



# IMPACT OF COVID-19 ON GLOBAL MERGER CONTROL REVIEWS

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21 January 2021

# OVERVIEW OF MERGER CONTROL REVIEWS

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



**Red:** Noticeable delays/review periods prolonged/suspended

**Yellow:** No noticeable impact on review periods but operations interrupted

**Green:** No/marginal impact

## EU27

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## AFRICA / MIDDLE EAST

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**EU** – DG COMP encourages parties to discuss the timing of notifications of transactions with the relevant case team and to use electronic means to notify their transactions. DG COMP will review cases in which parties can show very compelling reasons to proceed with a merger notification without delay. According to DG COMP’s website, 361 deals were notified in 2020 (77% under the simplified procedure), compared to 382 in 2019. According to published data, pre-notification in 2020 took twice as long compared to 2019.



**Austria** – Merger notifications may be submitted electronically or during office hours. Review deadlines for deals notified after 30 April 2020 run as usual. Meetings are held predominantly electronically unless physical meetings are arranged by prior agreement with the authority. On 15 July 2020, the BWB issued a position paper explaining how acquisitions of companies financially distressed by COVID-19 are assessed.



**Belgium** – The BCA’s staff is teleworking. Ongoing merger reviews may be delayed. The BCA is also inviting parties to delay notifications.



**Bulgaria** – The CPC is accepting merger filings though electronic filings are recommended. So far, the CPC is complying with normal time limits.



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



**Cyprus** – The CPC is functioning normally and accepting notifications. Its staff is working on rotation or remotely. Deadlines have not been suspended. However, the CPC is expecting parties to only notify necessary deals.



**Czech Republic** – The Authority has not asked companies to postpone new merger notifications. So far, the Authority is complying with normal time limits.



**Denmark** – The statutory deadlines within which the DCCA must review a merger were suspended until 17 August 2020 (initially 13 April 2020), although the DCCA clarified that it would try to comply with the ordinary time limits. The deadlines are running again as usual.



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



**Finland** – The KKV has requested that notifications be postponed when possible. Merging parties should contact the KKV as soon as possible and expect delays in the review of their proposed mergers. For example, the Finnish Market Court extended on 13 August 2020 by one month, due to COVID-19, the time limit for an in-depth investigation of a merger between two financial services companies.



**France** – Review periods were suspended between 12 March and 23 June 2020 and restarted again on 24 June 2020. Only electronic communications are possible.



**Germany** – Filings can be made as usual. A new piece of legislation – entered into force on 29 May 2020 – was adopted pursuant to which the review periods for notifications submitted between 1 March and 31 May 2020 (and for which the review was still ongoing or was initiated before 31 May 2020) were extended to allow the FCO more time to conduct market surveys during the COVID-19 pandemic. Phase I went from one month to two months, and Phase II moved from four months to six months. No-issues deals proceed as usual. These new longer review periods do not apply to merger filings made after 31 May 2020. The 10<sup>th</sup> amendment to the competition law entered into force on 19 January 2021, increasing the filing thresholds and extending the Phase 2 review period by one month.



**Greece** – The HCC has adjusted its opening hours for the public. Parties must submit documents via email. Meetings and conferences will be held via a video-conferencing platform. The HCC has not communicated on the impact on timelines.



**Hungary** – Pre-notifications and formal filings can only be made electronically. Review of no issues cases, eligible for the fast track procedure, should not be impacted. More complex cases are likely to be delayed, notably through the issuance of information requests that stop the clock. Financing transactions involving Hungarian public funds and implemented as part of a dedicated COVID-19 capital programme are exempt from notification.



**Ireland** – The CCPC requests that notification forms and all supporting documentation be submitted in electronic format. The CCPC has confirmed that its statutory timetables for all pending review processes remain binding. There was a 13% decrease of notifications made to the CCPC in 2020 compared to 2019 (partially explained by COVID-19). The average review period for Phase 1 mergers was 23 working days.



