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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN FINLAND

-- 2012 --

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1. Changes to competition laws and policies, proposed or adopted

1.1 *New Authority*

1. The Finnish Competition and Consumer Authority began its operations on 1 January 2013. The agency was created by joining the Finnish Competition Authority (FCA) and the Finnish Consumer Agency. The FCCA has a budget of €11 million for 2013 and about 150 employees. For more information, see www.kkv.fi.

1.2 *Government Proposals for new legislation*

2. In spring 2012, the Finnish Government launched a programme for promoting healthy competition whose aim is to increase competition in the domestic market. Among others, the programme will include measures to increase competition in the consumer goods retail sector, safeguard a level playing field for private and public sector businesses and reduce legislative obstacles for competition in various fields.

- Grocery Sector

As part of the programme, the Government issued a draft law to amend the Finnish Competition Act with a new provision concerning dominant market position in the consumer goods retail sector. Pursuant to the new provision, an operator in the Finnish consumer goods retail sector holds a dominant market position if its nationwide market share exceeds 30 % in Finland. Accordingly, the proposal suggests that a dominant market position would be confirmed directly and solely on the basis of the market share held. Based on their current market shares, this would mean that two major operators in Finland, the K and S Groups, would need to take into consideration the provision on the abuse of dominant market position in their activities. The draft law is currently in reading in the Parliament (situation in May 2013).

- Competition Neutrality

On 11 April 2013, the Finnish Government has published a draft law aimed at ensuring competition neutrality between public-sector and private-sector market operators. The main purpose of this proposal is to establish the national control mechanism, which would provide a tool for ensuring a level playing field between private and public market operators. The law would potentially cover a wide range of the market behaviours of public bodies that could distort competition e.g. cross-subsidisation or predatory practices. This law would also be part of the Finnish Government's broader programme to safeguard a level playing field for private and public sector businesses and reduce legislative obstacles for competition in various fields. According to the draft law, the FCCA would receive powers to supervise competition neutrality between public-sector and private-sector business activities. When the central government, a municipality, a federation of municipalities or a unit under the control of a municipality operates under an arrangement that distorts or prevents, or might distort or prevent, sound competition on the market, the FCCA should, preferably by way of negotiation, put an end to the arrangement endangering competition neutrality. If the negotiations remain unsuccessful, the FCCA could prohibit the activities or impose conditions that would ensure a neutral operating environment on the market. The FCCA would also have the right to impose a conditional fine enforcing the prohibition or the conditions. The proposal contains a de minimis provision i.e. the FCCA would not have to examine the request for action concerning competition neutrality if the arrangement has only a minor impact on a healthy and sound competition environment. It is also foreseen that

if the operation in question relates to public sector activities which are directly based on legal requirements, the new provisions may not be applicable.

The draft law is currently in reading in the Parliament (situation in May 2013).

2. Enforcement of competition laws and policies

2.1 *Action against anticompetitive practices, incl. agreements and abuse of dominance*

2.1.1 *Courts*

- **SKHL**

In January 2013, the Supreme Administrative Court issued a judgement overturning the decision of the Market Court that would have limited the liability of the members of a trade association SKHL representing Finnish household appliance repair firms. The FCCA was of the view that SKHL had fixed the prices for repairs of household appliances in a manner that was in violation of the Finnish Competition Act and proposed that the Market Court would order SKHL to pay a penalty. Further, that penalty should also apply to the repair firms which, by being represented in the SKHL board, were involved in the decision-making which led to illegal price agreement. The national competition provision corresponding to Article 101 of TFEU was applied to the case (but without trade effect identified).

The Market Court partially rejected the proposal of the FCCA. Most importantly, the Market Court was of the view that the members of the SKHL board were not responsible for the illegal activities taking place in the association. In its decision, the Market Court referred to what is called the special condition stating that there was no evidence that the repair firms would have introduced restrictive trade practices independently of their trade association. As the Market Court was of the opinion that there was no evidence of such independent activities, it concluded that the member firms of SKHL represented in its board were not liable for the illegal activities taking place in the trade association and that the responsibility lays solely with SKHL, the association. In practice, the interpretation of the Market Court would have meant that only the turnover of the trade association should have been considered in the imposition of the penalty payment.

