

Briefing March 2020

Impact of COVID-19 on Antitrust Law

The Swiss Competition Commission (ComCo) has reminded businesses that it will not tolerate any exploitation of the coronavirus crisis by companies forming cartels to increase prices, or by dominant suppliers driving up the prices they charge to excessive levels. However, ComCo will not actively intervene against cooperation that ensures the supply and fair distribution of scarce goods to all consumers if such cooperation is both necessary and temporary.

Cooperation to ensure supply and fair distribution of scarce goods to all consumers is allowed

In a [press release](#) dated 26 March 2020, ComCo has reminded businesses that it will not tolerate companies using the coronavirus crisis as a grounds to restrict competition and that it will initiate enforcement actions in such cases. The practices that ComCo is focusing on are cartels that are clearly unlawful like cartels to increase prices.

ComCo does not, however, target legitimate forms of cooperation to ensure the supply and fair distribution of scarce goods to all consumers. ComCo will not actively intervene against necessary and temporary measures put in place to avoid a shortage of supply and to ensure fair distribution. This may include information exchange among competitors to generate alerts when the stocks of a scarce product are running short.

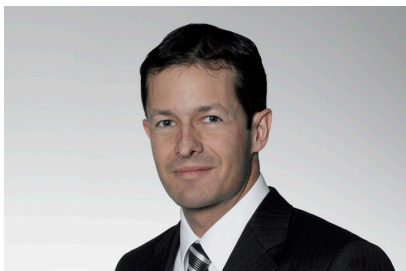
In this regard, ComCo is acting in line with the [joint statement by the European Competition Network \(ECN\) on application of competition law during the corona crisis.](#)

Excessive pricing of dominant suppliers currently runs a higher risk of triggering enforcement action

Like other competition authorities, ComCo is currently receiving complaints about excessive prices, for example for masks and disinfectants. ComCo has made clear, however, that (aside from cartels) it only has jurisdiction to intervene if the respective supplier has a dominant market position. Excessive pricing is generally not a priority area of enforcement activity for ComCo as competition authorities are less keen to take the role of a price regulator. However, given the current circumstances, ComCo may be more willing to take up cases of excessive pricing where no cost justification is apparent.

It has to be borne in mind that if ComCo does not take up the case, the Swiss price surveillance authority may still investigate the matter.

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