**Italy** – Deals notified between 23 February and 15 May 2020 were not deemed notified until 16 May 2020, when review periods resumed. Deals notified on or after 16 May 2020 are reviewed as per the usual timeframe. According to a decree dated 14 August 2020, transactions involving businesses that have registered balance-sheet losses in the last three years and risk going bankrupt are automatically authorised as long as they serve the general interests of the national economy.



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



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



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



**Netherlands** – The ACM is conducting its merger reviews as usual. Virtually all ACM employees are working from home. If necessary, meetings and hearings can take place at the ACM premises.



**Poland** – Standard statutory review periods are back in force. Legislation was repealed on 23 May 2020 according to which review deadlines for (i) mergers notified before 14 March 2020 were suspended and (ii) mergers notified after 14 March 2020 would only start after the end of the state of emergency.



**Portugal** – The AdC is ensuring the continuity of its activities. Meetings and contacts shall take place through phone or videoconference. Merging parties should only use the AdC's electronic mergers notifications system (SNEOC) when notifying their deals. There is no noticeable impact on review periods.



**Romania** – Notifications shall be submitted by email, through the Council's website, or by post. All contact with parties shall be made through phone or by email. No noticeable impact on review timelines.





**Slovakia** – The Slovak Antimonopoly Office is up and running. It is accepting merger filings and deadlines are being adhered to. However, some delays might occur if market reviews are necessary. The Office has asked all parties to submit filings electronically or via post (and thus avoid in-person submissions).



**Slovenia** – The CPA is accepting merger notifications (and parties should file within 30 days from signing to avoid fines for late filing). Slovenia lifted the state of emergency on 31 May 2020 and merger review periods are now running.



**Spain** – Administrative procedures, including merger control administrative procedures, are back in force, effective 1 June 2020. (The clock resumed at the point it had stopped, rather than restarting from day one.)



**Sweden** – There is currently no impact on merger notifications and review periods. The SCA staff are to a large extent working remotely. Physical meetings have been replaced by calls or videoconferences.

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



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



**Iceland** – Procedures for cases that are not relevant to the response to COVID-19 may be delayed.



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



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



**Norway** – The Norwegian Parliament had adopted a temporary law extending the review merger deadlines by an additional 15 working days. The new deadlines entered into force on 17 April 2020 and applied both to concentrations already under review on 17 April and new notifications made between 17 April and 31 October 2020. These new longer review periods do not apply to merger filings made on or after 1 November 2020. The NCA is encouraging its employees to work remotely. Meetings will be held remotely.

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



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



**Serbia** – Since 6 May 2020, Serbia is no longer in a state of emergency, and the Serbian government has revoked the deadlines suspension regulation put in force on 24 March 2020. Deadlines expiring between 24 March and 6 May 2020 were considered expired on 5 June 2020. Merger filings made after 6 May are being reviewed under the normal review periods. The CPC has suspended physical meetings, and merger notifications should be filed either by post or via email.



**Switzerland** – The official position is that the merger control procedures should not be delayed or impacted by COVID-19. In practice, pre-notification discussions tend to be longer. Merger filings can be submitted electronically.



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

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



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

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**Ukraine** – The AMC’s merger unit is working as usual and accepting merger filings (which shall be delivered physically). No request to postpone filings have been made and no disruptions or delays have been observed so far. There is no observable trend of merger filings being rejected or requests for analysis under the fast-track procedure being denied.

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



**Canada** – The Bureau encourages merging parties to contact case teams and management in the Mergers Directorate as early as possible on complex matters and throughout the conduct of a review. Timelines may be impacted. Notifications should be submitted via email or online forms. The Notification Unit is not reachable by telephone.



**Mexico** – COFECE has taken measures against COVID-19 and certain deadlines are suspended until 2 February 2021. However, merger reviews will continue as usual and deadlines will be met. COFECE has announced that it will expedite the review of transactions that consolidate production capacity to address increased demand for popular consumer goods and the fight against COVID-19.

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



**USA** – FTC and DOJ have introduced a temporary e-filing system. The FTC resumed granting early terminations (ETs) – effective 30 March 2020 – and appears to be processing filings with minimal delays.

