Gradual lifting of the state of health emergency in France: re-instating statutory time limits

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The time limits applying to various procedures have been suspended since 12 March 2020, the date on which the health emergency period started in France. Order No. 2020-560 of 13 May 2020 setting out the time limits applicable to various procedures during the health emergency period sets the date for re-instating the time limits applicable to *Autorité de la concurrence* procedures. Order No. 2020-427 of 15 April 2020 authorises the *Autorité de la concurrence* to end the suspension of the time limits applicable to certain procedures and decisions where "justified by the interests for which it is responsible". This press release sets out the measures applicable to time limits for procedures.

Regulated professions

As stated in the press release dated 27 March 2020, following the adoption of French Law 2020-290 dated 23 March 2020 on the State of Health Emergency and Order No. 2020-306 of 25 March 2020, the *Autorité* suspended the time limit relative to the public consultation launched on 9 March 2020 in order to prepare a new opinion on the freedom of establishment of lawyers at the French Administrative Supreme Court and the French Supreme Court.

As provided for under the last paragraph of Article 7 of the aforementioned Order, the time limits stipulated for the public consultation and which had not expired prior to 12 March 2020 were, on that date, suspended until the end of the period mentioned in Article 1, Section I of said Order, which was extended up to *" the date of expiry of a period of one month from the end of the state of health emergency (…)".*

As a result, as of 12 March 2020, and until expiry of a period of one month from the end of the state of health emergency, the deadline for this public consultation, initially set by the Authority to run from 9 March to 9 April 2020, was postponed.

Order No. 2020-560 of 13 May 2020 amended Article 7, cited above, and now stipulates that "deadlines provided for the consultation or public participation are suspended until 30 May 2020 inclusive".

As a result, the period of one month for responding to the public consultation, which was suspended on 12 March, will now start again as of 31 May. To adapt this time limit to fall within working days, the new period for responding to the public consultation is now set by the *Autorité* to run from 1 to 30 June 2020.

Merger control

French Order No. 2020-306, Article 7, Paragraph 1 states that: "Notwithstanding obligations arising from an international commitment or under European Union law, the time limits within which a decision, agreement or opinion of any of the bodies or persons referred to in Article 6 may or must be reached or is automatically acquired and which have not expired before 12 March 2020 shall, as of that date, be suspended until the end of the period referred to in Article 1, Section I."

The aforementioned Order No. 2020-560 of 13 May 2020 amended Article 1, Section I of Order No. 2020-306, referred to in Paragraph 1 of Article 7 of the same Order. The period referred to in Article 1, Section I has now been extended up to "*23 June 2020, inclusive*".

Consequently, regarding merger control, the statutory and regulatory time limits provided in Articles L. 430-5 and L. 430-7 of the French Commercial Code (*Code de commerce*), among other texts, which have been suspended since 12 March 2020, will begin to run again as from 24 June 2020.

The *Autorité* will continue to make every effort, wherever possible, to issue decisions in advance, without waiting for the legal time limits to expire. Thus, out of our concern to take account of the constraints due to the time limits felt by companies that wish to go ahead with mergers and acquisitions, the *Autorité* has, notwithstanding the provisions authorising us to postpone deadlines for examining applications for clearance, tried, wherever possible, to keep to the very short time limits usually practised. Twenty-five mergers have thus been cleared since 18 March 2020, within an average
22 working days, including large transactions such as the acquisition of Sinoué by ORPEA and that of Bombardier assets by Spirit.

Commitments, injunctions and urgent interim measures

In a press release dated 27 March 2020, the *Autorité* stated that, in application of Article 8 of Order No. 2020-306, the "time limits for implementing commitments, injunctions and interim measures are therefore suspended or postponed until a period of one month from the end of the state of health emergency has expired."

Bearing in mind the amendment to Article 1, Section I of the abovementioned Order, the time limit is now 23 June inclusive.

That means that the time limits for implementing commitments, injunctions and urgent interim measures, suspended since 12 March 2020, will start to apply again as of 24 June 2020.

Lastly, the last paragraph of Article 8 of Order No.2020-306, as amended by Article 6 of Order No. 2020-427 of 15 April 2020, stipulates that the "provisions set out in this Article shall not prevent the administrative authority from exercising its powers to modify these obligations or terminate them or, where justified by the interests for which it is responsible, to prescribe their application or order new provisions, within a time-frame that it shall define. In any event, the administrative authority shall, in determining the obligations or time limits that must be complied with, take into account the constraints of the state of health emergency."

The *Autorité* may therefore adopt individual decisions prescribing implementation of commitments, injunctions and urgent interim measures without having to wait until 24 June 2020, provided that they are justified in light of the interests for which it is responsible. While taking into account the constraints related to the state of health emergency, the time limits set for implementing decisions made by the *Autorité* must be proportionate to the objectives of protecting public economic policy, for which the *Autorité de la concurrence* is responsible, and ensuring the useful effect of its decisions.

The *Autorité* has thus issued certain decisions prescribing tight implementation time limits regarding, first, the urgent interim measures imposed on Google in the matter of "neighbouring rights" (Decision 20-MC-01 dated 9 April 2020) and, second, the commitments made by La Poste regarding its loyalty rebates practices (Decision 20-D-06 of 2 April 2020). The *Autorité* has issued other decisions prescribing the time limits for performing commitments on 18 May 2020 regarding five merger decisions: 19-DCC-141, 19-DCC-147, 19-DCC-221, 19-DCC-244 and 20-DCC-28.

Limitation periods and time limits for appeals

Last, in the press release dated 27 March 2020, the *Autorité* stated that, in application of Article 2 of Order No. 2020-306, acts and decisions which should have been completed and appeals against decisions by the Authority which should have been filed during the period mentioned in Article 1 of the Order could be completed within a maximum period of two months from the end of said period.

Given the amendment to Article 1, Section I of the aforementioned Order, such acts, decisions or appeals can be completed within a time limit which, **as from 24 June 2020**, cannot exceed the time limit legally prescribed for taking action, up to a maximum of two months, without being penalised for their lateness.

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