC) investigations.⁴

The Ministry of Business, Innovations and Employment (MBIE) launched a whistleblower email, pricewatch@mbie.govt.nz, for reporting allegations of price gouging (not specifically prohibited under NZ law).⁵ The MBIE noted some complained conduct may be 'misleading' in breach of the Fair Trading Act (FTA). The NZCC has its own whistleblower email and process.⁶

In addition to any government response to complaints, conduct that may breach the FTA or NZ's antitrust legislation (the Commerce Act or CA) is referred to the NZCC, which can investigate and bring proceedings. The NZCC is prioritising Covid-19 related complaints and liaising with the MBIE.⁷

North Macedonia

No. As far as we are aware, the Macedonian Competition Commission has not launched any formal investigation against abuses in the context of Covid-19.

⁴ There have been media reports of complaints about travel agent cancellation fees. See, eg, Natalie Akoorie, 'Covid 19 coronavirus: Flight Centre cancellation fees anger customers caught in travel chaos', *New Zealand Herald* (22 April 2020), www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12326684 accessed on 1 May 2020.

⁵ Matthews Law, 'Price gouging – illegal, or just morally wrong?' www.matthewslaw.co.nz/price-gouging-illegal-or-just-morally-wrong accessed on 1 May 2020.

⁶ See Commerce Commission, 'Anonymous whistleblower tool', <https://comcom.govt.nz/business/avoiding-anti-competitive-behaviour/what-is-a-cartel/reporting-cartel-conduct/anonymous-whistleblower-tool> accessed on 1 May 2020.

⁷ Price-gouging complaints are referred to PriceWatch and misleading pricing allegations are referred to the NZCC.

Portugal

On 9 April 2020, the Portuguese Economic and Food Safety Authority (ASAE) announced that, since March, it has conducted inspections of 280 premises and has initiated 15 criminal proceedings for alleged crimes of speculation in the sales of essential goods, such as masks and hand sanitisers.

As these proceedings are criminal in nature, the ASAE, which acts in the capacity of criminal police, will have transmitted this information to the Public Prosecutor's Office, the entity that will instruct the cases that may lead to a conviction. According to Law 28/84, this crime may be punished with imprisonment of up to three years or a fine.

To the best of our knowledge, no proceedings have yet been initiated by the Portuguese Competition Authority in this regard.

Romania

No formal investigations have been launched, but the authority confirmed that it monitors the situation of pricing for personal protection equipment and medical supplies. In late February the Competition Council Chairman declared that, although personal protection equipment and medical supply producers were faced with an abnormally high demand, this would not justify price gouging.

The Chairman went on to declare the Competition Council is investigating personal protection equipment and medical supply sellers and that any breaches that are uncovered might lead to a fine of up to 10 per cent of the sanctioned company's turnover. However, at the time of this report, there were no investigations opened; thus, the statement of the Chairman must be read as an effort to foster antitrust compliance and discourage abusive conduct.

Serbia

No. As far as we are aware, the Serbian Competition Commission has not launched any formal investigation against abuses in the context of Covid-19.

Singapore

The Price Controller appointed by the Ministry of Trade and Industry has powers under the Price Control Act to enter premises of any trader, manufacturer or producer and to examine books, accounts or other documents and require parties to furnish information in relation to explain their business. In this regard, the Price Controller has recently exercised its powers to require sellers of surgical masks who have sold these masks at higher than normal prices to explain the basis of their selling prices, including their cost price and profit margins. If these businesses fail to respond to the request for information, they may be fined up to S\$10,000 for a first offence and up to S\$20,000 for second and subsequent offences.

Technically, however, other than the issuance of these letters, the authorities may only take further action (eg, penalties for pricing above fixed prices set by law) under the

Price Control Act if the goods in question have been designated as price regulated goods. At present, only one product – rice – has been so designated.

There have been no investigations reported in relation to any action taken by the Competition and Consumer Commission of Singapore (CCCS) under the abuse of dominance provisions.

Slovakia

We are not aware of any investigations that would be started by the Slovak Antimonopoly Office (AMO) in the context of Covid-19. However, the AMO joined the ECN joint statement on the application of competition law during the coronavirus crisis (the 'ECN joint statement'). In line with the statement, the AMO thus undertook to take immediate action against undertakings taking advantage of the situation by forming cartels or abusing their dominant position.

Slovenia

At the time of writing, there have been no reports on any formal investigation against abuses or other competition law infringements in relation to Covid-19 outbreak launched by Slovenian Competition Protection Agency (CPA).

Please note that on 13 March 2020, the Regulation on the Formation of Prices of Protective and Other Medical Equipment⁸ (the 'Regulation') was adopted. The Regulation became effective on 14 March 2020 and set out the retail prices on the day when the Regulation came into effect as maximum retail prices of protective and other medical equipment (including protective masks, protective eyewear and sanitisers), thus, indirectly, trying to prevent abuse in the form of excessive pricing.

Moreover, on 23 March 2020, the CPA, which is part of the ECN, issued a statement of full support of the ECN joint statement and thus declared that it will not hesitate to take action against companies taking advantage of the situation by cartelising or abusing their dominant position.

Under general Slovenian competition law rules, any legal person who would abuse a dominant position or enter into a cartel or other form of restrictive agreement in contravention of competition law would be exposed to a fine up to 10 per cent of the annual turnover of the undertaking in the preceding business year (Article 73(1) of the ZPOmK-1⁹) Responsible individuals of the infringing companies could also face a fine between €5,000 and €10,000 (Article 73(2) of the ZPOmK-1).

Spain

We are not aware of any formal investigations being announced. However, on March 31, the National Commission for Markets and Competition (Comisión Nacional de los Mercados y la Competencia or CNMC) set up a dedicated mailbox, covid.competencia@cnmc.es, encouraging consumers to report anti-competitive practices and submit enquiries related to the Covid-19 crisis. On April 9, the CNMC

⁸ Official Gazette of the Republic of Slovenia, No 23/70 as amended.

⁹ *Zakon o preprečevanju omejevanja konkurence*; Prevention of Restriction of Competition Act, Official Gazette of the Republic of Slovenia, No 36/08 as amended; 'ZPOmK-1').

further announced that since setting up that mailbox it had received 50 such complaints and had started investigations (for the time being on a confidential basis) in relation to a number of them.

The CNMC particularly highlighted complaints in relation to two issues: (1) allegations that financial entities involved in providing state-guaranteed loans as part of government relief to businesses were obliging applicants to acquire additional products as a condition of access to the relief; and (2) allegations of unfair and anti-competitive prices being applied by funeral service providers. The CNMC also warned that due to the increase in prices and scarcity of hand sanitisers and their raw materials, it would monitor those markets closely.

For infringements of the Law for the Defence of Competition the CNMC can impose fines of up to 10 per cent of turnover on infringing companies and fines on individuals of up to €60,000 per infringement. They can also recommend bans from public contracting and the infringing companies may also be subject to damages claims.

South Korea

The Korea Fair Trade Commission (KFTC), which enforces Korea's fair trade laws, has launched formal investigations regarding market abuses connected to the Covid-19 pandemic. In particular, we understand that the KFTC commenced an investigation of online sellers of masks in February 2020 in response to the shortage of mask supplies. We also understand that the KFTC launched investigations mask filter manufacturers based on allegations of potential collusion in March 2020. These investigations remain pending.

South Africa

Yes – the relevant legislation in South Africa, the Competition Act 89 of 1998, prohibits excessive pricing. The Minister of Trade, Industry and Competition has published regulations specifically in order to deal with price gouging by 'dominant' suppliers during this period. These regulations prohibit dominant suppliers from charging excessive prices for certain specified goods and services (mainly basic food and consumer items; medical and hygiene supplies; and emergency and emergency clean-up products and services). The regulations provide that 'a material price increase' by a dominant supplier of specified critical medical equipment and basic consumer goods, which does not correspond or is not equivalent to an increase in cost, or which increases the net margin or mark-up on the product or service above the average margin or mark-up in the three-month period, will be a 'relevant and critical factor' in determining whether the price is 'excessive' in terms of the Competition Act.

The South African Competition Commission has already commenced investigating a large number of complaints about excessive pricing by dominant suppliers. The Commission is prioritising cases against national retailers and suppliers and particularly those cases where the victims of the price hikes are essential service providers (eg, medical professionals). The Commission has invited market participants to bring matters of pricing abuse to its attention and has established a consumer hotline and a dedicated team of investigators to assess these complaints on an

expedited basis. (See the Commission's press release at www.compcom.co.za/wp-content/uploads/2020/03/CCSA-COVID-19-statement-31-March-2020-Final-1.pdf.)

Regulations have also been passed by the Minister of Trade, Industry and Competition in order to enable the Competition Tribunal, which is responsible for adjudicating excessive pricing complaints, to fast-track adjudication of these complaints, and the Tribunal has issued directions on how it will deal with these complaints. (See the relevant Tribunal regulations and Tribunal direction at www.comptrib.co.za/info-library/case-press-releases/tribunal-directive-for-covid-19-excessive-pricing-complaint-referrals.)

If the Tribunal determines that a dominant supplier has engaged in excessive pricing, it may impose an administrative penalty of up to 10 per cent of the turnover of the firm. The regulations enable the Tribunal to impose a pricing order after an expedited hearing into these complaints, which will remain in place until it is set aside on appeal.

Sweden

No launching of formal investigations has yet been announced. Nor are we aware of any complaints.

Finland

No launching of formal investigations has yet been announced.

Switzerland

At this point, no formal investigations against abuses in the context of Covid-19 are known to the public. In an informal procedure the authority has intervened with an unnamed business association, which was engaged in pricing coordination and a price increase of 20–30 per cent through a notification procedure of the association. Due to its cooperative behaviour and immediate willingness to change its practices, the Competition Commission (the 'ComCo') refrained from taking formal measures against the association.

The Federal Council decided on 25 March 2020 to introduce a licensing requirement for exports of protective equipment. There are exceptions to the licensing requirement for exports to the EU and European Free Trade Association (EFTA) areas. The State Secretariat for Economic Affairs (SECO) is responsible for issuing export licenses.

Turkey

On 23 March 2020, the Turkish Competition Authority has issued a public announcement. In the press release, the Authority emphasised that it has observed various excessive price increases in the food markets, particularly of fresh fruits and vegetables, during the Covid-19 outbreak. The Authority, with the aim of protecting the consumer welfare, said that it will continue to monitor the price increases and the market players that have been contributing to the increases. In this respect, the

Authority has indicated that the maximum administrative monetary fines will be imposed on individuals and undertakings (all the players including manufacturers, intermediaries, carriers and final sales points) that engage in anti-competitive behaviours in the food market, especially fresh fruits and vegetables, as per Law No 4054 on the Protection of Competition.

Additionally, a press release from Birol Küle, the President of the Turkish Competition Board (the 'Board'), regarding the fresh fruits and vegetables prices was published on the Authority's website on 25 March 2020. It indicates that the Authority identified that the public announcement two days before this press release regarding the excessive price increases in the food markets has not been taken seriously by certain parties. In this respect, it is underlined that there are no price increases on the part of farms and greenhouses, no decrease in demand, no increase in the costs for fuel, storage and labour force and thus the players are creating an artificial shortage through immoderate price increases. Once again, the President of the Board warned that the Authority has a zero-tolerance policy against these practices; these practices will be immediately sanctioned; and the fines and the processes will be in line with the severity of the crisis. He also pointed to the Board's discretion on the rate of the fine and these practices could be sanctioned at the upper threshold for the fines (ie, 10 per cent of annual gross revenues of the incumbent undertakings and associations of undertakings or members of such associations). Finally, Küle emphasised that the Authority will continue to show all its efforts to maintain the competitive landscape and thus, the market order.

Accordingly, although at this stage the pandemic is a dynamic agenda and thus, the outcome of the Authority's public announcement and press release remains unknown, it appears that the Authority aims to stop undertakings that exploit the situation by taking advantage of people through excessive pricing. To that end, the Authority will continue to closely monitor the food market and other markets in Turkey in this rapidly evolving pandemic environment in order to ensure consumer welfare would not be adversely affected from any anti-competitive conduct. In this regard, it could be indicated that potential investigations on that front could be expected in the near future.

Ukraine

The Covid-19 outbreak has certainly affected the focus of the Antimonopoly Committee (AMC) of Ukraine and its activities. In particular, several top-priority industries where potential violations of Ukrainian competition law could take place have been put into spotlight by the AMC. The agency is now primarily focused on practices related to increase of prices for essential goods and socially important products/services, as well as behaviour resulting in shortage of such products/services. Since March 2020 the AMC has launched high-impact investigations against:

- suppliers of food products and major retail chains due to significant increase in prices for basic food products in several regions of Ukraine;
- major suppliers and pharmacy chains for sale of face masks at excessively high prices;

- the largest Ukrainian airline company for increase of prices for airline tickets during the days preceding cancellation of flights according to the Cabinet's decision; and
- a local pharmaceutical company for dissemination of information that its medicinal product can be used for treating Covid-19 with no proof of information.

Fines of up to 10 per cent of income from sales of products can be imposed on suppliers of food products and major retail chains, suppliers of face masks and pharmacy chains, as well as on the airline. In case of unfair advertisement of pharmaceutical product fine can reach up to 5 per cent of income from sales of medical product in question.

Russia

Formal investigations

Yes, since the beginning of Covid-19 spread in Russia, the Federal Antimonopoly Service (FAS) has conducted a number of unscheduled inspections related to the violations in the healthcare industry. Based on the results of such inspections, the FAS initiated three cases on the conclusion of cartel agreements in the market for face masks. According to FAS's information, wholesalers and retailers involved in the cartel agreements were maintaining unreasonably high prices set for face masks in three regions of Russia.

Furthermore, during the inspections conducted in the food industry, FAS found the signs of the conclusion of a cartel agreement between buckwheat suppliers in ten Russian regions. It is examining the information and documents received on the results of the inspections.

Russian legislation provides administrative as well as criminal liability for the cartel agreements conclusion. As for administrative liability, the FAS may impose an administrative fine up to 15 per cent of turnover in the relevant market for the entities and administrative fine up to RUB 50,000 or disqualification up to three years for individuals. Criminal liability in Russia does not apply to the legal entities. For the individual's conclusion or participation in the cartel agreement may lead to a fixed fine up to RUB 500,000 or up to seven years in prison.

Price monitoring and warnings

To prevent potential violations and identify shortages of food, medicines and medical supplies, the FAS launched continuous monitoring of retail prices.

For the purpose of monitoring prices for food products, the FAS's regional offices transitioned to an enhanced daily operating schedule, seven days a week. The FAS is paying special attention to the prices for bread and bakery products, grains, meat, eggs, oil, fruits and vegetables.

In addition to the socially sensitive industries, the FAS conducted inspections in the markets, which were also affected by the measures taken against Covid-19. For example, the authority analysed the price dynamic in the market for mobile network services, which faces an enormous workload of mobile networks due to remote

working of most businesses in Russia. According to the FAS, despite network overloading the prices for mobile network services had not increased.

The FAS is also monitoring public statements in the media to fight against panic buying and price increases. For example, on 7 April 2020, it issued a warning on inadmissibility of public statements that may lead to price increases and violation of antimonopoly legislation to the Head of the Non-commercial Union of Food Suppliers, Rusprodsoyuz. He made a statement in the media that prices for several products such as coffee, tea, cocoa, fish and others will increase up to 20 per cent due to turbulence in the currency market and also mentioned that such price increases were 'approved' by the FAS. The authority immediately issued official disproof of this fact and issued the warning to stop public statements that might provoke demand increase and price increase accordingly. Similar warnings were issued to the Vice-President of the Russian Oil Union, who publicly announced price increases in the gasoline market, and to the Head of the Milling and Cereal Production Companies Union.

Expected actions

We expect the FAS to continue monitoring closely the situation in sensitive industries such as healthcare and food products until the end of the pandemic. For example, on 9 April 2020 it released an additional press release on further price monitoring in the food industry.

United States

Yes, the US Federal Trade Commission (FTC) has set up a website, www.ftc.gov/coronavirus, to track its Covid-19-focused advice and enforcement actions, and it has launched several investigations into Covid-19 related activities. The FTC has issued cease and desist letters to a large number of companies that have made unsubstantiated claims that their products can treat or prevent coronavirus. The FTC has the authority to seek a federal court injunction and an order requiring money to be refunded to consumers. It has also sent similar letters to voice over internet protocol (VoIP) service providers warning them not to route and transmit illegal robocalls, including coronavirus-related scam calls.