The FCCA appealed against the rejection of the penalty payment to the Supreme Administrative Court. In its decision in January 2013, the Supreme Administrative Court stated that the repair firms, whose representatives had been involved in pricing decisions as the members of the SKHL board and other bodies of the trade association, were also responsible for the restrictive trade practices and that the special condition referred to in the Market Court's decision did not apply to the case. According to the Supreme Administrative Court, the price collusion was basically a matter of a single restrictive trade practice. However, the fact that a repair firm had at some point been engaged in a restrictive trade practice that had continued for several years did not make the firm in question an accomplice to the price collusion for the whole duration of the practice. According to the evidence presented in the case, some of the repair firms had stopped observing the restrictive trade practice more than five years before the proposal for imposing the penalty payment, which meant that in their case the right to impose the penalty had expired.

The process concerning the imposition of the penalty payments had lasted for about seven years, from the date on which the FCCA had requested the repair firms to submit opinions on the draft of the proposal for penalties to the date on which the Supreme Administrative Court issued its

decision. In order to provide a compensation for a protracted legal process, the Supreme Administrative Court lowered or abolished the penalties imposed on the repair firms in its capacity as a court of law.

- SNOY

In January 2013, the Supreme Administrative Court issued a judgement upholding the decision of the FCCA and the Market Court on the abuse of the dominant market position on the wholesale market for subscriber information. In its proposal submitted to the Market Court in 2005, the FCCA had requested the Market Court to order Suomen Numeropalvelu Oy (SNOY) a penalty payment of EUR 150.000 because the company had abused its dominant position on the wholesale market for subscriber information. SNOY had refused to grant a competitor (Eniro) access to the subscriber information it controlled. Eniro, which had opened an online telephone directory service, relied on SNOY for the subscriber information it needed in its business operations.

SNOY justified its refusal to provide the information by presenting its own interpretation of the Communications Market Act and the Personal Data Act. Accordingly, SNOY was of the opinion that it did not have any obligation to provide Eniro with the information because Eniro's online directory service also contained a map service and a route finder and because the service was free of charge and did not require registration. SNOY was also of the view that its refusal to provide the information did not meet any of the legal criteria under which a refusal to grant a licence to use intellectual property would form the abuse of a dominant market position.

In 2009, the Market Court upheld the opinion of the FCCA that SNOY had abused its dominant market position in the manner described by the authority and that SNOY may not refuse to provide the subscriber information on the grounds it had given. However, the Market Court lowered the penalty to EUR 100.000 because in its view, the abuse of the dominant market position of SNOY had not continued as long as had been claimed by the FCCA. In its judgment issued in January 2013, the Supreme Administrative Court upheld the decision of the Market Court but lowered the final amount of the penalty payment to EUR 90.000. The Supreme Administrative Court justified the lowering of the penalty by stating that the process concerning the matter had lasted for about eight years, from the date on which the FCCA had requested the company to submit an opinion on the draft of the proposal for a penalty to the date on which the Supreme Administrative Court issued the final decision on the matter. According to the Supreme Administrative Court, there had been a delay of about four years in the process and in order to compensate for the delay, the Supreme Court decided that it was, in its capacity as a court of law, obliged to lower the penalty.

- Real Estate Sector Bid-Rigging

In February 2013, the Market Court imposed penalties on two regional property companies that had participated in a bid-rigging cartel for sales of properties and flats carried out by the City of Rovaniemi.

In June 2011, the FCCA proposed that the Market Court would order a property company and its parent companies to pay a penalty totalling EUR 95.000 for illegal price collusion. This purchasing cartel was established for the competitive tendering concerning sales of properties and flats by the Lapland Hospital District and the City of Rovaniemi in 2006 and 2009. As part of the cartel arrangements, the companies that had submitted higher bids for the properties and flats withdrew their bids after the end of the bidding process. The withdrawal was a part of the plan by

the companies concerned and the purpose of such an action was to ensure that the price that they would have to pay for the properties and flats in the bidding process would be as low as possible. The companies wanted to ensure that the winning bid would be submitted by one of the three companies and that the winning bid would be the lowest possible. Even though the Market Court concluded that the procedure was illegal, it lowered the penalty to EUR 43.000, which was less than a half of what the FCCA had proposed. The relatively low turnover of the companies guilty of the offence was one factor prompting the Market Court to lower the penalties.

2.2 *Enforcement Actions of Finnish Competition and Consumer Authority*

2.2.1 *Abuse of Dominance*

3. In December 2012, the FCCA submitted a decision and a request to the Market Court under which a penalty of EUR 70 million for an abuse of the dominant market position on the basic milk market should be imposed on Valio Ltd. FCCA also ordered Valio to stop the practice. Under the decision and the request submitted by FCCA, the price of Valio's basic milk has not covered the variable costs arising from its production and sales after March 2010. The documents available to FCCA show that in February 2010 Valio decided to forgo the profits of its basic milk business so that it could prevent effective competition by excluding its rival Arla Ingman from the markets for basic milks and achieve a substantial (80 per cent) share of the market. The documents also show that after the potential exit of Arla Ingman from those markets, Valio planned to raise the prices of basic milk to the levels on which they had been before Arla Ingman's entry. The conditional volume discounts offered by Valio to S-Group made the exclusionary impact of the pricing undercutting variable costs even stronger. The case is pending in the Market Court.

