

Beware of Antitrust Law violations amidst Covid-19

In these unprecedented times, companies are grappling with the effects of the outbreak on doing business, including formulating ways in which to maintain business performance, at best, and avoid being completely crippled by the effects of the global pandemic, at worst.

By [Lerisha Naidu and Sphesihle Nxumalo](#) 16 Mar 2020



© Kheng Guan Toh – [123RF.com](#)

These circumstances may give rise to heightened incidences of competitor collaboration in an effort to minimise the business impact and align commercial coping strategies in order to mitigate losses.

While competitor collaboration is not prohibited outright, incidences of competitor interaction enhances the risk of an infringement even where efficiencies and/or commercial/consumer benefits may result from such interaction.

The competition authorities remain vigilant in their detection and enforcement mandate and will not hesitate in bringing firms to book for violations of competition law provisions, even during these difficult global times. For example, the United States Department of Justice has announced its intention to hold accountable any firm that violates the antitrust laws of the United States in connection with the manufacturing, distribution, or sale of public health products such as face masks, respirators, and diagnostics and to hold accountable competitors that agree to allocate consumers of public health care products amongst themselves.

Competitors should therefore guard against engaging with each other in order to align strategies to ameliorate the harsh effects of Covid-19 on business.

As a reminder, competing firms may not exchange competitively sensitive information in relation to, among other things:

- prices, increase / decrease in prices;
- transfer of commodity price rise;
- terms and conditions of trade;
- status and/or content of negotiations with customers or suppliers;
- areas of supply;
- quantities / capacities / inventories;
- marketing plans;
- rebates / discounts, etc.
- provision of references on status and content of negotiations or requirements of customers or suppliers.

Separately, firms should be mindful of the prohibition against excessive pricing during times in which the temptation to recover losses through novel pricing practices may be commercially intuitive and heightened.

ABOUT THE AUTHOR

Lerisha Naidu is a Partner and Sphehile Nxumalo, an Associate, in the Competition & Antitrust Practice at Baker McKenzie Johannesburg.

For more, visit: <https://www.bizcommunity.com>