United Kingdom

Although the Competition and Markets Authority (CMA) has not yet launched any formal investigations against abuses in the context of Covid-19, it has set up a dedicated Covid-19 taskforce which is monitoring market developments to identify harmful pricing practices and is taking steps to ensure no abusive behaviour is allowed to continue.¹⁰ On 24 April 2020, the CMA announced that the taskforce is scrutinising manufacturers and wholesalers for unjustifiable price increases and that it will take enforcement action if competition or consumer laws have been breached.

As of 19 April 2020, the CMA had received approximately 21,000 complaints related to Covid-19. It has written to 187 companies which account for more than

¹⁰ Competition and Markets Authority, 'CMA launches Covid-19 taskforce' (20 March 2020), <http://www.gov.uk/government/news/cma-launches-Covid-19-taskforce> accessed on 24 April 2020.

2,500 complaints regarding large price increases for personal hygiene products, such as hand sanitiser, and food products. The CMA is also looking into complaints against holiday and travel booking companies regarding cancellation and refund policies for consumers, with concerning practices including unnecessary complexity in order to receive refunds, high administration or cancellation fees and pressuring consumers to accept vouchers instead of cash refunds. After a complaint from the Bed and Breakfast Association, the CMA is considering whether certain changes to the terms and conditions of the travel companies Expedia and Booking.com, such as allowing consumers to cancel hotel reservations without a fee, amount to an abuse of dominance over small hotel operators. However, a formal investigation has not yet been opened.

The CMA published an open letter to the pharmaceutical and food and drink industries, stating that it had received reports of companies seeking to capitalise on the situation by charging unjustifiably high prices for essential goods or making misleading claims about the efficacy of certain essential goods, and warning against capitalising on the impact of the pandemic. The letter, which states the CMA has recourse to a range of competition and consumer powers to tackle bad behaviour, also asks that companies inform them of any price increased by wholesalers or suppliers.¹¹ The CMA is also communicating with Amazon and eBay in relation to the actions the platforms are taking against third-party retailers that are selling essential items at excessively high prices.

¹¹ Daniel Gordon, 'An open letter to the pharmaceutical and food and drink industries' (20 March 2020), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874240/COVID_19_Open_letter_to_pharmaceutical_and_food_and_drink_industries2.pdf accessed on 24 April 2020.

2. Please detail, in no more than three paragraphs, measures taken by your antitrust authorities to exempt filings or investigations of cooperation agreements. For example, the UK antitrust authority recently allowed retailers to exchange information on current stock levels and cooperate on logistics. The German Bundeskartellamt is examining cooperation between food retailers.

Albania

As far as we are aware, no such measures have been taken.

Australia

To protect the supply of essential goods, services, medicines and equipment to respond to the Covid-19 pandemic, and facilitate hardship relief, the ACCC has temporarily authorised (ie, granted statutory immunity) coordination between competitors in a number of industries that might otherwise contravene Australia's antitrust laws, including cartel laws.

To date, the ACCC has provided more than 15 urgent interim authorisations in sectors such as:

- Banking and insurance: Authorisations have covered implementation of relief packages for individuals and small business, assistance to smaller lenders to maintain liquidity, premium deferral and coverage changes to include Covid-related treatment and tele-health services.
- Medical suppliers and hospitals: Authorisations have covered supply of medical equipment and essential medicines, cooperation between private hospitals and state agencies, and private health insurance providers.
- Supermarkets and shopping centres: Authorisations have covered coordination between supermarkets to manage supply as well as rent relief measures for shopping centre tenants.
- Other essential services including energy, fuel, telecommunications and aviation.

Australia's authorisation process is a statutory mechanism that allows the ACCC to determine whether the public benefits of the proposed conduct outweigh the competitive detriments, and to impose conditions or limit the scope of permitted conduct and maintain oversight over proposed measures (eg, by requiring notification of proposed conduct and reporting of actions). For example, a special working group of Australia's largest telecommunications service providers has been formed with the ACCC acting as an observer. The ACCC can also review a decision on interim authorisation at any time, including to revoke authorisation when the Covid-19 crisis has passed. All authorisation applications will be subject to the normal process through to a final determination (including public consultation).

Argentina

No such measure has been taken by the Argentinean Antitrust Authority; hence, the general legal framework to analyse cooperation agreements between competitors remains applicable.

Brazil

The draft Bill No 1,179/2020, which provides an emergency and temporary legal regime for private law relations during the Covid-19 pandemic in Brazil, proposes the following amendments to the Antitrust Law:

- until October 31, 2020:
 - the mandatory notification of associative contracts, consortium or joint venture shall be suspended; and
 - CADE shall be prevented from investigating and deciding on cases resulting from the sale of goods and services at below cost prices, and the closing and partial termination of business activities without cause; and
- antitrust violations shall be assessed by CADE considering the extraordinary circumstances resulting from the pandemic.

The Bill was approved by the Brazilian Senate in the beginning of April and it was now submitted to the Chamber of Deputies. If approved, the Bill is then sent to the President for final approval or veto.

Belgium

The BCA has not taken any measures or granted any exemptions explicitly allowing competitors to cooperate or exchange information to deal with the challenges arising from the Covid-19 pandemic. That said, based on our experience, we expect that the BCA would be willing to (informally) discuss Covid-19-related cooperation agreements or arrangements between competitors that may affect competition in any markets in Belgium.

Bosnia and Herzegovina

As far as we are aware, no such measures have been taken.

Bulgaria

No specific measures have been taken. However, in a statement of 25 March 2020 the CPC expressed its readiness to adopt a more lenient approach in relation to temporary and proportional coordinated measures taken by the participants on the market supplying products with major significance for the protection of the public health (eg, masks and sanitisers) and/or essential in the context of the Covid-19 pandemic (eg, essential foods). Certain practices could be tolerated, provided that any measure taken by the local business has the sole objective of avoidance of shortages of such products.

Nevertheless, the CPC explicitly underlined that regardless of the declared state of emergency, market participants shall not prevent, limit to violate the free

competition with their actions and any indication of such practice shall result in investigation by the CPC.

The CPC has issued an invitation to all companies that have any questions or doubts regarding the compliance of their practices with the national and EU competition rules to turn to the CPC for guidance and instructions. Also, in its statement from 25 March 2020 the CPC has provided some practical advice to producers, suggesting that they may exert some control over the resale prices of their products by fixing a maximum resale price in order to avoid excessive resale margins. Such limitations shall be compliant with all legal requirements and shall in no way constitute price fixing.

Canada

There are no mandatory filings of cooperation agreements under the Competition Act and there are no exemptions to the application of the Competition Act with respect to conduct arising from the Covid-19 pandemic, including in particular the conspiracy provisions. Moreover, the Commissioner of Competition does not typically provide opinions as to whether competitor collaborations raise issues under the Competition Act.

On 8 April 2020, the CCB issued the 'Competition Bureau statement on competitor collaborations during the Covid-19 pandemic', which although not legally binding, provides guidance as to the CCB's enforcement priorities regarding business collaborations in light of the Covid-19 pandemic. These guidelines are the result of the recognition by the CCB that the exceptional circumstances surrounding the Covid-19 pandemic may call for the 'rapid establishment of business collaborations' and the CCB does not wish its enforcement of certain elements of the Competition Act to 'potentially chill what may be required to help Canadians' provided the collaboration is structured properly. The CCB noted, as examples, that buying groups and arrangements to share supply chain resources, such as distribution facilities, in response to the pandemic may be permissible competitor collaborations if structured properly.

Unlike other jurisdictions, the CCB has not issued detailed guidance on the types of collaborations that are permissible, but rather advised that it will generally refrain from exercising scrutiny of collaborative arrangements where: (1) the firms are acting in good faith and motivated by a desire to contribute to the crisis response rather than achieve competitive advantage; and (2) the particular competitor collaboration is of limited duration and scope to ensure the supply of products and services that are critical to Canadians.

Chile

There has been no filing exemption, but as a general rule, most cooperation agreements do not need to be filed, unless they are a concentration transaction (merger control regime). Nevertheless, the Chilean antitrust agency (FNE) issued a public statement regarding cooperation among competitors during the crisis. The FNE affirmed that cooperation agreements can be legal in some cases, unlike cartels. In the assessment of the lawfulness of such agreements, the FNE will assess the efficiencies,

competitive risks and measures taken to keep contact among competitors to a minimum.

China

According to the Announcement, the cooperation agreements between/among undertakings concerning the pandemic prevention and containment can be exempted in accordance with laws.

Specifically, in order to encourage undertakings to proactively participate in pandemic prevention and containment, the SAMR will grant exemptions to agreements concluded between/among undertakings for the pandemic prevention and containment that would be conducive to improving technologies and efficiencies, and protecting public interests (eg, consumer interests) in accordance with the Anti-Monopoly Law of China (AML), including behaviour for the following purposes: (1) improving technology and R&D of new products in the fields of drugs and vaccines, testing technologies, medical instruments and devices, and protective equipment; (2) upgrading the quality of pandemic prevention and control materials, reducing costs and improving efficiencies by unifying product specifications/standards, or implementing production specialisation; (3) serving social and public interests such as disaster relief; and (4) improving the operation efficiency and enhancing the competitiveness of small and medium-sized undertakings.

Estonia

The ECA has not adopted any official exemptions. However, it has clarified on its webpage that during the spread of Covid-19, its aim is not to prevent cooperation between competing undertakings that aims to overcome supply difficulties or other problems caused by the crisis. This is in line with the joint position taken by ECN.

The ECA has stated on its webpage that it is recommended that the cooperating undertakings notify it of plans to cooperate, so that it can give its assessment to such cooperation and work out appropriate solutions.

European Union

On 24 March 2020, the European Commission, together with the EFTA Surveillance Authority and the national authorities of the Member States, issued the ECN joint statement acknowledging that the extraordinary situation brought about by Covid-19 may trigger the need for companies to cooperate 'in order to ensure the supply and fair distribution of scarce products to all consumers'. The statement confirmed that the ECN would not actively intervene against 'necessary and temporary measures put in place in order to avoid a shortage of supply'.¹²

On 8 April 2020, the European Commission issued a Communication providing high-level antitrust guidance on the types of collaboration between companies that

¹² European Competition Network, 'Antitrust: Joint statement by the European Competition Network (ECN) on application of competition law during the Corona crisis', https://ec.europa.eu/competition/ecn/202003_joint-statement_ecn_corona-crisis.pdf accessed on 21 April 2020.

are likely to be accepted in the crisis. The Communication focuses on collaboration that is necessary ‘to ensure the supply and adequate distribution of essential scarce products and services during the Covid-19 outbreak’. This includes, in the healthcare sector, potential reallocation of stocks involving exchange of information between companies on sales and stocks, as well as ‘potentially coordinating the reorganisation of production with a view to increasing and optimising output so that not all firms focus on one or a few medicines, and other medicines remain in underproduction, where such re-organisation would allow producers to satisfy demand for urgently needed medicines across Member States’. The Communication envisages a range of activities that may be coordinated by trade associations such as coordination of joint transport for input materials, sharing aggregate supply gap information and inviting companies to indicate if they can fill the supply gap (while protecting individual confidential information and not sharing it with competitors).¹³

France

As the time of writing, the FCA had not taken specific measures to exempt filings or investigations of cooperation agreements (note that under French law, only mergers meeting French merger thresholds have to be notified; cooperation agreements have to be self-evaluated). However, the FCA relayed the message published on 23 March 2020 by the European Commission and the ECN, which brings together all the national competition authorities of the EU. In this message, the ECN stated that it understood that this extraordinary situation could ‘trigger the need for companies to cooperate in order to ensure the supply and fair distribution of scarce products to all consumers’. Therefore, the ECN stated that it will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply. Finally, the ECN pointed out that the existing rules allow manufacturers to set maximum prices for its products, which could prove useful to limit unjustified price increase at the distribution level.

Germany

No such exemptions have been issued – but it should be noted that undertakings do not have to file restrictive agreements that they believe merit an exemption from the general prohibition of restrictive agreements to the authority (the same system of self-assessment applies in Germany as under Regulation 1/2003 at EU level). Undertakings that wish to obtain the authority’s assessment need to engage with the authority in the traditional way. The President of the authority, Andreas Mundt, has indicated that the authority remains open to discuss cooperation agreements that merit an exemption and that various parties have shown an interest in such discussions.

The authority has pointed out that competition law allows manufacturers to set maximum prices for the sale of their products at retail level and this approach remains

¹³ European Commission, ‘Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak’ (8 April 2020), https://ec.europa.eu/info/sites/info/files/framework_communication_antitrust_issues_related_to_cooperation_between_competitors_in_covid-19.pdf accessed on 21 April 2020.

in place during times of crisis (in effect encouraging manufacturers to curb excessive prices at retail level).

Greece

In this respect, the HCC has noted that cooperation agreements that aim to secure the uninterrupted supply of products in deficiency, to all consumers in Greek territory, are not expected to lead to restriction of competition. Even if it is deemed that these agreements restrict competition temporarily, the Commission will take into account: (1) the degree of achievement of uninterrupted distribution of the necessary supplies; (2) their temporary nature; and (3) whether these are proportionate and absolutely necessary to achieve the aforementioned objectives. Apart from the aforementioned statement, no further measures to facilitate cooperation agreements have been taken.

Hungary

We are not aware of any measures by the GVH to exempt filings of any cooperation agreements among market participants or to investigation such agreements. It is to be noted at the same time, that the GVH is part of the ECN and is therefore one of the parties of the ECN joint statement on the application of competition law during the coronavirus crisis (the statement does envisage the possibility of such measures). The GVH duly published the ECN joint statement as well as the European Commission's subsequent Temporary Framework for assessing antitrust issues related to business cooperation (the 'Temporary Framework') on its website to inform Hungarian businesses of these developments.

Ireland

The CCPC has not made public any measures to exempt filing or investigations of cooperation agreements. On 25 March 2020, the CCPC published the ECN joint statement on its website.

According to the statement, the ECN understands that this extraordinary situation may trigger the need 'for companies to cooperate in order to ensure the supply and fair distribution of scarce products to all consumers'. Further, the same statement says that: 'In the current circumstances, the ECN will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply.'

Unlike in the UK and Germany, no cases of competitor collaborations related to the Covid-19 crisis have actually been reviewed and approved by the CCPC.

Israel

On 17 March 2020, the ICA published a statement whereby it clarified that under the current unique circumstances, collaborations among competitors (such as joint ventures) that are meant to ensure the continuity of their ongoing proper operations

affected by the Covid-19 crisis, may generally benefit from the Block Exemption for Joint Ventures, subject to fully meeting its conditions.

The ICA further clarified that during such an emergency situation; there would be more cases that justify such collaborations. In addition, it was noted that collaborations, even if are conducted between competitors, which are necessary to enable businesses to cope with the hardship stems from dealing with the Covid-19 crisis, would not be regarded as collaborations designed to reduce or to prevent competition, subject to their compliance with all other conditions of the Block Exemption for Joint Ventures.

In practice, however, we did not see public decisions granting such an exemption. The only published matters involved cases where the ICA warned parties that their collaborative measures might breach the law (retailers who tried to collaborate on negotiations on rent and management fees payments and the banks union's involvement in negotiations with the Israeli government on aid funds to businesses during the Covid-19 crisis).

Italy

The ICA thus far has not taken action to exempt filings or investigations of cooperation agreements. However, as a member of both the ECN and of the International Competition Network (ICN), the ICA generally follows the path set out in the ECN joint statement and the statement of the ICN Steering Group addressing key considerations related to competition law enforcement during and after the Covid-19 pandemic of 9 April 2020.

The ICA going forward may thus well recognise that the Covid-19 pandemic may trigger the need for competitors to cooperate temporarily in order to ensure the supply and distribution of scarce products and services that protect the health and safety of all consumers. Most importantly, it can be assumed that the ICA will follow the substantive provisions set out by the European Commission in the Temporary Framework. In the absence of any precedents and specific endorsement/statement by the ICA, for the time being, we can only assume that the ICA will adhere to the Temporary Framework as far as its substantive provisions are concerned based on Article 1(4) of the Law No 287 pursuant to which ICA is required to apply the substantive competition law in force at the EU level. On the contrary, in principle, the Temporary Framework should not have any effect on the ICA with regard to the set-up of a digital service aimed at providing companies with informal guidance on the legality of the cooperation.

However, considering that any crisis-related counter measures by companies might bear a significant legal risk and should therefore always be carefully reviewed by competition lawyers, the ICA might be willing to liaise with companies and their external legal advisers to provide informal guidance even in the absence of any procedural framework such as the one described in the EC Temporary Framework.

India

The power to exempt any class of enterprises from the applicability of the Indian Competition Act 2002 vests with the Indian government. The government has not yet

adopted any measures to exempt investigations of cooperation agreements in the context of the Covid-19 pandemic.

