



## COVID-19: Competition policy actions for governments and competition authorities

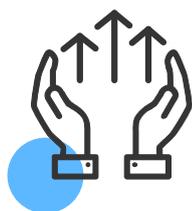
The economic consequences of the COVID-19 pandemic requires swift and strong government actions to keep markets and the economy functioning.

Government intervention in markets affected by the crisis is necessary and legitimate, but to ensure a robust recovery effective competition in markets will need to be restored in the longer term. Measures are thus needed the short term to prop up the economy as well to then stimulate the economy for recovery in a way that guarantees it is also more resilient, inclusive and more climate friendly. Policymakers may have to consider the trade-off between efficiency and resilience so that economies are better prepared to face different types of crises, addressing supply chain challenges, promoting social cohesion and environmental outcomes. To achieve these legitimate policy goals, policymakers should assess the different available policy alternatives, undertake a cost-benefit analysis, and select the policy option that minimises competition restrictions and distortions.

All these require a broad reflection on an intelligent industrial policy that can help reallocate resources to certain key sectors of the economy (e.g. health) that at the same does not distort competition between firms and can help to lay the ground for a resilient and sustainable economy in the long term. Restoring effective competition in the medium to long term is very important to ensure that the recovery is also fast and consistent, ensuring vibrant economic activity.

This policy note outlines actions that governments and competition authorities can consider to help address the immediate challenges raised by the crisis whilst looking to the post-pandemic future. For governments it describes competition principles that should be followed when designing support measures to the economy in order to facilitate a rapid and sustainable recovery in the longer term. For competition authorities this note outlines actions they can take to address the practical, theoretical and evidentiary challenges of the current crisis, including ways to prioritise investigations, tackle price abuses, review rescue mergers, and provide advice to governments on pro-competitive solutions when designing interventions in markets by providing state support measures.

### COVID-19: Actions for Governments



#### CONTINUE TO SUPPORT COMPETITION POLICY PRINCIPLES AND ENFORCEMENT

Past crises show that competition policy and enforcement has a fundamental role to play in strengthening resilience in markets and in supporting the speedy recovery of an economy from a crisis. Strong competition enforcement can therefore play a significant role in the Government's responses to the economic crisis and governments should continue to support competition authorities with resources and call upon their unique expertise during and after the crisis to ensure markets are well functioning after the crisis and can support economic growth.



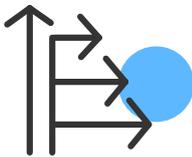
## STATE SUPPORT MEASURES SHOULD TAKE ACCOUNT OF COMPETITION PRINCIPLES

Governments should plan market interventions to minimise impact on competition and avoid, whenever possible, selective aid to firms that were failing or had significant structural issues before the crisis. Measures that target specific companies during this critical period should be carefully designed, narrowly tailored to solve the issue identified and should be temporary and monitored closely. Any investments made (e.g. equity), including the nationalisation of a firm, should be exited as soon as conditions permit and in a manner that promotes competition. Appropriately and transparently reimburse firms in cases where the crisis reveals the need to impose new public service obligations on firms. Governments should co-operate with other jurisdictions to ensure a degree of international agreement in the approach taken to maintain also a level playing field amongst countries.



## LIMIT PROTECTIONIST MEASURES AND KEEP MARKETS OPEN

Governments should carefully consider limiting state interventions which unnecessarily distort the level playing field, and consider seeking advice from competition authorities. When planning market interventions, governments should ascertain that the measure is necessary and proportionate to address a market failure identified in a particular market as a result of the crisis. They should also ensure that any support measures adopted be transparent and temporary. Finally, governments should make sure that there are no alternative solutions available that entail lower negative effects in terms of distortion of competition.



## PHASE OUT GOVERNMENT INTERVENTIONS IN THE MEDIUM TO LONG TERM

Competition policy can inform the development of exit strategies that will make it possible for the market mechanism to be restored after the crisis, while avoiding the damage to the market that might follow an unplanned exit. Support measures should be limited in time in a manner that is reasonable, transparent and foreseeable and Governments should stop providing support as soon as conditions allow. Exit strategies may include introducing incentives for exit from State support as soon as market circumstances permit (e.g. high remuneration for the government recapitalisation or requiring a strict dividend remuneration policy) and to ease markets back toward normality in a manner that promotes competition. Governments should rely on the advice of competition authorities when designing exit strategies. This can be complex and requires careful consideration, particularly to balance flexibility with legal certainty.

## COVID-19: Actions for competition authorities



## DO NOT SOFTEN COMPETITION ENFORCEMENT OR ADVOCACY

Competition has a fundamental role to play in ensuring well-functioning markets that can help promote the economic recovery. While there should be no suspension of competition policy standards or relaxation of principles and objectives of competition law enforcement, competition authorities' actions have to be realistic and take into account the crisis conditions in the

market and ensure dynamic effects are duly considered. Crisis circumstances and the need for emergency decisions require flexibility in procedures and the ability to carry out rapid but diligent assessments of mergers or of behavioural cases.