2.3 *Mergers and acquisitions*

- **Rudus / Lemminkäinen**

On 25 September 2012, the FCCA approved a transaction under which Rudus Oy acquired sole controlling interest in Lemminkäinen Rakennustuotteet Oy. Rudus is part of the same international CRH Group as Finnsementti Oy, which supplies most of the concrete used in Finland. Both parties to the merger develop, manufacture and market stone-based building materials.

The FCCA examined the competitive impacts of the transaction, particularly its effects on the ready-made concrete and concrete products markets. The deal did not result in significant negative impacts on competition on ready-made concrete markets as there are no significant competitive obstacles to the entry of new major players on the markets. Studies show that Rudus will also face competition from other players in the sector of concrete products after the merger.

As Finnsementti and Rudus are already part of the same industrial group, the transaction did not significantly change the market situation and there will also be companies in the sector in the future that are not dependent on Finnsementti.

- **DLA / Hankkija**

DLA International Holding A/S ('DLA'), which is part of the Danish Agro group, has acquired controlling interest in Hankkija-Maatalous Oy. The acquisition was approved as part of Phase II proceedings on 14 December 2012. Suomen Osuuskauppojen Keskuskunta (SOK) will remain a minority shareholder in Hankkija-Maatalous, owning 40 per cent of its shares. DLA already owns two Finnish companies, Yrittäjien Maatalous Oy and Melica Oy, which both operate in

agricultural trade. Hankkija-Maatalous operates in agricultural trade under the trade name Agrimarket and produces feed under the trade name Suomen Rehu. Etelä-Pohjanmaan Osuuskauppa, Suur-Seudun Osuuskauppa and Kymenlaakson Agrimarket, the three S-Group cooperatives that are part of the Agrimarket chain, are not part of the transaction. In the view of the FCCA, the transaction did not cause significant competitive problems in agricultural trade. Even though the new concentration will have a relatively high market share in some areas, there will still be a sufficient number of operators in Finland, both regionally and nationwide (such as K-maatalous and Raisio), ensuring competitive pressures. In their opinions submitted to FCCA, farmers stated that, if necessary, they subject their purchases to competitive tendering and acquire products from several retail and wholesale suppliers and that they are also prepared to look for suitable and moderately priced products from outside their own regions. As e-shopping has increased, farmers can nowadays also purchase agricultural products from nationwide online shops operated by different suppliers and do no longer have to rely on brick and mortar outlets. In the view of FCCA, the merger may help Hankkija-Maatalous to put its retail sales on a more efficient basis because, as part of the Danish Agro group, it will be able to purchase larger quantities of different products. In the best case this, together with the stronger negotiating position of the new concentration vis-à-vis suppliers, may mean lower prices for end customers.

- Uponor / KWH

The FCCA was notified of this transaction on 24 September 2012. Under the arrangement, Uponor and KWH would transfer their infrastructure technology business to a newly established joint venture. Internal pipe system (utilities) business operations would also be merged by transferring KWH's Building Technology business to Uponor. The transaction would lead to a merger of two companies that are by far the biggest operators in the field of plastic pipe systems in Finland. The parties to the merger have significant overlaps on a number of markets. According to the FCCA, the arrangement would lead to a significant reduction in competition, particularly on the plastic infrastructure pipe market. The merger would probably result in higher product prices and in an increase in infrastructure construction costs. Disagreements between the FCCA and the parties to the merger have mainly concerned the definition of relevant commodity markets and geographical markets. The FCCA submitted a proposal for prohibiting the merger to the Market Court on 25 February 2013. The Market Court has not yet issued a decision on the matter (situation May 2013).

Merger Statistics

	2007	2008	2009	2010	2011	2012
Number of Mergers Filed	48	38	37	35	42	29
Phase II required	1	1	1	1	2	3
Conditional Clearance	0	1	0	0	1	0
Mergers Blocked	0	0	0	0	0	0

3. The role of competition authorities in the formulation and implementation of other policies

3.1 *Interface between competition and consumer policy*

4. The FCCA has initiated accounts of the interface between competition and consumer policy. The purpose is to examine how competition policy can promote the interests of consumers and assess the benefits and challenges resulting from the merger of the Finnish Consumer Agency and the Finnish Competition Authority. The aim is also to assess the role of economics (and different types of economics) in competition and consumer policy. The issue will be analysed on the basis of the Finnish legislative framework and international research literature. The report is expected to be completed during 2013.