However, the existing cartel enforcement framework in India permits 'efficiency-enhancing' joint ventures (JVs) among competitors that demonstrably increase trade and distribution-related efficiencies. If no specific exemptions are introduced, arrangements among competitors that facilitate efficient supply of essential goods and services in the context of the Covid-19 pandemic may be self-assessed by the parties involved under this framework.

Japan

The JFTC has not announced any such measure. However, JFTC has published a special webpage for updating contents regarding Covid-19, where the JFTC refers to Q&As the JFTC had prepared regarding enforcement in emergency caused by natural disasters (the Q&As are available only in Japanese). The Q&As include case studies on how antitrust law applies to a potential cooperation among competitors in an emergency.

Latvia

The competition authority has not adopted any specific measures to exempt filings or cooperation agreements amid Covid-19 outbreak. However, the authority has shared the ECN joint statement stating that the authority will not actively intervene against temporary measures put in place to avoid product supply shortages.

The parties of such cooperation must self-assess compliance of such cooperation agreements with competition regulations and, when in doubt, are welcome to consult with the authority. The competition authority has been working remotely for more than a month and is fully operational to consult on any Covid-19 related cooperation matters.

Lithuania

The LCC maintains that it will look favourable into pro-consumer initiatives implemented by undertakings, even if they are competitors. This is in line with the ECN joint statement.

During the pandemic, the LCC will not take any measures against actions between competitors whose cooperation seeks to avoid shortages of essential products ultimately serving the interests of the final consumers.

In order to ensure sufficient stocks of the most important products and their delivery to the population throughout the territory of Lithuania, wholesale and retail trade companies and suppliers, for example, will be able to inform each other about the available shortage or surplus, if necessary, traders can negotiate store hours, in certain cases can even share distribution warehouses and transport for delivery of goods.

Mexico

The FECC has issued a statement establishing its positions given the present context. Collaboration agreements between economic agents will not be prosecuted as long as they do not have the objective of displacing competitors and are necessary for maintaining or raising supply, satisfying the demand, protect the supply chain and avoid shortage or hoarding of goods.

The analysis of the concentrations will be expedited to create synergies and contribute to the increase of production capacities for satisfying the demands derived from the crisis.

Montenegro

As far as we are aware, no such measures have been taken.

Netherlands

So far, no specific measures have been taken by the ACM. However, the ACM has endorsed the ECN joint statement. The ACM has also published a similar statement on its own website and has since helped draft a European statement in order to make sure that the same approach is taken in each Member State.

Furthermore, the ACM's Chairman, Martijn Snoep, has stated in a Dutch newspaper that special times call for special solutions. The ACM will take account of these special times in relation to, for instance: (1) the exchange of stock information by supermarkets; (2) logistical cooperation on food supply; (3) the exchange of sales information by pharmaceutical wholesalers; and (4) sectors that agree to have a more lenient approach towards debtors.

New Zealand

The NZCC can grant clearance or authorisation for cartel provisions, but this requires a formal public process, triggered by specific applications for specific conduct. There are no block exemptions or general authorisation powers.

On 1 May 2020, the NZCC announced formal 'guidance on how it is assessing business collaborations that are being entered into in response to Covid-19'.¹⁴ *Business collaboration under Covid-19* (the 'Guide')¹⁵ reinforces the NZCC's pragmatic stance to legitimate Covid-19-related collaboration and provides significant practical guidance for business (including risks). But the law remains unchanged, as do the risks around unnecessary collaboration.

This follows NZCC guidelines on consumer rights and business obligations on disruptions to travel, trading and events as a result of Covid-19, warnings against

¹⁴ Commerce Commission, 'COVID-19: Commission issues guidance on business collaboration' (1 May 2020), <https://mailchi.mp/comcom.govt.nz/commerce-commission-media-release-commission-issues-guidance-on-business-collaborations?e=6bff8633a6> accessed on 1 May 2020.

¹⁵ Commerce Commission, *Business collaboration under Covid-19* (May 2020) https://comcom.govt.nz/_data/assets/pdf_file/0019/215812/Business-collaboration-under-Covid-19-guidelines-May-2020.pdf accessed on 1 May 2020.

misleading and deceptive conduct and false representations under the FTA,¹⁶ and guidelines under finance legislation.¹⁷

The NZCC has reinforced that it has no intention of taking enforcement action against legitimate collaboration to ensure the provision of essential goods and services, including sharing staff or distributing networks with competitors or taking other measures to ensure security of supply for consumers.¹⁸ Essential goods and services include healthcare services and supermarkets.

On 22 March 2020, the Commerce and Consumer Affairs Minister announced that he had requested the NZCC to be 'more flexible than it might be in normal times around allowing businesses to work together, share resources, or take other cooperative measures to ensure New Zealanders have access to the products and services they need as we respond to Covid-19'.¹⁹ This request was pursuant to section 26 of the CA, which provides that the NZCC 'shall have regard to the economic policies of the Government as transmitted in writing from time to time to the Commission by the Minister'. Such requests are not binding on the NZCC (an independent entity).

North Macedonia

As far as we are aware, no such measures have been taken.

Portugal

The ECN, of which the Portuguese Competition Authority is a member, has informed that it will not intervene (through each national authority) against necessary and temporary cooperation arrangements entered into between companies concerning the supply and distribution of scarce products so as to avoid a shortage of supply.

According to the ECN joint statement, it is unlikely that such arrangements would amount to a restriction of competition. On the other hand, they are likely to generate efficiencies that would offset any such restriction. However, according to the joint statement, the competition authorities are available to address possible doubts about the lawfulness of initiatives of this kind.

No other information in this regard was specifically conveyed by the Portuguese Competition Authority, as far as we are aware.

¹⁶ Commerce Commission, 'Consumer rights FAQs', <https://comcom.govt.nz/about-us/Covid-19/consumer-rights-faqs> accessed on 1 May 2020; Commerce Commission, 'COVID-19: Commission issues guidance on consumer rights and business obligations' (15 April 2020) <https://comcom.govt.nz/news-and-media/media-releases/2020/Covid-19-commission-issues-guidance-on-consumer-rights-and-business-obligations> accessed on 1 May 2020; Commerce Commission, 'COVID-19: Disrupted travel, events and trade', https://comcom.govt.nz/_data/assets/pdf_file/0019/214750/Covid-19-Disrupted-travel-events-and-trade-guidance-15-April-2020.pdf accessed on 1 May 2020.

¹⁷ Commerce Commission, 'Guidance for lenders and borrowers' <https://comcom.govt.nz/about-us/Covid-19/borrower-and-lender-faqs> accessed on 1 May 2020.

¹⁸ Commerce Commission, 'COVID-19 – Commerce Commission approach to essential goods and services business cooperation' (22 March 2020), <https://comcom.govt.nz/news-and-media/media-releases/2020/Covid-19-commerce-commission-approach-to-essential-goods-and-services-business-cooperation> accessed on 1 May 2020.

¹⁹ Hon Kris Faafoi, 'Government statement on commercial cooperation during COVID-19', Beehive.govt.nz (22 March 2020), www.beehive.govt.nz/release/government-statement-commercial-cooperation-during-Covid-19 accessed on 1 May 2020.

Romania

The Romanian Competition Council has specified its stance on cooperation between undertakings in the context of the Covid-19 pandemic by issuing two press releases in March. The authority mentioned that undertakings may take certain measures for preventing the spread of Covid-19, as long as such measures do not lead to hardcore infringements of competition law. As an example of what is allowed, e-commerce platforms may impose price caps in order to limit excessive prices for basic products or services, or even delist products if there are suspicions of abusive prices. Producers were encouraged to make use of the possibility to vertically set up maximum resale prices in order to discourage excessive margins. Further, undertakings may coordinate their product freight in order to avoid a shortage of supply. However, the authority warned that the pandemic context and related market disruptions cannot be used for engaging in unjustified price raises, exchanges of commercially sensitive information or abuses of dominant position. The press release partially mimics the ECN joint statement, but also reflects concerns raised by undertakings seeking guidance from the authority, such in the case of the e-commerce platforms. According to the Competition Council Chairman, the authority may address soon concerns raised by the tourism industry.

A second announcement was made in April, specifically in relation to pharmaceutical companies. The Council mentioned that it will align itself to the European Commission's policy for temporary relaxation of competition rules in relation to pharmaceutical companies. In short, the Council stated that coordination between pharmaceutical companies might be needed in order to ensure a steady supply of products and that, although normally in breach of competition law, such coordination may be needed for the good of the consumers. Therefore, such coordination may be permitted, under the condition that it required for protecting the general interest of consumers. Undertakings are warned that the Council will closely monitor the state of the market during this period and are advised to contact the Council if they are unsure about the legality of the measures which they intend to implement.

Serbia

As far as we are aware, no such measures have been taken.

Singapore

As at 14 April 2020, the CCCS has not taken any measures to exempt filings or investigations of cooperation agreements.

Slovakia

Based on the information of the AMO published at its official website, we are not aware the AMO would adopt any exemptions from general rules due to the Covid-19 situation. On its official website, the AMO in this connection remarked the competition

rules are flexible enough to take into account social and economic consequences of the Covid-19 crisis.

Slovenia

In accordance with the ECN joint statement, the CPA declared on 23 March 2020 that it will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply. Furthermore, it also pointed out that such measures are unlikely to be problematic, since they would either not amount to a restriction of competition under Article 101 of the TFEU or Article 6 of the ZPOmK-1, which prohibits restrictive agreement on the territory of the Republic of Slovenia, or will generate efficiencies that would most likely outweigh the restrictions. However, the CPA failed to publish any more specific guidelines on this even though the CPA invited the companies that need additional guidance to reach out to it for help.

As of the today, there have been no reports or announcements regarding any investigations regarding cooperation agreements linked to the corona virus outbreak.

Spain

Again, no formal decisions to exempt filings or investigations have been taken.

The CNMC published on its website the ECN joint statement, in which it declares that it will not actively intervene against necessary and temporary measures put in place in order to avoid shortages of supply.

In addition, the CNMC also confirmed that it had been contacted by companies with doubts as to the enforcement of the competition rules via the hotline set up in March and that it had given guidance where necessary. The CNMC has stated that it is providing answers rapidly, reminding operators of the limits imposed by competition rules on cooperation agreements, and that any temporary measures intended to deal with this exceptional situation must be abolished as soon as normality is restored in the sector.

South Korea

To date, the KFTC has not taken any measures to exempt filings or investigations of cooperation agreements, or otherwise issued any guideline amending its investigation or merger review process.

Indeed, the KFTC's investigation activities, including dawn raids, have picked up again in recent weeks. Further, the KFTC's M&A division, which is responsible for the review of merger filings, operates as usual, despite adopting a rotating work-from-home policy for the case handlers within the division. Notably, the M&A division continues to accept merger filing applications, issue requests for information during the course of the review process, and, if necessary, conduct in-person meetings. We also understand that there are no plans by the M&A division to ask companies to delay new merger filings as is the case in other jurisdictions.

This is all to say that we do not see a significant disruption or delay of the KFTC investigation or merger review due to the Covid-19.

South Africa

As at 14 April 2020, no mergers or categories of mergers have been exempted from filing in South Africa. The monetary thresholds for intermediate and large mergers remain unchanged.

The Minister has passed regulations which exempt certain agreements or categories of agreements by competitors in the banking, healthcare, retail and hotel industries. (See, eg,

www.gov.za/sites/default/files/gcis_document/202003/43127rg11058gon355.pdf.)

These exemptions permit competitors in these sectors to coordinate their activities in response to Covid-19, as long as this is at the request of and in coordination with the Minister or another Minister. However, any agreements on pricing are only permitted if specifically authorised by a Minister. These exemptions will only endure for as long as the Covid-19 pandemic is declared a national disaster.

The Act also permits the Commission to exempt certain agreements or categories of agreements on various specified grounds, some of which may have application during the period of the Covid-19 pandemic, or following on from it. The Commission is required to publish notice of any such application for exemption, and to provide the public with an opportunity to comment. At the time of writing, no such notices have yet been published by the Commission.

Sweden

The actions of the Swedish Competition Authority (SCA) have been limited to three press releases, one on 20 March 2020 which did not say much more than that competition law applies as per usual. Then, on 23 March 2020, it issued a statement which essentially replicated the ECN joint statement.

On 9 April 2020, the SCA followed up with a slightly more detailed statement, but primarily reiterating the points of the ECN message.

Finland

The Finnish Competition and Consumer Authority (FCCA) issued a statement on 23 March 2020, noting that the FCCA will take into account the exceptional circumstances caused by the coronavirus when applying the Competition Act. The FCCA noted in particular that ‘companies may need to work together to ensure adequate supply or the equal distribution of products to all consumers’ and that the ‘FCCA will not intervene in measures that are necessary to ensure the sufficient availability of products’. Companies considering such necessary measures are encouraged to contact the FCCA. On the other hand, the FCCA has made it clear that it will be adamant in enforcing of the cartel rules and abuse of dominance restrictions, despite the circumstances. The FCCA has also underlined that it will comply with the policy outlined by the ECN.

On 9 April 2020, the FCCA followed up with a more detailed statement, covering in particular cooperation in the supply of medical products and protective gear. The FCCA underlined that it will not, in principle, stand in the way of such cooperation under the antitrust rules. Moreover, the FCCA noted that exceptional circumstances may warrant the rules on direct procurements under the Public Procurement Act to be relaxed as well as the rules on competition neutrality.

Switzerland

The competition authorities have not taken any measures to expedite exempt filings or investigations during the Covid-19 pandemic so far. In a press release dated 26 March 2020, the ComCo informed the public that it monitors compliance with cartel law also during Covid-19. The authority remains active and seeks to prevent antitrust violations.

At the same time, the ComCo noted that special times require special measures and stressed its willingness to address antitrust issues with associations, companies and other authorities on an informal level before taking formal measures. Patrik Ducrey, Director of the Secretariat of the ComCo, explained in the media that coordination could be justified to ensure the effective and fair distribution of critical goods. However, the fact that price coordination or an increase in the price of a product takes place at the same time would no longer be permissible under cartel law.

Turkey

The Authority has not taken any measures on that front so far.

Ukraine

No special exemptions have yet been stipulated either for concerted practices filings or investigations in general, or cooperation agreements in particular. The AMC continues monitoring the conduct of undertakings and issues approvals, including for cooperation between undertakings, under regular conditions.

Russia

According to the publicly available information, the FAS did not receive such filings and is not investigating such agreements. Herewith, in the context of Covid-19 the antimonopoly authority allowed retailers to sell part of their products without trade mark-ups. According to a FAS press release, the food retailer X5 Retail Group and the household appliances retailer M.Video asked the authority to clarify whether it is possible for retailers to use such practices under the Russian antimonopoly law. The FAS supported this 'socially responsible' approach of retailers and sent them the respective official clarifications.

United States

On 24 March 2020, the Department of Justice (DOJ) and FTC released a joint statement providing guidance on how to remain compliant with the antitrust laws while collaborating with other entities in response to the Covid-19 national emergency (the 'agencies' joint statement'). This announcement follows an executive order signed by President Trump on 18 March 2020 invoking the Defense Production Act (DPA), which,

if utilised, also has implications for how the antitrust laws will be applied to cooperation related to Covid-19 emergency responses.

The agencies' joint statement announces an expedited review process for FTC advisory opinions and the Division's business Review letters. The FTC and DOJ will accept requests for staff advisory opinions and business review letters, respectively, to be provided to parties on an expedited basis if the requests are related to proposed business conduct 'address[ing] the urgent public health and economic needs associated with Covid-19'. The agencies will attempt to respond to these expedited requests within seven calendar days of receiving the necessary information. Requests for expedited FTC staff advisory opinions and DOJ business review letters should include:

- how the proposed business conduct is related to Covid-19, including a description of the nature and rationale of the proposal (eg, the names of the participants, the products or services related to the proposal, and the geographic scope of the arrangement);
- any proposed contractual or other arrangements among the parties, including any documentation of the contracts or other arrangements; and
- the names of expected customers and information regarding the competitive significance of other providers of the products or services offered.

In recognition of the need for individuals and businesses to immediately address the Covid-19 pandemic, the agencies' joint statement refers to past guidance documents outlining various types of collaborative activities that the agencies are likely to find to be compliant with the antitrust laws. These include:

- collaborations on research and development classified as 'efficiency-enhancing integration of economic activity';
- healthcare providers' development of suggested practice parameters, including standards for patient management developed to assist providers in clinical decision-making, that is deemed to provide useful information to patients, providers, and purchasers;
- joint purchasing arrangements among healthcare providers designed to increase the efficiency of procurement and reduce transaction costs;
- private lobbying for governmental action with respect to the passage and enforcement of laws related to federal emergency authority, including private industry meetings with the federal government to discuss strategies responding to Covid-19; and
- sharing technical know-how rather than company-specific data about prices, wages, outputs or costs may be deemed 'necessary to achieve the procompetitive benefits of certain collaborations'.