### **PRIORITISE ENFORCEMENT AND ADVOCACY ACTIONS ON MEASURES MOST EFFECTIVE TO DEAL WITH THE CRISIS**

Enforcement and advocacy efforts of competition authorities should be focused primarily on those sectors of the economy which may have suffered the greatest impact from the crisis (e.g. health care, aviation, tourism). The competition authority should allow or support initiatives which can help speed up the recovery of the economy from the crisis (e.g. foster efficient co-operation between firms on climate change). Competition authorities' actions should focus on 1) allowing and promoting incentive mechanisms for markets to respond quickly to the needs arising from crises (e.g. production of essential drugs, medical products) and 2) limit market responses that prolong the effects of the crisis and slow down the recovery of the economy (e.g. anti-competitive behaviour and advocacy in labour markets). Competition authorities should also communicate with transparency crisis-related adjustments of priority sectors and instruments.



### **HELP GOVERNMENTS IMPLEMENT STATE INTERVENTIONS**

Competition authorities should continue to champion competition principles to safeguard a level playing field and avoid market distortions by helping governments design public responses to the crisis based, where possible, on clear, general and objective principles applicable to all firms in the economy, sector or region. Competition authorities should inform the development of exit strategies that will make it possible for market mechanisms to be restored post-crisis. This will help ensure markets remain competitive following the crisis, which will be crucial for the economic recovery.



### **MONITOR CLOSELY SIGNIFICANT AND RAPID PRICE INCREASES**

This may include enforcement actions against anti-competitive price increases as well as the use of interim measures or warning letters to stop the conduct quickly, when appropriate. Authorities should co-ordinate closely with consumer protection agencies, or rely on consumer protection powers (if available) to protect consumers from unfair pricing practices. Authorities may also use advocacy to highlight the risks of price control measures, including those related to discouraging production and undermining incentives for new entrants.



### **PROVIDE GUIDANCE ON LAWFUL CO-OPERATION BETWEEN COMPETITORS**

This may include both general guidance to deal with the current crisis as well as speedy case-by-case guidance to business (e.g. open fast-track channels to provide advice on specific cases of co-operation). It is important to consider efficiencies in arrangements between competitors, more specifically for the development of key health products (e.g., vaccines or essential drugs). Authorities should ensure that the arrangements are limited in time and do not include hardcore restrictions such as price fixing. "Crisis cartels" have

achieved limited benefits in stabilising businesses and resulted in significant detriment for consumers. Authorities should therefore remain vigilant.



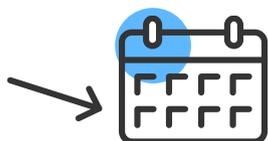
### **CONTINUE TO LOOK CLOSELY AT MERGERS AND IN PARTICULAR AT RESCUE MERGERS**

Anti-competitive mergers generating a long-lasting negative impact on the markets should be prohibited also in times of crisis. An increased emphasis on the evaluation of dynamic efficiencies should be considered. Firms in financial distress may seek to improve their condition by merging with healthier competitors. Transactions should be carefully scrutinised to ensure that the merger constitutes a “rescue merger”, to avoid risks of approving anti-competitive mergers with a long-lasting negative structural impact in the marketplace. Ensure a rigorous application of the failing firm defence. However, recognising that the position of firms in distress may rapidly deteriorate during the investigation, which in turn may cause inefficient liquidations, competition authorities should adopt procedural changes to ensure a speedier review of mergers involving failing firms.



### **MINIMISE THE USE OF EXCEPTIONS FOR PUBLIC POLICY CONSIDERATION IN MERGER CONTROL**

Decisions based on other public policy considerations should be limited to exceptional circumstances, made in a transparent manner and in cases where no less restrictive alternatives exist to achieve the same public policy objectives. If the power to approve an anti-competitive merger based on public interest considerations rests with another government body, the competition authority should actively promote, when available, the use of alternative policies measures that achieve the same public interest objective whilst minimising restrictions to competition.



### **LOOK FOR PROCEDURAL FLEXIBILITY**

Given the containment measures limiting movement of people (and staff of authorities) as well as the need to adjust to crisis-related priorities, competition authorities should explore the use of flexibility within procedures including expedited derogations from standstill obligations in mergers when justified and mechanisms to speed up reviews of mergers where necessary (e.g. e-filings), extension of soft deadlines and deferment of non-urgent cases. Any such use of flexibility and adjusted procedures should be mindful of due process rights.

This note is prepared based on the work of OECD Competition Committee, which formulates and promotes best practices in the area of competition law and policy.

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