Substantive analysis, engagement, and feedback from the government are still likely to be slower.

- Both FTC and DOJ are teleworking. As staffs of both agencies work from home, delays should be expected because there is much that gets accomplished face-to-face that will not happen as quickly.
- Latham’s experience with the government shutdown in 2019 and prior shutdowns (and what can currently be observed) suggests that all phases of the government’s reviews/investigations will happen at a slower pace.
- During the 2019 shutdown, when the government maintained a skeletal staff in place, the agencies’ practice was to issue placeholder Second Requests to pause the clock on deals that the agencies didn’t have time to review, even if they didn’t raise any issues.
- This time is different because all FTC/DOJ staff attorneys are still working, albeit from home. Nevertheless, it is expected that the agencies will fall behind and that there is a prospect of the government issuing Second Requests in deals with very limited (or perhaps no) issues the agencies don’t have time to rule them out.

192 HSR filings were made in December 2020, the most for that month since 2001 (and a 11.6% increase from December 2019). There were 1,701 filings during fiscal year 2020 (1 October 2019-30 September 2020), compared to 2,089 transactions reported during fiscal year 2019.

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



**Argentina** – Merger control reviews resumed on 26 October 2020. The CNDC will accept and review new notifications (through its dedicated electronic platform).



**Brazil** – CADE’s officials are working remotely, face-to-face meetings are being replaced by video conferencing, and judgment sessions of CADE’s Tribunal are being held virtually. There have been no requests for parties to postpone notifications. CADE has introduced a new online system allowing for a quicker payment and processing of the filing fee. Deadlines for gun-jumping investigations resumed on 21 July 2020.

Mergers reviews under the “ordinary” procedure have taken longer in 2020 (approximately 95.4 days) compared to 78 days in 2019 and 72 days in 2018.

A bill that entered into force on 12 June 2020 established that associative agreements, consortia, or joint ventures concluded between 20 March and 30 October 2020 were not subject to pre-merger control. However, CADE has advised that companies should notify their deals to the authority regardless of the bill.



**Chile** – The FNE issued specific guidelines on 25 March 2020 to address COVID-19. Parties are requested to postpone merger filings and only notify deals that are urgent and essential. Some formalistic requirements have been relaxed. Pre-notification is encouraged to ensure the notification form is complete. Once the clock starts, the FNE is conducting its merger reviews as usual.



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



**Colombia** – Merger proceedings have been fully reactivated since 12 May 2020. Merger filings should only be made electronically.



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



**Ecuador** – Review deadlines resumed on 6 July 2020 for filings deemed complete by the SCPM. New merger filings should be submitted by email, so parties can comply with the eight-day filing deadline. Fast-track notifications are being reviewed in 50-60 days, while obtaining clearance for regular notifications takes four to six months.



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



**Uruguay** – The new pre-closing merger control regime has entered into force. The Authority is open and merger filings can be submitted electronically.



**China** – SAMR has been working normally since mid-February 2020, accepting notifications and with no delays to timetable reviews. SAMR maintained the pace of merger reviews and clearances in the first five months of 2020. It cleared a comparable number of deals unconditionally compared with this time last year. It is currently approving deals on similar timelines as before: 2-3 months from filing in simple cases, 4-5 months in standard cases with either no issues or some resolvable issues, and 9+ months in complex deals resulting in remedies. Simplified mergers were even reviewed 4% quicker during Q1 2020 (12.79 days) compared to Q1 2019 (13.39 days). The average time to accept filings as complete and initiate the review process has been shortened by 21% in H12020 compared to 2019, and the review process itself has been 14.5% shorter in H12020 compared to 2019.

SAMR has established a “green channel” for expediting its review of mergers in key sectors in the battle against COVID-19 (e.g., pharmaceuticals, medical equipment, food production) as well as other sectors severely impacted by the pandemic (e.g., catering and tourism).