The agencies' joint statement also notes that the agencies will consider exigent circumstances when evaluating cooperative efforts to address Covid-19 and its aftermath. These efforts may include healthcare facilities working together to provide personal protective equipment, medical supplies or healthcare to affected communities, as well as businesses temporarily combining production, distribution, or service networks to facilitate production and distribute supplies to address the Covid-19 outbreak.

United Kingdom

In the guidance note titled 'CMA approach to business cooperation in response to Covid-19' dated 25 March 2020, (the 'Guidance Note'), the CMA stated it is allowing coordination between competing businesses, but only when that coordination is solely to address concerns arising from the crisis and does not go further or last longer than is necessary.²⁰ The CMA states that companies may need to cooperate to ensure the fair supply and fair distribution of scarce products and/or other services affected by the crisis, and that it will not take any enforcement action against companies that are temporarily coordinating their actions, providing that they:

- are appropriate and necessary in order to avoid a shortage, or ensure security, of supply;
- are clearly in the public interest;
- contribute to the benefit or wellbeing of consumers;
- deal with critical issues that arise as a result of the Covid-19 pandemic; and
- last no longer than is necessary to deal with these critical issues.

Certain industries have received additional specific measures, such as the Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020 which excludes certain agreements between suppliers of specified groceries from the application of the prohibition contained in Chapter 1 of the Competition Act 1998.²¹

²⁰ Competition and Markets Authority, 'CMA approach to business cooperation in response to COVID-19' (25 March 2020), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875468/Covid-19_guidance_-_pdf accessed on 24 April 2020.

²¹ See www.legislation.gov.uk/ukxi/2020/369/made accessed on 24 April 2020.

3. Please detail, in no more than three paragraphs, measures taken by your antitrust agency to expedite process filings submitted in the context of Covid-19 pandemic. For example, has it set special proceedings to approve cooperation agreements necessary for the fight against the virus?

Albania

As far as we are aware, no such measures have been taken.

Australia

The ACCC has expedited its review of authorisation applications in response to the Covid-19 crisis. The ACCC is treating the review of such applications as an important priority and has:

- in some cases, assisted business groups to shape their applications; and
- reviewed and granted interim authorisations within a period of one to two days.

Argentina

Any such measure has been taken by the Argentinean Antitrust Authority.

Brazil

The only measure taken in Brazil with regards to expedite process filings is the draft Bill No 1179/2020. However, it still must be approved by the Chamber of Deputies and then submitted to the President for final approval or veto (the Senate has already approved).

The Bill proposes the suspension of the obligation to notify associative contract, consortium or joint venture until 31 October 2020. The suspension does not preclude the possibility of further analysis by CADE.

Other concentration acts must still be notified and will be processed under the usual procedures and deadlines.

Belgium

The BCA has not set any special proceedings to enable companies to seek approval of cooperation agreements necessary for the fight against the Covid-19 virus.

Bosnia and Herzegovina

The BHCC has adopted guidelines aimed at ensuring and regulating operability of the Council during the Covid-19 pandemic (eg, minimum number of officials working on the premises, protective measures taken to enable the work on the premises and regulation of distance working for the officials working from home). The authority has

also instructed the public to file their submissions via post or email, even though submissions by hand are possible.

Other than that, as far as we are aware, no additional measures to expedite process of filings submitted in the context of Covid-19 pandemic have been taken.

Bulgaria

No such measures have been taken at this stage. Cooperation agreements are by rule not subject to preliminary approval by the CPC. As aforementioned, the CPC has expressed readiness to provide guidance and instructions to companies in relation to any questions that may arise as to the compliance with planned practices with the competition rules. In addition, the CPC's focus on ensuring the availability of products with major significance in the Covid-19 crisis could result in more swift action of the CPC; however, such cases have still not occurred.

Canada

With respect to enforcement activities, the CCB has acknowledged that delays may arise due to challenges arising from the Covid-19 pandemic, including staffing issues and the need for face-to-face interviews or market contacts, and the need to prioritise urgent marketplace issues requiring immediate action to protect Canadians (see the Commissioner's letter to the Canadian Bar Association). We expect such urgent marketplace issues to be linked to the CCB's statements regarding the focus of its enforcement activities on misleading or false claims regarding Covid-19 and high prices of goods and services during the pandemic resulting from criminal conspiracy and bid-rigging (see letters, notices and statements issued by the CCB on 18 March, 20 March, 8 April and 17 April 2020).

With respect to the review of competitor collaborations, the CCB has established a new team to assess proposed collaborations and advise the Commissioner on what informal guidance the Commissioner might provide on the legality of the collaboration under the Competition Act. While the 'aim of this team will be to facilitate rapid decisions to enable business to support the crisis response efforts', the CCB has not made any commitments regarding the timeframe in which the team will respond to requests for reviews of collaborations.

With respect to the review of mergers, the CCB has not taken any measures to exempt parties from their obligations to make pre-merger notification filings or to expedite the review process of notifiable transactions, and the statutory waiting periods applicable to notifiable mergers remain unchanged. Moreover, the Commissioner of Competition has advised that the CCB's ability to meet its internal service standards by which it endeavours to complete merger reviews and its ability to narrow issues in complex transactions within the initial 30 days of a merger review may not be met, given the difficulty in contacting market participants as a result of the Covid-19 pandemic.

Chile

The Competition Court (TDLC) issued guidelines (AA 21/2020) regarding voluntary filings during the pandemic or some other catastrophic situations, mostly aimed at cooperation agreements that seek to secure the supply chain of indispensable goods or services such as food, medicine or healthcare. These transactions will not be suspended while the decision is pending. This is a departure for the usual suspensory effects of these filings. Concerning merger control, no special measures have been announced, but the FNE asked to avoid filing transactions that are not urgent or essential.

China

The Announcement has not set up any special proceedings to approve cooperation agreements necessary for the fight against the virus.

Nonetheless, the SAMR has set up in the Announcement a fast-track review channel for merger control filing, under which the review of merger control filings involving the pandemic prevention and containment will be expedited in accordance with laws, which will include quick acceptance and review process. It is unclear whether this fast-track review channel will also be analogized to the application for the review of exemption filings for cooperative agreements.

Estonia

The ECA has stated on its webpage that it plans to overview any cooperation plans to overcome difficulties in an expedited manner. It has closed its physical office for people and provides all its services remotely via phone and email.

European Union

The Communication of 8 April 2020 confirms that the European Commission is ready to quickly provide informal guidance to companies and trade associations with regard to specific proposed cooperation initiatives with an EU dimension and in exceptional cases, can provide informal approvals (through comfort letters). The Commission's Directorate General for Competition has set up a dedicated webpage, <https://ec.europa.eu/competition/antitrust/coronavirus.html>, and a dedicated mailbox, COMP-Covid-ANTITRUST@ec.europa.eu, that can be used to seek informal guidance on specific initiatives.

The Commission has already provided comfort letters to some companies, including 'Medicines for Europe' regarding a voluntary cooperation project among pharmaceutical producers – both members and non-members of the association – that targets the risk of shortage of critical hospital medicines for the treatment of coronavirus patients. The comfort letter was reportedly granted within two days of the request being made.

France

The FCA did not take any measure to expedite process filings submitted in the context of Covid-19, nor did it specifically communicate on this topic. On the contrary, most

of the statutory deadlines are suspended during the pandemic (see questions 5 and 6 below). As indicated, we also recall that under French law only mergers meeting French merger thresholds have to be notified; cooperation agreements have to be self-evaluated.

Germany

The Bundeskartellamt has not found it necessary to put into place special processes to deal with cases that arise in the context of the current crisis. The President, Andreas Mundt, has stated publicly that a larger number of discussions has taken place with undertakings that seek exemptions from the general prohibition of anti-competitive agreements as they cooperate during the crisis, suggesting that a time-limited cooperation aimed at ensuring the effective distribution of scarce goods during the crisis could merit an exemption and that it will not intervene against such temporary measures. The authority is fairly flexible in addressing potential violations or requests to clarify its position in relation to behaviour that the parties claim to be justified under competition rules. Thus, it is to be expected that the authority deals with urgent cases in a flexible and timely manner.

At the same time, the authority has made it very clear that competition rules remain in force even in times of crisis and that undertakings should not be using the crisis as a pretext to enter into anti-competitive agreements. The authority will critically review any structural crisis cartels and takes a particularly dim view on price-related agreements.

Greece

The HCC has adopted no such measures so far. However, the authority has noted, in a published series of Q&As, that undertakings that wish to enter information exchange, supply or distribution agreements with existing or potential competitors are requested to communicate with the Commission.

Hungary

We are not aware of any Hungary-specific steps taken by the GVH to expedite process filings. We note that under Hungarian law (similarly to EU law), it is not possible to request an individual exemption/examination of cooperation agreements, but rather, they should be self-assessed by the parties.

Nevertheless, the GVH (as an ECN member, and party to the ECN joint statement) would be likely to be willing to provide informal guidance to companies and it is also expected that these would receive a degree of priority.

Ireland

The CCPC has not adopted any measures to expedite process filings submitted in the context of the Covid-19 pandemic.

In a press release issued on 18 March 2020, the CCPC announced a temporary merger notification process whereby if parties cannot delay making a merger filing,

they should submit the filing electronically via email. However, this is generally applicable to all notifiable mergers, not just deals directly related to the Covid-19 pandemic.

Israel

On 17 March 2020, the ICA published that in light of the Covid-19 crisis, it would allow parties to a merger (whether they have already filed merger notifications with the ICA or intend to do so) to approach to the Director-General of the ICA in order to discuss and find solutions for difficulties that may arise during the interim period as a result of the unusual circumstances, until a decision is granted by the Director-General.

Italy

See previous answer.

India

The Indian antitrust regime does not provide a framework to pre-notify an agreement to the CCI for its review under the Competition Act's behavioural provisions. That is, enterprises are expected to self-assess compliance with the law on anti-competitive agreements and abuse of dominance and the CCI's role on the behavioural front is purely ex post.

The CCI (or the government) has not adopted any substantive measures or relaxations to the Indian merger review process in the context of the Covid-19 pandemic. For details on regulatory continuity with respect to merger filings not related to the Covid-19 pandemic, please refer to our response to Question 6.

Japan

As far as we are aware of from press releases of JFTC and information publicly available, the JFTC has not taken any such measures.

Latvia

The competition authority has not adopted any specific measures related to Covid-19 pandemic, meaning that the existing competition regulation applies.

Latvian competition rules provide that parties to an agreement may voluntarily choose to submit cooperation agreements for clearance of the Competition Council, but this clearance is not mandatory. The standard timeframes for clearing cooperation agreements are one month from the date of filing, which can be prolonged by up to four months, and those timeframes have not been shortened.

The head of the competition authority in its podcast reminded that cooperation agreements are subject to self-assessment by the parties and urged to consult with the authority in case of any doubts. The competition authority has been working remotely for more than a month and is fully operational to consult on any Covid-19 related cooperation matters.

Lithuania

The LCC has established a separate mailbox and hotline for all matters related to Covid-19, including cooperation agreements. It is fully prepared to provide all of its services and advice remotely and promptly.

Mexico

There are no special proceedings, but there is the compromise of the FECC to review any operation faster (such as filed concentrations or collaborations among competitors).

Montenegro

The Montenegrin Competition Agency has suspended work with parties and has instructed the public to file their submissions via post or email.

Other than that, as far as we are aware, no additional measures to expedite process of filings submitted in the context of Covid-19 pandemic have been taken.

Netherlands

No special proceedings to approve Covid-19 cooperation initiatives are formally in place. However, the ACM has stated it will answer any questions about collaborations that companies wish to launch to combat the crisis. According to the ACM, several companies and trade organisations have already contacted it for informal guidance. The ACM has also stated that it will not actively intervene in cooperation initiatives that find the right balance between the interests of the different parties involved, while keeping the public interest in mind.

New Zealand

The NZCC has not established special proceedings to expedite merger filings or other matters, but it will prioritise merger clearance applications for businesses in financial jeopardy.²²

North Macedonia

The Macedonian Competition Commission has instructed the public to file their submissions via post or email, even though submissions by hand are possible.

Other than that, as far as we are aware, no additional measures to expedite process of filings submitted in the context of Covid-19 pandemic have been taken.

Portugal

²² Commerce Commission, 'COVID-19: The Commerce Commission's response' <https://comcom.govt.nz/about-us/Covid-19/the-commissions-response-message-to-stakeholders> accessed on 1 May 2020.

Apart from the ECN joint statement, no other information in this regard was specifically transmitted by the Portuguese Competition Authority, as far as we are aware.

Romania

Although the Council has stated that rules are temporarily relaxed for pharmaceutical companies that cooperate in order to ensure a steady supply of pharmaceutical products, as well as in relation to measures taken by all companies in order to limit the spread of Covid-19, no special procedural rules have been enacted in order to allow the Council to fast-track requests related to Covid-19 prevention.

Serbia

The Serbian Competition Commission has instructed the public to file their submissions via post or email, even though submissions by hand are possible (especially filings exceeding 100Mb need to be submitted either by hand or by post).

Other than that, as far as we are aware, no additional measures to expedite process of filings submitted in the context of Covid-19 pandemic have been taken.

Singapore

Not applicable.

Slovakia

Based on the information of the AMO published at its official website, we are not aware the AMO would adopt any such measures. This does not exclude the AMO would give priority to certain filings in order to clear them as soon as possible.

Slovenia

In principle, under ZPOmK-1, there is no requirement to notify cooperation agreements that do not constitute concentrations and companies must make self-assessment with respect to the compliance of their cooperation agreements with competition law. This has remained unchanged during the Covid-19 epidemic.

The CPA nonetheless declared on 23 March 2020, in line with the ECN joint statement, that the companies that are in doubt as to the compatibility of any cooperation agreements necessary for the fight against the virus with competition law may consult the CPA for informal guidance. The CPA now, based on its statement of 21 March 2020, also allows filings to be submitted electronically without special electronic authentication signature.

Spain

We are not aware of any concrete measures taken to expedite filings or investigations.

The CNMC has taken steps to ensure that urgent procedures can continue despite the shutdown – announcing the five merger cases had been cleared, among other things – but no special proceedings have been announced.

South Korea

While the KFTC's M&A division continues to maintain business as usual, we are not aware of the M&A division officially taking steps to fast-track or expedite its standard merger review for filings submitted in the context of the Covid-19 pandemic. However, as the merger filing process is in principle a confidential process (ie, the fact that a filing has been submitted and unconditionally approved is not normally published or made available on a public register) and filings for transactions affected by the Covid-19 pandemic may yet to come in coming weeks and months, it requires continuous monitoring.

South Africa

None yet. South Africa is in lockdown. The Commission has issued a press release which indicates that during the lockdown period, only essential merger notifications (for example, involving companies in financial distress) should be filed.

Sweden

See the answer to question 2.

Finland

See the answer to question 2.

Switzerland

The ComCo has so far not taken any measures to expedite process filings during the Covid-19 pandemic.

Turkey

The Authority has not taken any measures on that front so far.

Ukraine

No special proceedings were established to approve cooperation agreements required to stand against Covid-19. At the same time, our experience shows that the current circumstances and social needs urge the AMC to act and take decisions faster than usually. We understand that certain regulations setting out special procedures for filings and investigations in socially important or top-priority areas are now in the pipeline, especially given that the AMC's practices is receptive to those of the

European Commission and European national competitions authorities; however, it is rather hard to forecast when such procedures are to be brought into life.

Russia

According to the publicly available information as well as information received from FAS officials, the authority has not taken such measures as of the date of this letter.

United States

See answers to questions 2 and 3.

United Kingdom

The CMA has not introduced formal measures to expedite process filings submitted in the context of Covid-19, but states in the Guidance Note that it will not take any enforcement action against a company that coordinates behaviour with competing companies where that coordination is solely to address concerns arising from the Covid-19 crisis.

4. Have your authorities published guidelines warning against using the Covid-19 pandemic as an excuse for anti-competitive behaviour? This was the case in Romania and Brazil, for example.

Albania

As far as we are aware, no such guidelines have been published.

Australia

The ACCC has not, at this time, published formal guidelines addressing Covid-19 and anti-competitive conduct. However, the ACCC Chair, Rod Sims, has delivered a series of speeches addressing the work that is being undertaken by the ACCC during the Covid-19 crisis.

