

Clients & Friends Memo

COVID-19 Update: DOJ and FTC Launch Expedited Review Process for COVID-19-Related Collaborative Efforts

March 26, 2020

The Antitrust Division of the U.S. Department of Justice (the “Division”) and the Federal Trade Commission (“FTC”) have jointly announced an expedited process for the review of proposed collaborative efforts to deal with the COVID-19 pandemic. The March 24 joint statement recognizes that addressing the spread of the virus will require “unprecedented cooperation . . . among businesses to protect America’s health and safety.” Both agencies are “committed to providing individuals and businesses in any sector of the economy that are responding to this national emergency expeditious guidance about how to ensure their efforts comply with the federal antitrust laws.”

The Division’s Business Review Process and the FTC’s Advisory Opinion process “generally take several months[.]” The newly announced COVID-19 process will drastically shorten that time period. The Division and the FTC will “respond expeditiously to all COVID-19-related requests, and to resolve those addressing public health and safety within **seven (7) calendar days** of receiving all necessary information.” (Emphasis added.) The agencies will accelerate these evaluations for the sake of “the many individuals and businesses . . . trying to address a rapidly evolving crisis as quickly as possible.” The agencies also pledged to “expeditiously process filings under the National Cooperative Research and Production Act” for joint ventures designed “to bring goods to communities in need, to expand existing capacity, or to develop new products or services[.]”

The Division and the FTC committed not only to faster turnaround, but also to considering “exigent circumstances in evaluating efforts to address the spread of COVID-19 and its aftermath.” In their joint statement, the agencies recognized that these “exigent circumstances” go beyond the health care industry. For example, businesses “may need to temporarily combine production, distribution, or service networks to facilitate production and distribution of COVID-19-related supplies they may not have traditionally manufactured or distributed.”

Companies seeking to use this expedited procedure should submit a request by email to ATR.COVID19@USDOJ.GOV. The request should include:

- an explanation of how the proposed collaborative action relates to COVID-19;
- a description of the nature and rationale of the proposal, including: participants, products or services covered, expected customers, and any proposed contractual or other arrangement;
- copies of all contracts and other relevant documents submitted by email with the request; and
- any available information regarding the competitive significance of other provider(s) of the product(s) or service(s) to be offered.

Opinions issued by the Division or the FTC through this expedited process will be effective for one year.

The joint Division/FTC action comes the same week their transatlantic counterparts announced similar exceptions for COVID-19-related cooperation. The EU's European Competition Network stated that it would not "actively intervene" where companies are working together to take "necessary and temporary measures" to ensure "fair distribution of scarce products to all consumers." Likewise, the UK's Competition and Markets Authority said it would exempt companies' COVID-19-related coordination so long as those efforts are "appropriate and necessary, clearly in the public interest, contribute to the benefit and wellbeing of consumers, deal with critical issues that arise as a result of the pandemic and last no longer than necessary."

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

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