

Informative Note

The impact of the COVID-19 crisis on merger control

26th March 2020

As defined in Royal Decree 463/2020 declaring the state of alarm

As we have been reporting over the last few days, the extraordinary crisis caused by COVID-19 is having consequences in all areas, but above all, of course, in the economic sphere.

As a result, the COVID-19 crisis also seems to be significantly affecting the market for corporate operations and mergers and acquisitions. In this respect, the companies involved may see their objectives frustrated or, in any case, may see their operations delayed, especially when the operations constitute mergers which involve notifying the competent competition authorities.

It is precisely in this sense that the National Commission for Markets and Competition (CNMC) [has recently issued a statement](#), recalling that the administrative deadlines have been suspended by virtue of Royal Decree 463/2020 declaring the state of alarm and that, consequently, the CNMC would not be obliged to resolve or notify any type of resolution. It is also recalled that the time limits for replying to requests, making representations or appeals are also suspended.

Notwithstanding the above, the Spanish competition authority has confirmed that it will continue to provide its services electronically, mainly through their website. Therefore, all interested parties will be able to continue communicating online with the CNMC, including the submission of documents related to the practice of notification of mergers, although, as we commented, it is very likely that its processing will be slowed down, since most of the CNMC's staff are working remotely. Nevertheless, and in any case, it is noteworthy that the Spanish authority has not yet published any notification entries since 13 March.

On the other hand, according to Additional Provision Three of RD 463/2020, the CNMC would indeed be authorized to agree on those measures strictly necessary to avoid causing serious harm to the rights and interests of the parties concerned in the proceedings, provided that the interested party so requests and agrees that the time limit is not suspended. Therefore, in exceptional cases and in the light of the circumstances, the CNMC will retain the power to bring forward those cases which, if not dealt with, could be prejudicial to the interested parties.

For its part, and given the difficulties and disruptions caused by COVID-19, the European Commission's Directorate-General for Competition [advises](#) companies to delay notifying possible mergers until further notice, unless this is unavoidable. This is mainly due, as in the case of the Spanish authority, to the fact that some of the Directorate-General's staff are providing their services remotely; and secondly,



because it would be particularly complex to gather information from third parties, such as competitors, customers or suppliers, among others.

Similarly, in compliance with the obligations given by the health authorities, the Commission has restricted the possibility of delivering the documentation in physical format, having previously contacted the Merger Registry. For the same reason, priority has been given to the electronic submission of all documents through the channels provided for that purpose.

In line with the above, it is worth noting that the European Commission has already agreed to suspend the processing of some second phase mergers, as is the case of [Essilorluxottica / Grandvision \(M.9569\)](#), [Hyundai Heavy Industries Holdings / Daewoo Shipbuilding & Marine Engineering \(M.9343\)](#) or [Boeing / Embraer \(M.9097\)](#). However, to date, no similar decisions have been made in respect of those cases that are in the first phase.

Therefore, and in the absence of other measures of an additional nature, it is very important that, prior to taking any decision that may involve the obligation to notify a merger, either to the European Commission or to the CNMC, account be taken of the possible delays that this may entail in the effective completion of the operation. In this regard, we recommend that you exercise caution and consult a professional with expertise in the field.

We hope the information is useful and of your interest. At Andersen Tax & Legal we have created a multidisciplinary team to deal with all the questions that may arise in this area or in relation to the COVID-19 and all the firm's professionals are at your disposal.

For more information please contact:

[Isabel Martínez Moriel](#) | Director in the area of Privacy, IT & Digital Business
isabel.martinez@andersentaxlegal.es

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