As noted, the ACCC operates as Australia's antitrust and national consumer law regulator. In relation to its consumer law functions, the ACCC has formed a dedicated Covid-19 taskforce to address emerging consumer law issues. The taskforce has developed consumer law guidance for both businesses and consumers that deals with the impact of the pandemic (including price gouging).

Argentina

The Argentinean Antitrust Authority has not issued any guidelines warning against using Covid-19 as an excuse for anti-competitive behaviour.

Brazil

CADE has not issued any guidelines warning against using Covid-19 as an excuse for anti-competitive behaviour. However, there is the Bill previously mentioned (No 1,179) which proposes to suspend, until 31 October 2020, the application of two conducts provided in Article 36 of the Antitrust Law. If approved, CADE shall be prevented from investigating and deciding on cases resulting from: (1) the sale of goods and services at below cost prices; and (2) the closing and partial termination of business activities without cause.

It should also be noted that on 24 March 2020, another draft Bill (No 881/2020) was presented in the Senate proposing to freeze prices of drugs during the state of public calamity. CADE has already presented studies pointing out competition concerns, indicating that it might trigger a reduction in the volume of products offered by smaller companies, as well as lead to market concentration. It is uncertain whether this draft Bill will be approved.

Belgium

The BCA has not issued any specific guidelines warning the business community in Belgium against using the Covid-19 pandemic as an excuse for anti-competitive behaviour.

Bosnia and Herzegovina

As far as we are aware, no such guidelines have been published.

Bulgaria

The CPC has issued an official statement which provides some general guidelines and statements in this regard. For more details, see answer to question 2.

Canada

The CCB has published letters, notices and statements relating to its enforcement activities during the Covid-19 pandemic on 18 March, 20 March, 8 April and 17 April 2020, all of which confirm that the CCB will continue to enforce the provisions of the Competition Act during the pandemic, with a focus on urgent marketplace issues. In particular, the CCB has stated that it 'remains vigilant against potentially harmful anti-competitive conduct by those who may seek to take advantage of consumers and businesses during these extraordinary circumstances' arising from the Covid-19 pandemic, including by engaging in deceptive marketing practices regarding a product's ability to prevent, treat or cure the virus, and any collusions by competing businesses.

The 'Competition Bureau statement on competitor collaborations during the Covid-19 pandemic', which although not legally binding, provides guidance as to the CCB's enforcement priorities regarding business collaborations in light of the pandemic. The CCB has cautioned that firms engaged in the supply of products that are important to the response to the pandemic should be especially vigilant to ensure compliance with the Competition Act and, in particular, the CCB's guidelines, as the CCB may pay particular attention to markets affected by the crisis. The CCB affirms in the Covid-19 guidelines that the CCB has 'zero tolerance for any attempts to abuse this flexibility or the guidance [...] as cover for unnecessary conduct that would violate the Competition Act'. See the answer to question 2 for information regarding these guidelines.

Chile

No guidelines have been given for this, though the authority has reaffirmed its disposition to prosecute anyone that engages in anti-competitive behaviour taking advantage of the emergency.

China

As of today, the SAMR has not published any detailed guidelines warning against using the Covid-19 pandemic as an excuse for anti-competitive behaviour, except for the aforementioned Announcement.

The SAMR has explicitly mentioned in the Announcement that the antitrust agencies will focus their investigations on antitrust behaviours (such as coordinated price increases, production reduction, market division and abuses) that hinder the

pandemic prevention and containment. According to the Announcement, only those cooperation agreements concerning the pandemic prevention and control that fall within the scope of statutory exemption conditions provided in the AML may be exempted.

Estonia

There have not been any new guidelines warning against using the Covid-19 pandemic as an excuse for anti-competitive behaviour. Nevertheless, there is an official statement on the Authority's website where the authority states that protecting free competition is still at least as important today as it is under normal circumstances.

European Union

The Communication of 8 April, while mainly focused on providing guidance on the types of collaboration likely to be accepted to ensure supply and distribution of essential scarce products, also warns companies against attempts to use the crisis to breach antitrust rules. The Commission is focused on anti-competitive coordination between competitors as well as unilateral anti-competitive conduct by dominant companies including by charging excessive prices or refusing to scale up production to face shortage of supply. The Commission is encouraging reports by companies and individuals of suspected cartels and other antitrust violations, including abuses of dominant positions. Also, the ECN joint statement warns against anti-competitive practices and prompted by concerns over excessive pricing, the authorities remind companies that existing rules allow manufacturers to set maximum prices for their product.

France

The FCA did not publish such guidelines. As explained in question 2, the FCA only relayed the ECN's message of 23 March where it is stated that national authorities will not hesitate to take action against 'companies taking advantage of the current situation by cartelising or abusing their dominant position'.

Germany

No, the President of the Bundeskartellamt, Mundt, has taken the position that issues will be addressed on a case by case basis.

Greece

The HCC has issued a series of Q&As regarding the Covid-19 pandemic in order to inform businesses and the public about its initiatives. It has also put together a task force against anti-competitive practices due to Covid-19. Through these initiatives, the Commission has stressed that undertakings, even though times of social and economic unrest such as this, must continue to pursue autonomous trade conduct with means that do not distort effective competition, and in any case act independently of each

other. The HCC will not tolerate companies that take advantage of the health crisis in order to conceal collusion between competitors to raise prices or limit production.

Hungary

The GVH have not published any Covid-19-related guidelines (apart from the ECN joint statement and the European Commission's Temporary Framework).

Ireland

No. The CCPC has not published any guidelines or warnings on exploiting Covid-19 as an excuse for anti-competitive behaviour.

As noted in the answer to question 2, the ECN joint statement published on the CCPC website provides that ECN authorities (including the CCPC) will take action against companies that take advantage of the Covid-19 crisis to form cartels or abuse dominant positions.

Israel

On 5 April 2020, the ICA published a statement where it emphasized that it would closely and particularly monitor the food and drug shop/ toiletry sectors during the crisis, given the sensitivity and importance of these industries to consumers during this particular period, ensuring that there would be no exploitation of the consumers' dependency in order to harm competition or the public. It was also stated that the Director-General would not hesitate to use any enforcement measures against such anti-competitive behaviour, even at this time, but no guidelines were published in this respect.

Italy

In a statement issued on 8 April 2020, the ICA has warned the Italian Parliament about the possible anti-competitive effects arising from the legislative measures adopted in response to the Covid-19 pandemic. In particular the ICA has warned the Italian Parliament to carefully assess the actual proportionality, rationality, necessity and temporary nature of each and every measures taken in the context of the parliamentary procedure of conversion into law of Decree Law No18 of 17 March 2020 'Cura Italia' (the 'Decree'). Particular attention has been drawn on the following:

- A proposed parliamentary amendment to Article 82 of the Decree (concerning a number of initiatives aimed at upgrading the Italian telecommunications infrastructure, to ensure the functioning of networks, the viability and continuity of services and the improvement of network capacity and service quality) which would suspend the mobile numbers' portability endowed with the consumers' freedom of switching from one telecoms operator to the other. The ICA's concerns with regard to such potential measure, arguably aimed at fostering market stability by temporarily shielding telecom operators from normal competitive dynamics, are related to its apparent lack of proportionality and rationality at a time when allowing consumers to migrate towards more

convenient tariffs may be an important factor to alleviate the burdens related to the upcoming severe economic crisis.

- Promotion of infrastructural competition functional to improve the offer of fixed line telecommunication services. To this end, the ICA has encouraged the adoption of measures able to speed up the realisation of the fibre optic national network, reduce the administrative burdens related to such activity and increase sharing and information of the existing infrastructures.
- The suspension of public tender procedures and the automatic prorogation of public concessions provided for as a result of the application of Article 103 of the Decree which, read in conjunction with Article 37 of the Law Decree No 23 of 8 April 2020, stays, until 15 May 2020, any and all deadlines relating to each and every national administrative proceedings pending or commenced after 23 February 2020 (on this see also the answer to question 5). The ICA's concerns, in particular, are addressed to the tender procedures in the local public transportation sector which were to be launched immediately before the Covid-19 outbreak. The ICA points out that any measures aimed at freezing the regular competitive selection dynamics should in fact be strictly temporary and directly functional to overcome the emergency, in order not to unduly prevent new and more efficient operators from entering the market.

India

No. The CCI has not yet issued any such guidelines or warnings.

Japan

The JFTC has not published guidelines particularly regarding Covid-19. However, the JFTC has made a couple of press releases as below:

- on February 27 2020, the JFTC requested that trade associations inform their members that they should not conduct tying sales of hygiene mask (see the answer to question 1); and
- on March 10 2020, the JFTC requested that businesses hiring freelancers or self-employed persons to pay appropriate attention to those workers under this difficult situation.

Latvia

The Competition Council has published a statement on its website and on its social media platforms warning the undertakings that competition rules continue to be effective and that Covid-19 does not justify competition law violations. The authority has also shared the ECN joint statement and warned that it will act against undertakings that take advantage of the situation by cartelising or abusing their dominant position.

The authority did not adopt any new guidelines on the matter.

Lithuania

There have been no new guidelines, just official statement on the LCC's website reminding the companies that, despite the current situation, competition rules still apply. The LCC has stated that it will look especially diligently into all matters concerning possible anti-competitive conduct and that the Covid-19 pandemic shall not be used as a means to hide anti-competitive arrangements. All this was done only in the form of public statements on its website and LinkedIn account and no new guidelines have been issued on this matter.

Mexico

The FECC published in the same statement that any increase or setting of prices must be made individually by each company as an independent decision and action; these cannot be induced, promoted or recommended by business associations, confederations or chambers.

Those markets in which indiscriminate prices hikes will be observed and reviewed to evaluate, and rule out, that these are being caused by possible agreements between competitors, in which case an investigation would have to be initiated.

Montenegro

As far as we are aware, no such guidelines have been published.

Netherlands

The ACM has warned companies by press release that they cannot take advantage of uncertainty and scarcity during the Covid-19 crisis to circumvent application of the competition rules. As a result, it is (still) prohibited for: (1) dominant companies to raise prices excessively or to exclude competitors; and (2) companies to conclude any price-fixing agreements.

New Zealand

Yes, most recently the aforementioned Guide and accompanying media release. An earlier media release also warned businesses against using the pandemic to take advantage of others in breach of any laws the NZCC enforces.²³ The NZCC Chair said, 'the Commission will not tolerate unscrupulous businesses using Covid-19 as an excuse for non-essential collusion or anti-competitive behaviour. This includes sharing information on pricing or strategy where it isn't necessary in the current situation'.²⁴

North Macedonia

As far as we are aware, no such guidelines have been published.

However, different public authorities generally announced that they are carefully monitoring the pricing policies on the market in North Macedonia. The

²³ See n 33 above.

²⁴ See n 28 above.

government adopted a couple of decrees setting ceiling prices for certain products (eg, bread, milk and other dairy products) and the highest allowed profit margin for tropical fruits.

Portugal

On 16 March 2020, the Portuguese Competition Authority ensured that it will be alert to anti-competitive practices that exploit the situation, such as price-fixing and market-sharing. Besides, the Authority has stated that it will be in contact with other sector regulators with a view to detecting competitive problems.

Additionally, the ECN's joint statement warned that its member authorities would act against companies taking advantage of the situation by behaving anti-competitively (either cartelising or abusing their dominant position).

Romania

Yes, the Competition Council has published several press releases which include examples of what anti-competitive behaviour will still be considered as breaching competition law, even in the context of the Covid-19 pandemic. The warnings were summaries in scope and boilerplate in nature.

Serbia

As far as we are aware, no such guidelines have been published.

However, different public authorities generally announced that they are carefully monitoring the pricing policies on the market in Serbia. The government adopted a decree setting ceiling prices for certain fast-moving consumer goods (eg, bread, water, salt, milk, detergents and soaps).

Singapore

The CCCS has not published guidelines in this regard.

Slovakia

The AMO has not published any such guidelines. However, as we have noted, the AMO joined the ECN joint statement. In connection, the AMO publicised on its official website that it is necessary for medical accessories and protective material that are currently needed to remain available at competitive prices.

Slovenia

No, no such guidelines have been published. However, the CPA statement with respect to the ECN joint statement stresses the utmost importance of ensuring that products considered essential for consumer health in the current situation remain available at competitive prices and that the ECN and CPA will not hesitate to take action against

companies taking advantage of the situation by cartelising or abusing their dominant position.

Spain

The CNMC has not published guidelines but has published statements that it will consider enforcement of abuses of the crisis as a priority. In addition, it also set up the aforementioned hotline, covid.competencia@cnmc.es.

South Korea

To date, while the KFTC has launched investigations on companies for conduct connected to the Covid-19 pandemic that is alleged to violate the Fair Trade Law, the KFTC has not published any warnings or guidelines for parties attempting to use the pandemic as an excuse for anti-competitive behaviour.

South Africa

While the Commission has issued press statements warning market participants to ensure that their conduct remains compliant with the Act, no specific guidelines have yet been issued.

Sweden

Yes, in line with the ECN joint statement.

Finland

The FCCA has made it clear that: ‘Even during the state of emergency, the FCCA will resolutely intervene in cartels between companies, which aim to raise prices to the detriment of consumers. The same will apply to abuse of a dominant position, which a company uses to exclude competitors from the market or to charge manifestly unfair prices.’

Switzerland

The ComCo has published a media release on 26 March 2020, confirming the applicability of anti-trust law during the pandemic (see the answer to question 2).

Turkey

The Authority has not published guidelines warning against using the Covid-19 pandemic as an excuse for anti-competitive behaviour. However, in addition to the public announcement and press release indicating that the Authority will scrutinise potential abuses of the current crisis in the detriment of competition and consumers, Turkey adopted a new law on April 17, 2020 to introduce more measures to fight the social and economic disruption of the Covid-19 outbreak. Within the scope of Law No

7244 on Amendment of Certain Laws, one of the most significant amendments is introduced to the Law on Regulation of Retail Trade (LRRT). This new law prohibits producers, suppliers and retailers from: (1) excessively increasing prices; and (2) engaging in any activity that will restrict consumers' access to products and distort competition, in particular through 'stocking' products.

Furthermore, an Unfair Price Assessment Board (UPAB) will be established to enforce these new prohibitions and impose administrative monetary fines in case of violations, which are also set by the new law. With the current amendment, the UPAB will be able to impose administrative monetary fines to producers, suppliers and retailers varying from:

- TL 10,000 (approximately US\$1,436) to TL 100,000 (approximately US\$14,369) if they excessively increase prices of products or services; and
- TL 50,000 (approximately US\$7,184) to TL 500,000 (approximately US\$71,846) if they prevent consumers from accessing products by restricting supply or distorting the market balance and free competition.

The new law, however, does not indicate that a representative from the Authority (as one of the government agencies) will be represented in the UPAB. Therefore, it is not certain yet what happens when a conduct of producers, suppliers or retailers infringe both the LRRT's new clause and Law No 4054, which law will prevail and whether the Board or the newly established UPAB will be authorised to impose monetary fines. However, it should be noted that this amendment is rather new and is anticipated to be elaborated further through a new regulation which is yet to be published.

Ukraine

No unified general guidelines warning against reliance on pandemic as an excuse for anti-competitive behaviour were published to date. The AMC issued several public notices urging business community to avoid speculations on pandemic (by way, eg, of overpricing, creating shortages of products and unfair competition).

The AMC's territorial offices have already issued the following binding recommendations to:

- manufacturers of medical products, personal hygiene products, sanitisers and disinfectants to avoid any unjustified price increases or other abuses related thereto, as well as to refrain from promotion of their products as such that can treat or prevent Covid-19 in absence of clinical trial confirmation;
- major retail and pharmacy chains to refrain from unjustified increase of prices for long-time storage food products and medical products;
- mobile operators to avoid increases prices and tariff during restrictive measures related to the spread of Covid-19 in Ukraine and to refrain from termination of social tariff plans or forced allocation of subscribers to more expensive tariff plans and decline of quality services; and
- A major local agricultural and food-processing company to prevent increasing volume of sales of chicken meat to foreign markets at cost of restriction of sales in national market. According to the AMC, this behaviour can result in shortage of supply and increase of prices on chicken meat in absence of significant competition in the market.

Russia

The FAS has not published such guidelines. Herewith, on 18 March 2020 it released the clarifications regarding the process of public procurements in the context of Covid-19. These clarifications were sent to the FAS regional office heads. The similar clarifications were made by Ministry of Finance together with the FAS and Ministry of Emergency Situations on April 3, 2020.

According to the clarifications, Covid-19 constitutes force majeure and for this reason procurement processes aimed on preventing, controlling and remediating the spread of coronavirus can be conducted with a single supplier, provided there is a causal relationship between the purpose and subject matter of the relevant procurement process.