**India** – According to the CCI’s notice of 20 April 2020, merger filings may be notified electronically. The CCI also allows pre-filing consultations through videoconferencing. The CCI will review new filings subject to the availability of necessary information and material. Delays cannot therefore be excluded.



**Indonesia** – The KPPU has resumed its activities (since 7 April 2020). Merger filings can be made and review periods are running again. Upon request, the parties can submit their merger filing within 60 days – instead of 30 days – from closing.



**Japan** – The JFTC is running as usual. During April–June 2020, the JFTC took, on average, 18 days to issue its clearance decisions, compared to 10 days during the same period last year.



**Philippines** – Merger control reviews have resumed after being suspended between 16 March and 15 May 2020. The PCC issued guidelines on 16 July 2020 (last modified on 6 August 2020) to provide guidance on the merger process during the quarantine period. The 30-day notification period has been relaxed, on the condition that the deal is notified before implementation, and that the 30th day falls during the quarantine period. Review periods may be extended by 15 days for Phase I and 30 days for Phase II, subject to the execution of a waiver by the merging parties. Parties must submit their filings and other correspondence electronically through the PCC’s online filing facility, and submit hard copies once the quarantine is lifted. Parties may be interviewed remotely.

The President has approved a bill substantially increasing the notification thresholds for the next two years. Notification is now only required if the “value of the transaction” exceeds PHP50 billion (US\$1 billion). The proposal is intended as an economic stimulus following the COVID-19 pandemic.



**Singapore** – The CCCS remains operational. Merger filings are still accepted, though prior contact with the CCCS is encouraged to obtain guidance on how to notify. The CCCS has not issued any communication providing for extended review periods.



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



**Taiwan** – The TFTC is fully operational. Merger filings are accepted as usual.



**Australia** – Merger filings are still accepted. Timelines for some reviews/applications may be extended where there are challenges in conducting the necessary market inquiries. The ACCC is asking parties to postpone mergers that are not urgent, more speculative or at a very early stage with no sale agreements in place. Regime is voluntary.



**New Zealand** – The CC is aiming to carry out its current merger applications within the timeframes agreed with the parties. Extension may be needed if there are delays in responding to information requests due to COVID-19. Parties are still able to file any new merger applications at any time. The CC will seek to prioritise merger approvals where the financial viability of a firm is in jeopardy because of COVID-19. Regime is voluntary.

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



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



**CEMAC** – Merger notifications can still be submitted (also electronically). However, non-essential staff are working remotely and, as such, delays in the merger review can be expected.



**COMESA** – The CCC encourages electronic filings. Onsite investigations and in-person meetings have been suspended. Engagement with the CCC on the notification process within 30 days of the decision to merger is sufficient to avoid a fine for late filing. The CCC has announced that it may not be able to complete its assessment of mergers and acquisitions within the statutory 120 days. The regime is not suspensory.



**Ethiopia** – The TCCPA is now accepting new merger filings (having previously suspended its merger review activities during the state of emergency).

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



**Kenya** – The CAK is fully operational though most of the staff is working remotely. It is still receiving and processing merger notifications without noticeable delays. Electronic filings are encouraged. The CAK is trying to fast-track merger reviews where the merging parties are trying to bring a product faster to the market in response to the COVID-19 crisis.



**Morocco** – The state of emergency has been prolonged until 7 February 2021. All submissions – including new merger filings – should be made electronically. Meetings and hearings will be done remotely. No-issues cases should be reviewed within the standard timeframes. Review deadlines for complex/Phase II mergers may be suspended during the state of emergency.



**Namibia** – The NCC has resumed normal operations since 11 May 2020, although stakeholders are encouraged to continue using electronic means of communication. Physical documentation such as merger filings are accepted at the NCC's offices.



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

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**South Africa** – The CC continues to work remotely and has called for new merger filings to be deferred. New merger filings are accepted, but the CC will immediately seek extensions of 60 business days for intermediate mergers and 120 business days for large mergers. In practice, no undue delays have been experienced (both for intermediate and large mergers). The CC has also announced that priority will be given to mergers in sectors of the economy that have been severely impacted by the pandemic.



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



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