



Joint activities with other FMCG suppliers during Corona

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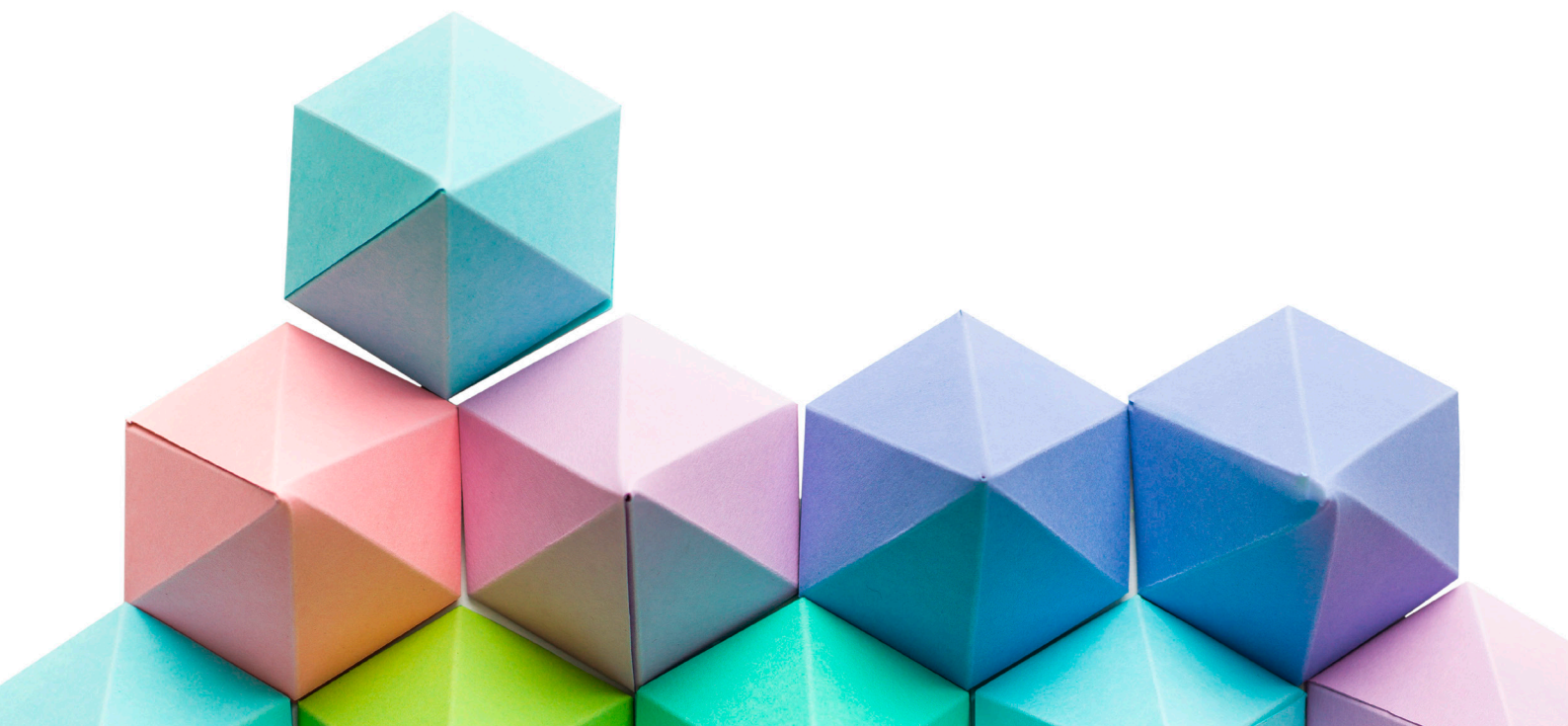
Visible to anyone who has recently entered a supermarket, COVID-19 puts not only our healthcare system under extreme pressure but also retailers and suppliers. While governments, retailers and suppliers alike assure us that warehouses are full, queues at the borders and stockpiling by anxious consumers are the biggest contributors to strains on the food supply chain. This is making retailers as well as suppliers look for possibilities of cooperation – even with competitors.

Although [competition law compliance](#) might not be the most pressing issue of the day to suppliers of FMCGs, competition law applies – even in times of crisis. However, several competition authorities such as the CMA in the UK and the German Competition Authority (Bundeskartellamt) have stated that they are open to adopting a [more lenient approach on information exchange during the crisis](#).

Additionally, the ECN has issued a joint statement on [cooperation](#) between companies to ensure the supply and fair distribution of scarce products to all consumers. Andreas Mundt, president of the Bundeskartellamt, has indicated that competition law allows for cooperation between companies if there are – as in the current situation – good justifications.

Nevertheless, companies can be sure that competition authorities will not turn a blind eye on information exchange and agreements between competitors for the duration of the crisis. Against this background, we have drafted the following guidance for suppliers of FMCGs who are considering teaming up with other suppliers.

Generally, suppliers which neither compete nor have dominant products in their portfolio can expect to enjoy more freedom.



Competing suppliers and/or suppliers with dominant products, however, should consider that joint activities with other suppliers and/or the exchange of business information need to respect certain limitations set by competition law and will need good justifications. At least for this group of suppliers the following might be useful as a more detailed guideline for **joint activities with other suppliers**:

 Possible	 Caution	 Not admissible
<ul style="list-style-type: none"> — to discuss best practices to overcome COVID-19 challenges (e.g., home-offices, labor law issues, how to avoid/deal with real or potential infections, product handling, safety checks, logistics, export/import improvements, warehousing, home delivery, access to state support/subsidies) <ul style="list-style-type: none"> · this should be limited to the duration of the crisis and be based on the idea of how to improve the situation for the final benefit of consumers — to discuss political/legal/general economic developments. 	<ul style="list-style-type: none"> — to discuss/agree on joint commercial offers to customers to provide support to retailers or consumers to overcome the crisis (e.g., MINIMUM [but not: MAXIMUM] extension of payment deadlines, product baskets, joint incentives to retailers if they extend opening hours) — to discuss how/agree to join forces if a supplier is seriously affected by the crisis (e.g. second employees, takeover of certain business/logistic functions) — to discuss/agree on swap agreements, cross-supplies and/or distribution of competitor's products — ALL of the above should be checked by competition lawyers before details are discussed or a concept is agreed. 	<ul style="list-style-type: none"> — to discuss/agree on any kind of limitations of offers, prices, promotions, etc. to customers or consumers (e.g. not to agree to certain requests by retailers, how to react if retailers cancel promotions) — to discuss/agree on customer and/or geographic market and/or sales channel allocation.
<div>  <div> <p>Anything else not mentioned above</p> <p>Should be checked by competition lawyers before details are discussed or a concept is agreed.</p> </div> </div>		



Please, feel free to submit any comments or remarks on our guidelines as the situation evolves and further need for cooperation or additional questions come up. We will be happy to adapt our guidelines to the current needs of FMCG companies and to provide further guidance on possibilities during the times of crisis.



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