It should be noted that legislation on public procurements provides the rules according to which in case of force majeure it is possible to conduct the procurement process with a single supplier. The Russian authorities just clarified that such rule should be also applied in the context of Covid-19 to avoid possible doubts.

United States

The aforementioned agencies' joint statement affirms their commitment to holding accountable individuals and businesses found to be taking advantage of the Covid-19 emergency to engage in anti-competitive activity. The FTC and DOJ will continue to investigate and pursue civil violations of the antitrust laws related to fraudulent and deceptive activity involving Covid-19 (including agreements to restrain competition through increased prices, lower wages, decreased output or reduced quality, or using market power to engage in exclusionary conduct). The DOJ will prosecute any criminal violations of the antitrust laws, specifically with respect to conspiracies to fix prices or wages, rig bids or allocate markets.

On 13 April 2020, the agencies issued another joint statement specifically addressing the issue of coordination in the labour market in response to the crisis. The agencies reaffirmed the importance of competition for American workers and announced that they will 'protect competition for workers on the frontlines of the Coronavirus Disease 2019 (Covid-19) response in the United States by enforcing the antitrust laws against those who seek to exploit the pandemic to engage in anti-competitive conduct in labor markets'. They acknowledged that some cooperation between government, business and individual actors may be necessary in order to protect the health and safety of Americans. Nevertheless, the agencies reminded the business community that they are 'on alert for employers, staffing companies, and recruiters who might engage in collusion or other anti-competitive conduct that harms workers. Examples of such conduct include agreements to suppress or eliminate competition with respect to compensation, benefits, hours worked, and other terms of employment, as well as the hiring, soliciting, recruiting, or retention of workers.'

United Kingdom

In the Guidance Note, the CMA stated that it will not tolerate companies exploiting the crises in order to engage in non-essential collusion and provides a list of examples of

behaviour that would not be exempt from enforcement action, such as exchanging commercially sensitive information where it is not necessary, abusing a dominant position to raise prices significantly above normal competitive levels and excluding smaller rivals from efforts to cooperate in order to achieve security of supply, among other practices.

The dedicated Covid-19 taskforce is monitoring the market to identify harmful pricing practices, and a new online service has been launched on the CMA website which allows businesses and consumers to report unfair practices related to Covid-19.

5. The antitrust authorities are continuing to monitor market developments and are investigating restrictive agreements or practices. Have your authority suspended deadlines for presentation of defences or meetings in non-Covid cases?

Albania

The Competition Authority has not suspended deadlines.

Australia

While the ACCC's compliance and enforcement priorities remain in place, it has refocused its attention on to the priorities that are most relevant in the context of the evolving Covid-19 crisis.

In relation to its enforcement activities, the ACCC has indicated that it will be seeking to minimise regulatory burden, particularly with respect to business under pressure from the Covid-19 crisis. This may include adjusting the scope and timing of compulsory notices requiring the production of information and documents, and minimising the use of examinations of individuals.

In relation to ongoing enforcement action, Australian courts have implemented measures to manage hearings during the crisis. For example, the Federal Court of Australia has modified its practices to minimise in-person attendance, including virtual hearings using Microsoft Teams.

Argentina

As of 14 April 2020, legal terms for all ongoing proceedings – conducts and mergers alike – have been suspended between 16 March and 26 April 2020. The CNDC's offices are closed except for 'urgent presentations'.

Since the regulation solely refers to 'ongoing proceedings' and allows 'urgent presentations', it would be reasonable to contend that new proceedings, such as the notification of mergers and submission of new claims, are exempted from the suspension and can thus be submitted for the analysis of the Argentinean Antitrust Authority.

Brazil

Only certain procedural deadlines for defendants in formal investigations are suspended; most deadlines continue to run.

The Provisional Measure No 928 provided exceptional measures to fight Covid-19, such as the suspension of procedural deadlines imposed on defendants in administrative proceedings for as long as the state of calamity remains. With the enactment of the Provisional Measure, CADE issued an information note clarifying that deadlines imposed on defendants in: (1) proceedings with formal charges that can result in fines (cartel and unilateral conduct investigations); (2) proceedings to

investigate failure to comply with merger control rules (APAC); and (3) proceedings that can result in fines for breach of incidental procedural rules, will be suspended.

On the other hand, there will be no changes to the deadlines in the following proceedings: (1) merger control cases; (2) preparatory proceedings; (3) administrative inquiries; (4) leniency agreements negotiations; (5) settlement agreements (TCC) and merger control agreements (ACC) negotiations; and (6) consultations.

Finally, the meetings scheduled with CADE have not been suspended. They are taking place through videoconference.

Belgium

Neither the Belgian government nor the BCA have not taken any generally applicable measures suspending procedural deadlines applicable to BCA investigations. In practice, companies involved in an ongoing BCA investigation may be able to obtain longer than usual extensions to applicable deadlines if they can reasonably show to the BCA that they cannot meet deadlines due to the Covid-19 situation.

Bosnia and Herzegovina

The BHCC has not suspended deadlines as of yet.

Nevertheless, the Council of Ministers is preparing the regulation according to which the statutory deadlines in the administrative proceedings could be postponed and/or suspended during the pandemic. The regulation was expected to become effective in April.

Bulgaria

The deadlines for presentation of defences and meetings in all cases were temporarily suspended in the period between 13 March and 10 April 2020. The initial suspension and postponement of all proceedings before the CPC was announced after the promulgation of the Act on Measures and Actions during the State of Emergency, announced on 13 March 2020 by the National Assembly. According to the Act, nearly all court proceedings were postponed and statutory terms were extended until after the end of the state of emergency.

The proceedings were renewed with an order to the CPC's Chairman dated 10 April 2020. The CPC has adopted some measures to limit any health risks in this context, for example, electronic submissions, limitations on visitors allowed in the CPC's premises at once and obligatory wearing of masks.

Canada

The CCB remains open and has advised that it will continue to conduct its enforcement activities, subject to possible delays that may arise due to challenges arising in response to the Covid-19 pandemic and the need to prioritise urgent marketplace issues requiring immediate action to protect Canadians (see Commissioner's letter to the Canadian Bar Association).

The Competition Tribunal has issued notices advising that it remains open, but has suspended all in-person hearings and deadlines until 15 May 2020 (subject to further extension) and has suspended all deadlines unless the matter is urgent or the parties agree to advancing the matter. The Tribunal has advised that it will continue to hear urgent matters by telephone or videoconference and will also hear other matters if all parties consent to it and agree to have the matter heard by telephone or videoconference. The Tribunal will determine what constitutes an 'urgent' matter on a case-by-case basis. Parties can also continue filing their documents electronically while the Tribunal is closed to the public and parties can continue to file new applications with the Tribunal.

There are two ongoing matters before the Competition Tribunal, being: (1) an application by the Commissioner challenging a merger (CT- 2019-005 *Commissioner of Competition v Parrish and Heimbecker Limited*), with the most recent Tribunal decision of 15 April 2020 revising the schedule order in light of the pandemic; and (2) an application by the Commissioner for a temporary order against Nuvocare Health Sciences Inc and its President and Chief Executive Officer to stop them from making weight loss and fat-burning claims in the marketing of certain natural health products, with the most recent Tribunal decision of 21 April 2020 denying a request for an adjournment by the respondent in light of the pandemic and instead scheduling that the respondent provide material by 23 April 2020, in part due to the Commissioner's claim the matter is urgent.

Chile

A general Bill was passed allowing the courts, during the crisis, to suspend hearings and terms to submit evidence. Accordingly, the TDLC has suspended several hearings and all terms to submit evidence. Hearings that are not suspended will be held remotely, via videoconference. The TDLC, however, will continue deciding matters that can be easily resolved or that would not bring any harm to the parties considering their limited defence capabilities.

China

Currently, to the best of our knowledge, the antitrust agencies will focus their investigations on Covid-19-related cases, and thus the investigation of non-Covid-19 cases may be affected to some extent.

Therefore, there may be not much delay on the process for antitrust cases that are close to an end. For instance, the SAMR published administrative penalty decisions on three antitrust cases on 7 February and 9 March, which were initiated far before the outbreak of Covid-19.

For non-Covid-19 antitrust cases still under investigation, the investigation process seems to be slowed down to some extent. During the period when the pandemic was serious in China, it may be the case that the antitrust agencies have suspended deadlines for presentation of defences or meetings in non-Covid-19 cases. Nonetheless, since the pandemic has been basically contained in China, the governments and undertakings have gradually resumed work and production across the country. Therefore, the investigation for non-Covid-19 antitrust cases may be re-

initiated, but the deadlines for presentation of defences may be extended, and the teleconference meetings will be taken, if necessary.

Estonia

There have not been any official statements on suspended deadlines for presentation of defences or meetings in non-Covid-19 cases. The Competition Authority has stated that people will not be able to come to its physical offices and has asked to be contacted by phone or email.

European Union

Senior officials at the European Commission's Directorate-General for Competition have stated that they are being careful not to overburden companies in antitrust investigations, in light of the Covid-19 crisis. At least one senior official acknowledged that certain procedural steps are being delayed in some investigations, including sending out heavy requests for information to companies.

France

The French Parliament adopted an emergency law on 23 March 2020 to adjust deadlines during the health emergency situation, which was further completed by a government order, further to which the FCA published a press release on 27 March 2020, specifically on the necessary adaptation of procedures and deadlines to the emergency situation (coming after a first press release on 17 March 2020 to the same effect but with much less detail). In particular, the following deadlines are modified:

- Time limits for the production of observations and briefs in response to a statement of objection or to a report are extended. Consequently, the two-month limit for companies to submit their responses is suspended. All responses may be filed electronically.
- Acts or decisions, which should have taken place during the period from 12 March 2020 until the expiration of a period of one month from the termination of the state of health emergency (ie, as of today, 24 June 2020), in order to avoid the prescription of action by the FCA, may be completed within two months from the end of this period, without being penalised for their lateness.
- Similarly, appeals against the decisions of the FCA, which should have been filed in the period from 12 March 2020 until the expiration of a period of one month from the cessation of the state of health emergency, may be completed within two months of the end of this period, without being penalised for their lateness.
- Time limits for implementing commitments, injunctions or interim measures are suspended or postponed until the expiration of a period of one month from the end of the state of health emergency.
- Deadlines already granted under the leniency marker are suspended and leniency applications may be filed electronically by email.

Germany

The Bundeskartellamt continues to operate on an ‘as normal basis’ with investigations continuing – at least nominally – to proceed without interruption or delay. It has taken the position that the authority has in the past already operated an extensive working-from-home scheme (and has put into place the technical means that allows its officers to work remotely and access whatever systems are necessary to do so) so that the current situation should not present any major challenges. In addition, investigations into potentially restrictive agreements or practices do not follow a prescribed timeline; thus, the authority enjoys considerable flexibility in the timing of its processes and decision-making.

In the light of this, it seems very likely that current developments will have the effect of slowing down investigations to some (potentially significant) extent – in particular as companies face challenges to respond to FCO allegations or questions. Thus, while the authority is keen to suggest business is done ‘as usual’, proceedings will as a pure matter of fact be stretched out beyond what would generally be expected (a recent decision against providers of technical building services began with the submission of leniency applications in November 2014 and was concluded in December 2019 showing that investigations, in particular complex investigations that may include criminal charges, may take some time to be completed).

In general, it should be noted that the authority will not schedule any in-person meetings at this time, but has pointed out that alternative means of communication (in particular telephone conferences) remain available to discuss any questions that arise in the context of proceedings.

Greece

Prima facie, existing deadlines are not amended. The legally binding deadlines still apply to the day-to-day work of the HCC, which will continue to carry out its mission, to review pending cases (including mergers) and make decisions, through the immediate adjustment of its staff to home office. At the same time, the Commission will continue to monitor time schedules, providing, where permitted, extensions to existing deadlines. Any amendment shall be notified to the parties concerned and posted publicly on the HCC’s website.

Hungary

The GVH has not suspended any relevant deadlines (including deadlines in merger cases).

Ireland

To our knowledge, there has been no formal suspension of deadlines for presentation of defences or meetings in non-Covid-19 cases.

We understand that while physical meetings are no longer possible, parties may still engage remotely with the CCPC via teleconferencing and other means of digital communication.

We are not aware of any case where a defence presentation deadline has been suspended by the CCPC due to Covid-19.

Israel

The ICA did not issue specific suspension decisions; however, some deadlines are and will be postponed in light of general suspension regulations published by the Israel government, which also apply to certain aspects of the ICA's work.

Thus, deadlines in relation to administrative fines that fell between 10 March and 20 May 2020 – such as deadlines to pay fines imposed or deadlines to be heard before the ICA regarding its intention to impose an administrative fine – were automatically suspended by three months.

Italy

Pursuant to Article 103 of the Cura Italia Decree read in conjunction with Article 37 of Law Decree No 23 of 8 April 2020, any and all deadlines relating to administrative proceedings pending or commenced after 23 February 2020 are stayed until 15 May 2020. This clearly applies to administrative proceedings pending before the ICA.

However, pursuant to a communication adopted by the ICA, the suspension does not apply to: (1) deadlines of interim measure proceedings; (2) deadlines for the compliance with ICA's decisions; (3) deadlines for compliance with the measures imposed in the conditional authorisation of a merger; and (4) the calculation of interest and increase of the fines whose deadline has already expired on 23 February 2020.

Also, notwithstanding the aforementioned, the ICA is required to take all appropriate organisational measures to ensure the reasonable duration and swift conclusion of proceedings, prioritising those to be considered urgent, also on the basis of reasoned requests filed by the parties concerned.

India

Following directions of the government, most of the CCI's regulatory functions were suspended between 23 March 2020 and 13 April 2020. The CCI has partially resumed functioning from 14 April 2020, when it announced that it will accept new complaints and merger notifications on email and progress new and pending cases subject to availability of information.

All other compliances, meetings and hearings scheduled until 20 April 2020 remain suspended until new dates are notified by the CCI. This date is likely to extend in line with the nationwide lockdown directed by the government until 3 May 2020.

Japan

As far as we are aware of from press releases from the JFTC, the JFTC has not suspended any procedure officially. Nevertheless, it seems to us that some investigation divisions have suspended their ongoing investigation (including interviews with employees of suspected companies) for the time being.

Latvia

The Latvian Competition Council has been working remotely for more than a month. Meetings take place via videoconferencing, and all applications and submissions take place via electronic means.

There have been no official statements on suspended deadlines for presentation of defences or meetings in non-Covid-19 cases.

Lithuania

The LCC has been working remotely for more than a month. There have been no official statements on suspended deadlines for presentation of defences or meetings in non-Covid-19 cases.

While there is a possibility to meet on the Competition Council premises if extraordinary circumstances require, the preferred method of communication remains videoconferences.

Mexico

Yes, the FECC has suspended deadlines in investigations of anti-competitive practices (abuse of dominance and absolute monopolistic practices) and illicit concentrations. Two suspensions have been issued: the first from 23 March to 16 April; and the second from 20 April to 6 May of 2020.*

According to the terms of the first extension decreed by the Commission, deadlines for merger notice proceedings and opinions related to guidelines, licences, and transfers would not be affected. In this second extension, the following exceptions are added:

- request for formal opinion under Articles 104–109 of the Federal Economic Competition Law (FECL);
- general orientation under Article 110 of the FECL;
- formal opinions under Article 12, sections XII, XIII, XIV, XV and XVIII of the FECL;
- public consultation under Article 138 of the FECL and General Regulation Article 19;
- leniency programme under Article 103 of the FECL;
- fine reduction or discharge programme under Articles 100–102 of the FECL related to commitments for abuse of dominance cases or illegal mergers;
- stage after the conclusion of investigations of de facto illegal commercial practices or illegal mergers, under Article 78 of the FECL; and
- deadlines for the Commission to issue a resolution under any procedure (provided that the case has been completed and in case of administrative proceedings structured as trials for de facto illegal practices and illegal mergers,

if the oral hearing has been held or the deadline to hold the hearing has passed).

* The Commission decided that all deadlines would be suspended from 20–30 April inclusive; therefore, deadlines were scheduled to resume normally starting on May 6, given that the Commission’s working calendar already included a 1–5 May recess. Notwithstanding the suspension, the FECC will be working as usual and their offices will be open during their normal schedule, except during the predetermined 1–5 May recess.

Montenegro

The Montenegrin Competition Authority has not suspended deadlines.

Netherlands

The ACM has stated that it will take account of the special circumstances when it comes to deadlines and that procedures may be delayed.