3.1.1 *Project on Impact Assessment*

5. The purpose of the project is to facilitate the observance of considerations concerning competitive impacts in the preparation of new legislation. The project divides into the following subsectors: competitive neutrality as a guarantee of good legislation, unhindered entry on the markets as a key to smoothly functioning markets and opening of markets and application of competitive instruments on the markets. The ultimate aim of the project is to prepare recommendations on more detailed assessment of the competitive impacts of legislative proposals. The project will be completed in 2013.

3.1.2 *Competitive position of primary producers*

6. The FCCA has examined the position of primary producers in the food supply chain. The sectors under scrutiny were meat production, fish farming and open air and glasshouse cultivation. It was found out that contract practices and regulation put primary producers in a difficult position in the food supply chain due to tight regulation and contract practices that are dubious in terms of functional competition with groceries trade and the industry. The report is a continuation to the purchase power study in the groceries trade published by the FCCA in January 2012, which highlighted trade practices that are questionable in terms of competition. In part, these practices were also seen as detrimental from the perspective of primary producers. The study also points out that the regulation, to which primary producers are subject to, causes problems in the competition environment. The studies showed that in many cases the retail trade tries to transfer the risk arising from unsold produce by demanding that the primary producers reimburse any losses. The situations experienced by some respondents, in which the producers are banned from bypassing the central organisations by selling their produce to individual retailers or in which they are obliged to sell their produce to a single buyer, are questionable in terms of competition. Problems may be accentuated by sole delivery obligations laid down in the contracts, combined with the long periods of validity of such contracts, which makes subjecting procurement companies to competitive bidding more difficult. According to the FCCA's report, increasing cooperation between primary producers could be one way of redressing the balance of power in the food supply chain.

4. Resources of competition authorities

4.1 *Resources overall*

7. The total number of staff of the Finnish Competition and Consumer Authority is 150 of which 59 person currently work for the Competition Affairs Division.

4.1.1 *Annual budget (in your currency and USD):*

8. For the FCCA totally (covering both consumer and competition enforcement): EUR 11 million (13,7 million USD)

4.1.2 *Number of employees (person-years, covering competition enforcement):*

Staff	Number
Economists	30
Lawyers	21
Other Professionals	4
Support Staff	4
All staff combined	59

4.2 *Human resources (person-years) applied to:*

- Enforcement against anticompetitive practices: 46
- Merger review and enforcement: 5
- Advocacy efforts: 8

5. Summaries of or references to new reports and studies on competition policy issues

5.1 *Sector report on petrol markets*

9. The FCCA has examined the wholesale pricing and other contractual terms between independent petrol retailers and oil companies. The entrepreneurs and Suomen Bensinikauppiaitten ja Liikennepalvelualojen Liitto (SBL), the organisation representing them, suspected that at least some of oil companies have adopted wholesale pricing practices allowing them to abuse their dominant position vis-à-vis petrol retailers belonging to their chains. The FCCA alleged that the purpose of those actions was to hinder the operations of independent entrepreneurs on retail markets. However, the situations, which have caused problems for entrepreneurs and in which wholesale petrol prices have in some regions been high in relation to retail prices, seem to result from competition between oil companies on the retail markets. The FCCA did not find any evidence that the pricing would have impeded the operations of independent entrepreneurs on the markets in the manner that is in violation of the Finnish Competition Act.

5.2 *Report on medicine markets*

10. The report 'Lääkehuollosta lääkemarkkinoihin' (From medicine supply to medicine markets) drawn up by the FCCA was published on 28 August 2012. The report, which the FCCA prepared at its own initiative, recommends that structural obstacles to competition should be eliminated and permanent structural reforms should be introduced, particularly in the Finnish pharmacy system. The report examines whether the Finnish medicine supply is properly regulated and whether the regulation is correctly measured when consideration is given to efficiency and economic factors. The recommendations proposed by FCCA mainly concern Finland's pharmacy system and focus in the report was on the process of granting pharmacy licences, density of the pharmacy network, improving the efficiency of pharmacy operations, pharmacy fees and medicinal tariffs.

5.3 *Report on obstacles to housing construction in the Helsinki Region*

11. The report focused on the competitive environment and obstacles to competition in the Helsinki Region. The aim was to find out how SMEs operating in the sector or operators new to the sector could enter the housing construction market in the region and operate there and what would be the best way to facilitate their entry.