

COVID-19 Update

Antitrust

15 April 2020

Enforcement of Swiss Competition law in light of COVID-19

Given the COVID-19 circumstances, the Swiss Federal Council ordered an extension of the ordinary annual court recess ("Gerichtsferien"). As a result, procedural deadlines in many (but not all) proceedings by the Swiss Competition Commission ("ComCo") have been suspended up to and including 19 April 2020. This memorandum explains impacts, consequences and exemptions on competition law proceedings.

Merger Filings

This standstill of deadlines in administrative procedures does currently not affect Swiss merger control. Unlike the EU Commission, ComCo has so far not officially commented on the impact of COVID-19 on Swiss merger control. However, the past weeks have shown, that ComCo is still accepting merger filings (both electronically submitted and hard-copy filings). ComCo has so far also neither asked parties to refrain from submitting merger filings nor has ComCo asked parties to delay any merger filings.

The ordinary statutory deadlines for the review of merger filings remain applicable (i.e. one month for phase I and four months for phase II). Unlike in European Union law, where the EU Commission may use its "stop the clock powers" in order to extend the examination period of a concentration, ComCo may only extend the period of the review, if it is prevented from concluding its examination for reasons attributable to the undertakings concerned (cf art. 33 para. 3

CartA). Therefore, if the parties remain able to provide ComCo with information despite the COVID-19 situation, ComCo will likely have to conduct its examination within the ordinary course deadline. There have also been no indications so far, that ComCo is referring more concentrations to phase II, in order to extend the examination period.

Even during the pre-notification period, i.e. during ComCo's preliminary examination of the draft filing for which no statutory time limits apply, there have so far been no COVID-19-related delays. ComCo pursues a "business as usual" approach for merger filing proceedings.

Investigations by ComCo

However, the extended standstill of deadlines in administrative procedures, which has been issued by the Federal Council in light of COVID-19, affects other proceedings by ComCo. Based on the Federal Council's ordinance, a suspension of

procedural deadlines applies to procedural deadlines, which are subject to a suspension during the Easter court recess.

This is the case, for example, for deadlines which have been set in ComCo's investigations with respect to anti-competitive conduct. Insofar as the extended suspension applies, such a suspension does not only affect procedural deadlines calculated on the basis of a number of days, weeks or months, but also administrative deadlines for which ComCo has issued a specific end date that fall within March 21, 2020 and April 19, 2020. In these cases, the deadline lapses on the first working day following the end of the suspension, i.e. on April 20, 2020.

In addition, ComCo is flexible on a case-by-case basis regarding the payment of enforceable fines, in order to take into account the exceptional situation related to COVID-19. Thus, in several cases of appeals pending before the Federal Supreme Court, the ComCo Presidency has excep-

tionally granted a suspension of the deadline to pay the fine until a decision by the Federal Supreme Court is rendered.

Finally, while ComCo had to postpone hearings in ongoing procedures in order to comply with "social distancing" measures, ComCo continues with its ongoing investigations by permitting home office for its staff.

Conclusion

ComCo is pursuing the enforcement of competition law in times of COVID-19 and pursues a business as usual attitude for merger control proceedings. At the same time, ComCo is respecting the standstill of deadlines issued by the Federal Council for deadlines in its investigations with respect to anti-competitive conduct, while continuing with its ongoing investigations.

Please do not hesitate to contact us in case of any questions.

Legal Note: The information contained in this COVID-19 Update is of general nature and does not constitute legal advice. In case of particular queries, please contact us for specific advice.

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