New Zealand

The NZCC continues work on current investigations and is liaising with parties needing extra time to give it information. It manages each investigation on its merits and evaluates information on a case-by-case basis, taking into consideration any challenges businesses have in working with the NZCC as they respond to government directions (eg, challenges working from home). Meetings scheduled with NZCC staff have been conducted by phone calls and Microsoft Teams calls.²⁵ NZCC staff have been sympathetic, pragmatic and responsive.

North Macedonia

Based on a decree adopted by the Government of the Republic of North Macedonia all deadlines in administrative procedures that would have expired during the declared state of emergency are suspended and will continue to run after the end of the state of emergency. Upon a justified request from an interested party, the officials may decide otherwise.

Portugal

The Portuguese Competition Authority has informed that it now operates preferentially on a remote basis. It has, therefore, requested that communications be made by electronic means or telephone.

Deadlines in misdemeanour cases are currently suspended.

Romania

²⁵ See n 33 above.

The Competition Council has suspended on 13 March 2020 the direct contact with the public until 16 April. This suspension is likely to be extended up to the end of the Romanian lockdown, but no extension was announced by the time of this report. This refers only to direct, face-to-face contact with the general public, not to contact via telephone, email or regular mail.

Serbia

The Serbian government has adopted a regulation on statutory deadlines in administrative proceedings (effective as of 24 March 2020) which provides that the statutory deadlines applicable to administrative bodies including the competition authority which elapse during the state of emergency will be deemed to have elapsed 30 days after the termination of the state of emergency.

On the other hand, the statutory deadlines applicable to the parties are not suspended during the state of emergency, but the parties will not suffer any sanctions for their late submissions (eg, fines for late filing).

Hence, the deadlines still apply, but if a deadline expires during the state of emergency, the applicant cannot suffer any consequences for missing the deadline.

Singapore

As of 14 April 2020, the CCCS has not specified any policy for the suspension of deadlines for presentation of defences or meetings. However, they have generally been amenable to extensions of time for matters under review at this time.

Slovakia

We are not aware the AMO would suspend deadlines for presentation of defences. However, the AMO limited opening hours of its office for public. The AMO also cancelled its annual conference regarding competition law trends which is usually held in May. We assume the AMO would not accept meetings with undertakings without having a serious cause for a meeting. Through on its official website the AMO generally invited all parties to use mainly electronic means of communication with the AMO (eg, electronic filing) and to limit physical contact with the AMO officials. We understand that number of officers from the AMO work from home.

Slovenia

Yes. On 20 March 2020, the Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (Covid-19)²⁶ was adopted. Ever since ZZUSUDJZ came in force on 29 March 2020, the deadlines for procedural actions of the parties and for exercising their obligations set by substantive law (ZPOMK-1 including) are suspended until the reasons for the suspension cease, but at the latest until 1 July 2020. This includes all administrative procedural deadlines set by the CPA in non-Covid-19 cases. In practice, meetings in

²⁶ Official Gazette of the Republic of Slovenia no. 36/20; 'ZZUSUDJZ'.

non-Covid-19 cases have been postponed until further notice and the CPA currently does not seem to widely use videoconferences instead of meetings in person.

Spain

Yes, as a result of the declaration of the state of alarm by the Spanish government, all deadlines and time limits in proceedings with the CNMC have been suspended. Therefore, deadlines for decisions on matters (eg, the 18 months for decisions in cartel and abuse investigations) and deadlines for completing any steps already communicated to parties to investigations (such as responses to statements of objections or requests for information) have been put on hold. As a result, the suspension will significantly slow down processing of all matters in progress.

Nevertheless, interested parties can request proceedings in given cases not to be suspended and for appropriate measures to be taken by showing that delay would seriously harm their legitimate rights and interests.

South Korea

While the KFTC extended its work-from-home policy for working level officers until 5 May 2020, which may slightly delay meetings, there are no signs that the KFTC has suspended or otherwise delayed its normal operations. The one area that we may see some disruption to the KFTC's working timetable is for transactions that require a KFTC hearing (ie, cases that present significant anti-competitive concerns). While the Korean government seems to be cautiously trying to ease off of some of the more stringent recommendations and the KFTC has resumed holding hearings, due to a number of hearings that had to be cancelled during the time of initial Covid-19 outbreak, there may be some delay in scheduling hearings for the time being.

On the other hand, we understand that the KFTC has revised its Rules of Procedures, extending deadlines for respondent companies to submit their response briefs to the KFTC's examiners reports by two weeks, such that respondent companies may now have up to six weeks after receipt of KFTC's examiners reports to submit their response. The extension remains valid until the Covid-19 emergency measures are lifted.

South Africa

Not officially, but we are aware of instances of the Commission writing to parties in complaint cases to request extensions until after the lockdown ends.

Sweden

No, not to our knowledge. The SCA has explained informally that it intends to meet all existing deadlines.

Finland

No, not to our knowledge. Both the FCCA and the Market Court are operational but most, if not all, meetings are taking place digitally. Particularly the Market Court has made it clear that already set deadlines are not affected by the present circumstances unless otherwise decided.

Switzerland

The Swiss government has ordered the standstill of most deadlines in civil and administrative proceedings between 21 March and 19 April 2020. This also applies to antitrust proceedings. Apart from this, the ComCo has taken no specific measures to suspend proceedings.

Turkey

On 17 April 2020, the Authority made an announcement on its website concerning the legal periods. The Authority indicated that the deadlines for preliminary investigations, examination and investigations carried out under Law No 4054 continue to be valid. However, in order to prevent aggrievement that could arise due to the legal periods, the Board has decided:

- to accept the applications for time extension requests made by the undertakings subject to the investigations until 30 April 2020 to submit their second and third written defences under Article 45 of Law No 4054; and
- to accept the matters that are intended to be submitted in addition to the written defence but cannot be raised within the specified period, during the investigation.

In addition to that, the parties are also able to submit the defence arguments that are intended to be submitted in addition to the second written defence but cannot be raised within the specified period, within the scope of their third written defence.

The Board also postponed scheduled oral defence meetings; their dates will be determined later by the Board.

Ukraine

In general, the AMC continues performing its functions as usual, but, at the same time, certain investigations launched pre-Covid-19 indeed seem to be moving quite slowly. No overall deadline suspension in investigation and review of non-Covid-19 cases have been announced, while it is true that the AMC became more willing to extend deadlines in specific cases upon justified motions from the parties.

Russia

On 8 April 2020, the FAS issued a statement that all hearings on antimonopoly cases are postponed for as long as it is possible, taking into account that the statutory deadlines for cases considerations remain in force. The urgent cases, which should be considered until 30 April 2020, are transited to remote hearings by videoconference.

The FAS noted that all the aforementioned measures are temporary and related only to the measures against Covid-19 spread.

Also, on 7 April 2020, the Russian government imposed a moratorium on conducting the inspections by state authorities, including by the FAS, except for inspections related to the facts of threat to citizens' life and health, and inspections made by direct orders of the President, government or Prosecutor's Office of Russia.²⁷

Furthermore, according to the Deputy Head of the FAS, the antimonopoly authority will allow companies to postpone the payment of administrative fines imposed for antimonopoly violations for approximately three months.

United States

No.

United Kingdom

The CMA has paused certain antitrust investigations as it has had to reallocate resources to ensure there is a focus on urgent work during the Covid-19 crisis. The investigations remain open and will be continued when the need to focus on the Covid-19 crisis has reduced, though no date has yet been given for this.

²⁷ Government Decree No 438 dated 3 April 2020 'On the specifics of the implementation in 2020 of state control (supervision), municipal control and on amending paragraph 7 of the Rules for the of annual plans for conducting routine inspections of legal entities and individual entrepreneurs preparation by the state control (supervision) bodies and municipal control bodies'.

6. How are your authorities working with pending merger control filings, which sometimes need market tests and information provided by third parties that are now in lockdown or home office (please address extensions granted, waivers, possible relaxation of regulations).

Albania

The authority has not taken any special measures in this respect. It has published a press release informing that the meeting of the competition commission and hearing sessions planned for the month of March will be postponed in April. The authority has accepted email communications in respect of pending merger filings, but they have not published any guidelines in respect of new merger filings.

Australia

The ACCC's merger and authorisation division is providing ongoing guidance about the impact of Covid-19 on the operation of the informal merger regime and also formal merger authorisation.

The ACCC has flagged that, while some merger reviews will need to be conducted on an urgent basis, timelines for some reviews may need to be extended if there are challenges in conducting and completing the necessary inquiries with merger parties and market participants due to Covid-19.

At present, the ACCC is not requesting parties to delay applications for authorisation or requests for clearance. However, it is asking parties to consider whether approaches to the ACCC could be postponed (for example for transactions at the very early stage) and that parties update the ACCC on a regular basis about any changes in the commercial timing of mergers under review.

As noted, while the ACCC has not issued formal guidance, it has indicated that it will take into account the Covid-19 crisis when requesting information or documents from parties. The ACCC is also likely to minimise the use of examinations and, if necessary, is conducting them by phone.

At a general level, the ACCC Chair has flagged that the ACCC will not be applying a different or more lenient approach to its assessment of proposed transactions during the Covid-19 crisis, including in the context of failing or distressed firms and assets.

In addition, significant temporary changes have been announced to Australia's foreign investment regime meaning that all foreign investment into Australia will require screening and prior approval through the Foreign Investment Review Board (FIRB). The FIRB customarily engages with other regulators including the ACCC in this process and will not issue a no objection notification for a proposed transaction unless and until it is confirmed that the ACCC (and other agencies) do not have any concerns. In this context, parties to a potential transaction should seek advice about the best way to manage the intersection of these two regulatory processes, and the impacts on timing.

Argentina

As aforementioned, the CNDC's offices are closed save for 'urgent presentations' such as the notification of new mergers and claims, which can either be done in person at the Ministry of Productive Development or electronically by sending the relevant documents to cndcfirma@produccion.gob.ar.

Furthermore, we have been informally conveyed that the CNDC's staff are working remotely while their offices remain closed.

Brazil

Pending merger control filings have followed the usual procedures. Although there are problems arising from remote work, difficulty in obtaining information by the companies or delays caused by third parties in responding to questionnaires, CADE and the parties seem to be cooperating to obtain decisions on time, according to the average time of analysis by the authority normally.

Nevertheless, it is important to highlight that due to the crisis generated by Covid-19, an increase is expected in the volume of filings involving companies with financial difficulties or in bankruptcy and also an increase in requests for the faster preliminary authorisation (or 'precarious authorisation') in transactions, provided the deal can be reversed in the case of a subsequent prohibition.

Belgium

On 19 March 2020, the BCA issued a short press release announcing that while the BCA strives to ensure the continuity of public service, the containment measures imposed by the government – as a result of which all BCA officials are working from home – may have an impact on the BCA's ability to handle merger filings with the usual diligence. The BCA in particular noted that the gathering of information from both the merging parties and third parties will be more cumbersome. Against that background, the BCA has invited companies to delay the notification of (draft) notifications for transactions that are not urgent. If/when a filing needs to be made to the BCA, companies (or their counsel) are advised to contact the BCA in advance. A review of the BCA's merger docket suggests that very few merger cases are currently pending before the BCA (which could mean that companies are indeed postponing their notifications and/or may reflect a lower level of M&A activity triggering BCA filings). For any pending merger investigations, the BCA's standard deadlines apply (15 working days from formal notification for simplified cases, 40 working days for non-simplified cases in Phase 1 and an additional 60 working days in the event of a Phase 2 investigation).

Bosnia and Herzegovina

The authority has not taken any special measures in this respect.

The BHCC is generally operative and responsive and provides extensions, for example, for the submission of additional information, if requested by the party. On

the other hand, there has been no relaxation of regulations or deadlines yet, and, to the best of our knowledge, no waivers.

Furthermore, the review process has been significantly delayed, as the BHCC rarely holds its decision-making meetings. Previously the Council would hold at least two meetings a month, which has now been decreased to a single meeting once a month.

Bulgaria

There are no specific measures taken in this regard.

Since the proceedings before the CPC were renewed on 10 April 2020, two decisions on merger control filings have been published. This indicates that the CPC manages to perform all necessary investigations and the parties have managed to submit the required data. Based on the current information available, no waivers or extensions are granted; however, it is likely that the CPC could adjust its approach on a case-by-case basis.

Canada

The CCB has not taken any measures to exempt parties from their obligations to make pre-merger notification filings or to expedite the review process of notifiable transactions and the statutory waiting periods applicable to notifiable transactions remain unchanged.

The Commissioner of Competition has advised that the CCB's ability to meet its internal service standards by which it endeavours to complete merger reviews and its ability to narrow issues in complex transactions within the initial 30 days of a merger review may not be met, given the difficulty in contacting market participants as a result of the Covid-19 pandemic and other challenges (see Commissioner's letter to the Canadian Bar Association).

The CCB has advised that its ability to contact market participants has varied on a case-by-case basis. While some market participants have indicated that they do not have access to their files or computer and are unable to provide information to the CCB, other market participants have been more responsive to the CCB. As at 8 April 2020, the CCB reported that it had not yet missed any service standards since the CCB shifted to working remotely in response to the Covid-19 pandemic, though the CCB anticipates that it may miss a service standard in one ongoing review where it has not been able to get in touch with any market participants.

The impact of Covid-19 on economic activity has been unprecedented, and the CCB is considering its approach to merger review of acquisitions of 'failing firms'. The failing firm test is difficult to meet under the Competition Act as parties must establish that an otherwise anti-competitive transaction should be approved on the basis that the firm being acquired is a 'failing firm' and would leave the market absent the transaction. While we understand that the analytical framework under the CCB's Merger Enforcement Guidelines has not been relaxed, the CCB intends to publish a position statement soon in respect of a completed merger that it approved and will provide guidance on the failing firm argument.

Chile

The FNE offices are closed and its personnel are working at home. This poses challenges, but the FNE is complying with the legal deadlines and trying to carry out filings as smoothly as possible. Any written communication and submission of documents must be by email and meetings are held via conference calls and videoconferences. The FNE has expressed its willingness to grant waivers for some of the information required for filings, taking into account the hardship the parties may face. The parties and the FNE may also mutually agree suspensions of up to 30 days on Phase 1 or 60 days for Phase 2 (general rule, not a special rule for Covid-19).

China

Currently, since the Covid-19 pandemic has been basically contained in China, the governments and undertakings have gradually resumed work and production. Hence, the review of pending merger control filing in China has not been affected significantly by the pandemic.

To be more specific, for cases reviewed under simplified procedure, after being formally accepted by the SAMR, the public notice will be published on the SAMR's website for ten-day public consultation, which will not be influenced by the Covid-19 pandemic since it is an online procedure.

For the cases reviewed under normal procedure, SAMR will issue a consultation letter after formal acceptance to third-party stakeholders (eg, industrial competent authorities, trade associations) to consult their views. As aforementioned, as the Covid-19 pandemic has been basically contained in China, and the governments and undertakings have gradually resumed work and production, it is less likely that the SAMR will waive the consultation procedure, but it is possible that it may grant extensions for third parties to respond to the SAMR's request, if necessary. Furthermore, there is currently no relaxation of regulations with respect to consultation with third-party stakeholders for normal cases in China.

Estonia

The Competition Authority has not stated that there are any problems due to the spread of Covid-19 in this regard. It has made a couple of merger decisions during this state of emergency and seems to be working in a regular manner. The possibility to file most official documents using ID cards and digital signatures in Estonia has proved to be most useful during this time.

European Union

The European Commission has asked parties to delay filings where possible. The Directorate-General of Competition has acknowledged concerns about its ability to conduct market investigations and get input from competitors and customers of the merging parties, as well as their ability to market test any remedies. That said, in its guidance of 7 April 2020, the Commission stated that it is ready to accept filings where firms can show 'very compelling reasons to proceed with a merger notification without

delay'. While they have not provided an indication of what they consider to be 'very compelling', evidence that the target company is in financial distress, or that delay will likely cause deterioration in the business, will be helpful.

The EU Merger Regulation provides for the possibility to get a waiver from the requirement to suspend closing a transaction pending European Commission approval, where the suspension obligation would cause serious damage to the merging parties or to a third party (eg, if there is a risk of imminent financial failure) and where the merger is unlikely to pose a threat to competition. So far, we are not aware of any requests for derogation from the suspension obligation as a result of the Covid-19 crisis.

France

On 17 March 2020, the FCA stated that gathering information from third parties will very likely be more difficult during the pandemic. Therefore, the statutory deadlines for merger control have also been suspended by the emergency law of 23 March, but the FCA still reserves the possibility to issue decisions, including on mergers; and, in fact, the FCA has issued several decisions since the start of the pandemic. In addition, the FCA invited companies to postpone filing of non-urgent mergers. All communications are exclusively electronic, via email or the FCA's new dematerialised notification platform.

