

The Thinking and Reaction of Competition Authorities during Major Economic Changes - Using the Example of the Effects of the Coronavirus Epidemic (COVID-19)

Abstract

Keyword(s): COVID-19, antitrust laws

In recent years, the continued spread of the COVID-19 epidemic has had a huge impact on global society and economies. Most businesses tried to maintain stability during the economic downturn while governments in various countries actively worked to combat the epidemic and offered relief plans or subsidies to help. Businesses survived the epidemic crisis and worked to formulate effective strategies for economic recovery.

However, the policy to revive the industry should not be reduced to a protection policy. In addition to providing short-term subsidies to combat epidemics, government agencies should also take long-term measures to help the market return to an open competitive environment.

Therefore, the timing of the government's exit is an important key. Exiting too early does not help manufacturers and cannot restore competition in the market. Exiting too late makes producers too dependent on government support, which reduces competition and participation in the market. Therefore, the research team collected the datasets of impact of COVID-19 on the industry in different countries and compared law enforcement and major competition authority cases in the United States, Europe, Asia-Pacific and other countries during the COVID -19 epidemic and compared their competition with my country. The similarities and differences between judicial authorities and domestic competition law can be discussed by experts in industrial economics and academics to enrich the observation perspective and research content. The following paragraphs explain the policy recommendations adopted by the government and competition authorities in response to the epidemic:

1. Competition policy and recommendations for government.

- (1) Continued support for and adherence to the principles of competition policy and its implementation.

Past crises have shown that competition policy and enforcement can play a fundamental role in strengthening market resilience and the economy's rapid recovery from crises. The government should continue to provide resources and

support to competition authorities and consult competition authorities during and after the crisis because related Knowledge can ensure the market functions well after the crisis and support economic growth.

(2) The state should reduce the impact on the market when supporting measures
When planning market intervention measures, the government should minimize the impact on market competition and avoid selective support for companies that closed before the crisis or had major structural problems. If the crisis shows that it is necessary to impose new measures on companies, it is necessary to provide adequate and transparent support and compensation to companies. Governments in all countries should work with other jurisdictions to ensure that there is some international consensus on methods to maintain a level playing field between countries.

(3) Avoid excessive protectionism from distorting the market.

The government should carefully consider whether to limit government intervention that unnecessarily distorts the level playing field and seek the views of competition authorities. They should also ensure that any support measures taken are transparent and limited in time. Finally, the government should ensure that there is no other solution that can have a lesser negative impact on restricting competition.

(4) Government gradually removes intervention measures on market in the medium and long term

Competition policy can provide a guide for formulating market intervention exit strategies so that the market mechanism can be restored after the crisis while avoiding damage to the market, such as an unplanned exit from intervention policy. Support measures should be time-limited in a reasonable, transparent and predictable manner. The government should end the support measures and implement the intervention policy as soon as conditions allow.

2. Recommendations of the competition law authority

(1) Do not weaken the enforcement and advocacy of competition law

The actions of the competition law authority should ensure that the impact of the COVID-19 epidemic is properly considered. Decision-making process during crisis requires flexibility in procedures, as well as quick and careful assessment of mergers or other similar actions.

(2) Law enforcement should focus on the most effective measures to deal with the crisis

The enforcement and publicity work of the competition law authority should focus on those economic sectors that may be most affected by the crisis (such as healthcare, aviation, and tourism). Competition agencies should allow or

support initiatives that help accelerate the recovery of the economy (such as promoting effective business cooperation on climate change). To be more specific, the actions of the competition law authority should focus on: a. Allowing and promoting market incentives so as to be able to swiftly respond to the demand generated by the crisis (such as the production of essential drugs and medical products); b. Limiting the market responses that will extend the impact of the crisis or/and slow down the economic recovery (such as anti-competitive behavior and related propaganda in the labor market).

(3) Closely monitor the substantial and rapid price increase

In the face of major economic changes, market prices are likely to fluctuate sharply, and the competent authority should closely monitor prices and list them as important matters for law enforcement, as well as using temporary measures or issuing warning letters when appropriate to quickly stop such behavior.

(4) Provide guidance on legal cooperation between competitors

This can include general guidance for dealing with the current crisis, as well as quick case-by-case guidance for companies (for example, opening up fast lanes to provide advice on specific cooperation cases). Authorities should ensure that these arrangements are temporary and do not include core restrictions such as fixed prices. "Crisis cartels" have achieved limited benefits in stabilizing enterprises, but they have caused serious damage to consumers. Therefore, the competent authority should be vigilant about its behavior.

(5) Continue to pay close attention to business mergers, especially the "rescue combination"

Anti-competitive mergers that cause a long-term negative impact on the market should also be prohibited in times of crisis. Consideration should be given to further emphasis on evaluation of efficiency. Companies in financial distress may improve their situation by merging with healthy competitors. The transaction should be carefully reviewed to ensure that the merger constitutes a "rescue combination" to avoid the risk of approving anti-competitive mergers that will cause a long-term negative structural impact on the market. It is important to strictly apply the competition law to the arguments made by a dying business regarding its merging plan with another company. As a result, the competition law authority should adopt procedural changes to ensure faster review with mergers involving bankrupt companies.

(6) Minimize the use of exceptions based on the public policies arguments in merger control

Decisions based on public policy considerations should be limited to special

circumstances, implemented in a transparent manner, and undertake it only when there are no less restrictive alternatives. If the power to approve anti-competitive mergers based on public interest considerations belongs to another government agency, the competition law authority should actively promote the use of alternative policy measures so as to achieve the same public interest objectives while minimizing the restrictions on competition.

(7) Seek procedural flexibility

The competition law authority should explore flexibility in the procedure, including speeding up the reduction or exemption of the suspension obligation in the merger under reasonable circumstances, and speeding up the review of merger (such as via using electronic documents) when necessary, extending the soft deadline and deferring the processing of non-emergency case. Any use of such flexibilities and adjusted procedures should take into account the right to due process.

Finally, the research team is honored to have this opportunity to conduct researches on such a meaningful topic, and we would like to sincerely thank the President of the Fair Trade Commission, the review committees, and friends in the industrial and economic fields for their valuable suggestions and research assistance. Certainly, all fallacies and deficiencies are the responsibility of the research team.