

**European Commission | Temporary Framework for Assessing Antitrust Issues  
Related to Business Cooperation in Response to COVID-19 Outbreak**

On 8 April 2020, the European Commission (the **Commission**) published a Temporary Framework to assess possible forms of business cooperation in response to the emergency situation caused by the COVID-19 outbreak.

The Commission acknowledges the “*exceptional challenges due to the COVID-19 crisis*” that companies face and considers that these extraordinary circumstances may make it necessary for them to cooperate with each other in order to mitigate the effects of the crisis. The Temporary Framework thus covers cooperation “*in order to ensure the supply and adequate distribution of essential scarce products and services during the COVID-19 outbreak*”. According to the Commission, many EU Member States are already experiencing shortages of medicines used to treat COVID-19 patients or are expecting such shortages to occur very soon.

1. *Assessment criteria for cooperation projects designed to tackle the shortage of essential products and services during the COVID-19 outbreak*

The Commission considers that a trade association (or another independent company or public body) may lawfully engage in the following cooperation initiatives, provided that “*sufficient safeguards*” are in place (notably to avoid sharing any individualised information about a company with its competitors):

- a. Coordinating the joint transport of input materials;
- b. Helping to identify those essential medicines for which, in view of production forecasts, there are risks of shortages;
- c. Aggregating production and capacity information, without exchanging individual company information;
- d. Working on a model to predict demand on Member State level and identify supply gaps;
- e. Sharing of aggregate supply gap information coupled with the indication by participating firms whether they can fill the supply gap on an individual basis, provided that information is not shared with competitors.

The Commission considers that cooperation in the health sector “*might even need to go further to overcome critical supply shortages*”. According to the Commission, it might for instance be necessary to reorganise production so that not all firms focus on one or a few medicines, leaving other medicines underproduced, or to adapt stock management or distribution. Such measures, which, “*in normal circumstances*”, would be problematic as they entail the exchange of commercially sensitive information, would not infringe EU competition law nor constitute an enforcement priority for the Commission in the current situation, provided that they are:

- a. “*designed and objectively necessary to actually increase output in the most efficient way to address or avoid a shortage of supply of essential products or services, such as those that are used to treat COVID-19 patients*”;
- b. temporary and only applied as long as there is a risk of shortage (and in any event only during the COVID-19 outbreak); and
- c. limited to what is strictly necessary to address or avoid the shortage.

Additionally, the Commission considers the fact that a cooperation effort is encouraged and/or coordinated by a public authority to be “*a relevant factor*” to conclude that such a form of cooperation would not be problematic or an enforcement priority.

The Commission asks companies participating in such initiatives to document all exchanges and agreements between them and keep these documents available to the Commission on request.

2. *Exceptional procedure to provide guidance and comfort letters on compliance of specific cooperation projects with competition rules*

The Commission announced that its Directorate General for Competition stands ready, “*exceptionally and at its own discretion*”, to provide guidance by means of an ad hoc “comfort” letter. The Commission thus aims to facilitate initiatives that need to be swiftly implemented in order to tackle the COVID-19 outbreak effectively. It thus revived a guidance procedure which it had abolished almost twenty years ago.

Companies seeking informal guidance can use the Commission’s [webpage](#) and mailbox ([COMP-COVID-ANTITRUST@ec.europa.eu](mailto:COMP-COVID-ANTITRUST@ec.europa.eu)) dedicated to the COVID-19 outbreak.

On the day of adoption of the Temporary Framework, the Commission also issued its first comfort letter to “Medicines for Europe” (a trade association formerly known as the European Generics Medicines Association) on a specific voluntary cooperation

project among pharmaceutical producers targeting possible shortages of critical hospital medicines for the treatment of COVID-19 patients.

8 April 2020

[Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of emergency stemming from the current COVID-19 outbreak](#)

[Press release issued by the European Commission in relation to the Temporary Framework](#)