From an informal discussion I had with an FCA's official, I also understand that at least some of FCA's officials could still be reached over the phone, on a one-to-one basis, in urgent cases, and possibly also for pre-notification talks on emergency deals. I also understand that the FCA may also be willing to consider the potential granting of individual exemptions to the suspensive effect of a notification in merger cases of great urgency, which would fulfil the legal requirements of exemption (ie, urgent crisis of a target that would die if the closing is not made before the expiration of the standard 25-business day deadline).

Germany

Nominally, merger control proceedings and their timing remain unaffected by the crisis and the authority can be reached in any of the usual ways (including by email, although messages by such means do not technically constitute formal submissions). Officially, the authority has put into place additional email addresses for each division/ Beschlussabteilung (Abt.), abt.b___@bundeskartellamt.bund.de, to which every officer of the division has access in order to ensure that the members of the division can effectively be reached. Officially, electronic submissions to the authority still require a special secure email signature, but it is suggested that undertakings or their lawyers should reach out to the relevant Head of Division to enquire about modes of communication that are acceptable in any given case.

While the position is that business is done 'as usual', the Bundeskartellamt has on 17 March 2020 informally asked undertakings to delay their filings within the bounds of what is possible.

Greece

No specific provisions regarding pending merger control filings have been introduced. There is the possibility of amendments in deadlines and timetables, subject to the decision of the Commission. The answer to the previous question applies.

Hungary

The GVH's operations are still functioning well.

Although no hearings are held, the GVH's officers are mostly working from home (with the exception of the secretariat).

In terms of merger control, the deadlines are still running. The principal way of communication is email with the case handlers being available over telephone or via email.

It is noted that if the merger proceedings require third parties to be contacted, the GVH is expected to face difficulties in the collection of information from third parties then these contacts are sent out with deadlines significantly longer than usual. This could result in significant delays. As a result, the GVH also asked parties to consider postponing the notification of the mergers.

The GVH has issued a press release providing more details (www.gvh.hu/en/actualities/Information-on-the-operation-of-the-Hungarian-Competition-Authority-due-to-the-situation-of-the-pandemic).

Within the framework of emergency measures stemming from the Covid-19 pandemic, the Hungarian government also introduced a change to the Competition Act's merger control rules on 20 April 2020 (Decree No 137/2020 concerning the transitional provisions of loan, equity and guarantee products in the 'state of danger').

Namely, concentrations that entail financing transactions implemented as part of a dedicated Covid-19 capital programme with the aim of investment protection and which are performed with the participation of (directly or indirectly) majority state owned venture capital funds or private equity funds are exempted from the mandatory notification obligation under the Competition Act.

Importantly, the exemption is only applicable in so far as the 'state of danger' situation exists in Hungary with respect to the coronavirus and certainly does not affect the notification obligation that may be applicable under EU or other national merger control laws.

Ireland

The CCPC is bound by statutory deadlines for merger control; however, there are a number of tools available to the CCPC that may facilitate delayed merger review during the Covid-19 crisis.

During Phase 1 of an investigation, the CCPC formally has 30 working days to review a transaction, before it must decide whether to refer the transaction to a full investigation (Phase 2) or clear the transaction, with or without conditions. Should the transaction be referred to Phase 2, the CCPC has a further 90 working days to review the transaction.

Where necessary, the CCPC can issue a requirement for information (RFI) during both Phase 1 and Phase 2. The effect of an RFI issued during Phase 1 of a

merger is to reset the 30-working day clock to zero from the date of final response to the RFI. In contrast to Phase 1, during Phase 2 the effect of an RFI is to stop the clock, which will resume on full response to the RFI.

During the Covid-19 crisis, the CCPC has been willing to give parties longer periods than normal to respond to an RFI. In addition, the CCPC could also further extend the deadline for an RFI response until parties are in a position to respond to an RFI such as where a review of hardcopy documents in an office is required.

Israel

The ICA did not issue public statement of general applicability in this specific aspect.

Italy

As for most other national competition authority, the ICA is remaining functioning as staff working partially from home even if, as regards new transactions to be filed, it is informally encouraging merging parties to delay notifications.

India

The CCI has announced that it will endeavour to process all pending merger filings subject to availability of necessary materials. It has also announced that it is open to scheduling pre-filing consultations through videoconferencing. In this effort, it has already reviewed and approved four filings since 23 March 2020, while more than ten merger filings remain pending. Because any kind of public dealing and hearings are currently suspended, it is possible for the review (and review clock) of merger filings that require market testing or other kinds of procedural steps (eg, hearings) to be on hold.

Japan

It seems to us that the JFTC has been continuing their review work as usual. In addition, the waiting period under the antitrust law cannot be extended as it is stipulated under the law. Nevertheless, in this difficult situation, in practice, the JFTC may ask parties to 'pull and refile' a filing so that the JFTC can have sufficient time to review a pending case.

Latvia

The Latvian Competition Council has been working remotely for more than a month. There have been no official statements from the authority on the need to apply any extensions, waivers or relaxation of regulation for ongoing matters.

However, the regulation on the work of state institutions during the Covid-19 state of emergency adopted by the Latvian government would also apply to proceedings initiated by the competition authority. Under this temporary regulation, parties to proceeding may ask for extension or renewal of the procedural terms that are to materialise during the Covid-19 state of emergency. The regulation also allows

the competition authority to postpone adoption of its decisions for a period not longer than two months after the state of emergency is abolished, provided that there is an objective justification for noncompliance with procedural terms and that the authority has already used the prolongation possibilities under the existing legislation.

Lithuania

The LCC has been working remotely for more than a month. At the start of the quarantine period they assured that all services could be provided using electronic means – there were originally no exceptions made for merger cases and similar matters.

However, on 14 April 2020, the LCC warned that examinations of mergers may last longer than usual, due to the fact, that it struggles to receive all the information needed from the businesses. It notes that its ability to postpone the deadlines is limited by the laws, especially in merger control procedures. According to the authority, failure to collect information in time when evaluating the competitive effect of a merger may significantly impede the effectiveness of a merger examination procedure.

Since the authority can start the examination of a merger only when the notification complies with the applicable legal requirements, companies, which are planning to notify their merger, should carefully evaluate whether they will be able to ensure their proper involvement in the merger examination process. While the LCC is ready to deal with those transactions which the companies are not able to postpone, the authority asks businesses to pay considerable attention to any difficulties that may arise, especially in situations which may lead to an in-depth review and require additional resources. In principle this means that mergers notified during the Covid-19 pandemic will require more time for examination and that the LCC might use its powers established in the Law on Competition to extend or even in certain cases suspend the merger examination procedure.

Mexico

The FECC is working as usual, merger control filings are made electronically and any activity in the process is not suspended. However, the Chairwoman has mentioned that in merger cases where information from third parties is needed, the review process may be delayed.

Montenegro

The authority has not taken any special measures in this respect. The authority did not suspend any deadlines or issuing of decision; however, the review process has been somewhat delayed.

Netherlands

The ACM has not published any information on how it will handle pending merger control filings during the Covid-19 crisis. According to the ACM's Chairman, Martijn

Snoep, companies can request the ACM to grant an exemption from the mandatory standstill period before closing a concentration when, for instance, the target company is in serious financial difficulty (similar to the derogation provision in the EU merger regulation). The decisional practice shows that the ACM is able to issue such exemption within one day, if needed.

New Zealand

The NZCC still aims to conduct current merger clearance applications in timeframes agreed with applicants. Extensions may be needed for delays receiving responses to information requests due to Covid-19 challenges. The NZCC will prioritise requests for merger clearances where the financial viability of a firm is in jeopardy because of current economic circumstances. Otherwise, it assesses applications on a case-by-case basis, considering the current environment and the longer-term impact on competition from any change in the structure of markets.²⁸

North Macedonia

According to the aforementioned decree for stay of the deadlines in administrative proceedings, the competition authority decided to suspend all activities on the merger control cases until the end of the declared state of emergency subject to a possibility that an interested party may request the authority to decide based on a reasoned request.

The state of emergency was initially enacted to last until 18 April 2020; however, the government extended it for additional 30 days. In addition, during the state of emergency, the authority will not be organising online meetings decreasing the authority's activities to minimum necessary.

Portugal

The Portuguese Competition Authority has requested that correspondence relating to merger control be submitted solely via electronic platforms. Apart from this, no other information was conveyed. In fact, the Portuguese Competition Authority has stated that it is endeavouring to continue its activity. Contrary to misdemeanour cases, deadlines in merger cases have not been suspended.

Romania

The Competition Council is still sending information requests, whether in sectoral investigations or targeted investigations, setting forth rather tight deadlines and not being opened for sizable extensions of the submission deadlines. As a matter of fact, the authority seemed to be, in some instances, more aggressive in setting forth submission deadlines and less accommodating in extending them than before the Covid-19 pandemic.

As regards merger control filings, the current context does not in fact affect the merger control deadlines. This happens because the case handlers confirm that a

²⁸ See n 33 above.

merger filing is complete and effective (which triggers the 45 days in which the authority must clear the filing or open a Phase 2 review) very late in the process, after collecting the missing information from the applicant and the needed information from the third parties, thus securing all needed merger review information. As a result of such timing, the merger control clearances are issued within weeks from the moment the filing is deemed complete and effective.

Serbia

The authority has not taken any special measures in this respect.

The review process is somewhat delayed, but the authority continues to merger clearance decisions in the summary proceedings (Phase 1) fairly efficiently while certain delays are possible in in-depth cases (Phase 2), in granting individual exemptions of restrictive agreements as well as in issuing decision in antitrust proceedings.

Since the beginning of the pandemics, the authority seems to have established an informal internal system of issuing decisions once a week on Fridays.

In addition, the authority has been lenient and responsive in granting extensions of deadline for providing requested information to parties, though after the adoption of the mentioned regulation on deadlines in administrative proceedings the requests for extension of deadlines are no longer a practical issue.

Singapore

The CCCS continues to operate as usual, save that most of its staff are telecommuting. The CCCS will accept merger notifications filed electronically and will not require hard copies (which are generally required) at this time. It also continues its reviews of existing mergers that have been lodged based on existing timelines. Should more time be required in view of the current circumstances, the CCCS will inform the parties accordingly.

Slovakia

It is possible to assume the AMO would utilise longer time periods to take any procedural measures or decisions. It is not possible to exclude the AMO would even open Phase 2 in merger-control matters with no (or low) competition concern to win some additional time to take a decision. Regarding responding of RFIs from the AMO we assume the authority would on one hand provide longer time periods to undertakings for providing of their responses and also the authority is likely to be open to grant necessary extension of time for responding of RFIs.

Slovenia

On 21 March 2020, the CPA issued a notice on its website, stating that it is expecting difficulties in obtaining information from this parties, such as consumers, competitors and suppliers. It has also stated that CPA personnel is facing restrictions regarding

access to information and databases as well as general difficulties regarding information exchange, hence merger clearance decisions may be rendered with delay.

Under ZZUSUDJZ, which came in force on 29 March 2020, the usual 30-day deadline for merger notification, as well as the usual deadline (25 working days) for the CPA to issue the decision regarding the notification, are suspended until the recalled by Slovenian government (when the reasons for the suspension cease), but at the latest until 1 July 2020. No other relaxation of regulations has been adopted so far.

Spain

We are not aware of any extensions, waivers or relaxations of the regulations. All deadlines and time limits in merger control proceedings have been suspended (including deadlines to provide information by third parties as well as the one-month deadline for first phase merger review). As such, while notifications of transactions can still go ahead and the CNMC will seek to progress simple or urgent cases, most transactions and particularly those that require market tests may be delayed.

South Korea

As noted, the KFTC M&A division continues to process merger filings largely apace with normal operations (ie, accepting merger filing applications, issuing requests for information from filing parties as well as issuing questionnaires to third-party customers and competitors, and conducting in-person meetings). We have found from our experience that there appears to be little to no noticeable impact on the KFTC merger review process for the time being.

South Africa

The Commission is still accepting merger filings and continues to investigate mergers by working remotely, though parties are discouraged from filing any non-essential notifications during the lockdown. Time periods for merger clearances by the Commission and the Tribunal have been significantly extended. Large mergers usually require a public hearing before the Tribunal, but for the lockdown period, the Tribunal has categorised mergers into three phases, depending on the complexity of the merger and the level of engagement required from merger parties. Phase 1 mergers are being decided by the Tribunal without a public hearing, on the papers. The adjudication of Phase 2 mergers requires merging parties to be available for a teleconference with the Tribunal. Phase 3 mergers and all other matters already enrolled, pre-hearings and interlocutory hearings are postponed sine die. Like the Commission, the Tribunal is prioritised hearings relating to Covid-19 complaints. All other new matters, unrelated to Covid-19, will not be set down for hearing.

Non-essential investigations by the Commission that require public comment have been extended. For example, the Commission has extended the deadline for the public transport market inquiry, and for publication of proposed guidelines in the automotive sector. (See www.compcom.co.za/wp-content/uploads/2020/04/COMMISSION-EXTENDS-THE-CLOSING-DATES-FOR-PUBLIC-TRANSPORT-MARKET-INQUIRY-AND-AUTOMOTIVE-GUIDELINES-SUBMISSIONS.pdf.)

Sweden

The SCA has not indicated any issues in obtaining market data to date. It was noteworthy that it cleared its two longest running cases within a matter of days in late March. In both cases, the SCA was looking into a potential monopolisation of markets but in the end cleared one case without remedies and one with remedies.

Finland

The FCCA's merger control unit is fully operational and working remotely. However, it has warned parties that they should prepare for the eventuality of delays. Parties preparing filings are requested to be in contact with the merger control unit as early as possible and if feasible, consider delaying filings. The FCCA's registry is open but all filings are requested to be made electronically. Any submission of a filing (or related materials) is requested to be agreed on in advance.

Switzerland

In case a law firm orders its employees to work from home on the basis of Covid-19, the ComCo accepts electronic submission of documents as PDF by email. In such case the reasons must be given why postal delivery is not possible. Similarly, the competition authority is also working remotely and letters are sent without signatures by ComCo officials. There are (at the moment) no other special procedures adopted by ComCo; all procedures continue to run normally. The Swiss government has simplified the use of electronic signatures.

Turkey

The Covid-19 outbreak might also have an impact on the merger control review process of the Authority. Obviously, there are many unknowns about how things would unfold for Turkey in terms of this global pandemic, due to its novel nature and its consequences on the work of the administration.

At the moment – unlike some competition authorities elsewhere in the world – the Authority has not requested cooperation of applicants with special circumstances, and it has not announced any limitation on its bandwidth either.

Ukraine

The AMC's merger control departments are working at full pace, accepting merger filings, staying in touch over the phone and via emails to ask questions and request additional information and clearing transactions within the time limits prescribed by law.

While many officers work remotely, the AMC does not lose grip on substantive analysis during these turbulent times, maintaining the usual level of scrutiny. No request to postpone filings had been conveyed to the public. Although applicants are encouraged to provide electronic copies of all data via emails, filings are still required to be made in hard copies during normal working hours.

We also observe the AMC's general willingness to provide deadline extensions for those parties which are lockdown, again, upon a justified motion.

Russia

The FAS did not publish specific clarifications regarding any changes in the regime of merger control review during Covid-19 crisis. At the same time, the FAS has made certain changes into its day-to-day working process following the President's order on non-working period until 30 April 2020. Following the order, most FAS officials are working remotely with the document flow to be transferring into electronic format (where possible).

Currently, FAS officials continue the regular merger review process, sending the RFIs to the parties, sending the information requests to the other state authorities and issuing decisions. No extraordinary delays or suspensions in the merger review process have been announced so far. As we understand, the FAS is planning to review the mergers within the statutory deadlines.

At the same time, we assume that the technical delays in review of the transactions/issuance of decisions are possible due to limited amount of the FAS officials present at the office, and the general focus of FAS Russia on addressing price gouging, cartel arrangements in healthcare and state aid measures rather than merger control. Further changes cannot be excluded as the situation changes regularly.

United States

The Agencies have not publicly granted any extensions or waivers. Any changes to the standard timing of extended merger reviews are handled on a case-by-case basis through negotiation with the merging parties.

United Kingdom

Where merger reviews are ongoing, the CMA has continued to issue statutory information requests which must abide by statutory deadlines, though the CMA is being flexible where possible and recognising that there may be delays in providing the information it needs to conduct its investigations.

Where mergers are not yet closed, the CMA is requesting that the companies delay formally filing notifications of the mergers, as the CMA anticipates delays in relation to liaising with third parties for market testing.