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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN FINLAND

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This report is submitted by Finland to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 18-19 June 2014.

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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 (hereinafter FCCA) began its operations on 1 January 2013. The agency was created by joining the Finnish Competition Authority and the Finnish Consumer Agency. The FCCA has a budget of €11,3 million for 2014 and roughly 150 employees. For more information, see <http://www.kkv.fi/en-GB/>.

1.2 New legislation in force

1.2.1 Grocery Sector

2. The provision on the groceries trade contained in the Competition Act became effective on 1 January 2014.

3. In accordance with the new paragraph 4a of the Act, the prohibition of abuse of dominant position can be applied to companies whose national market share in the groceries retail markets exceeds 30 percent. In the present market situation, the provision concerns the central firms of the K and S groups.

4. In 2013, the FCCA has discussed with those involved in the trade in groceries some questions brought up by them as well as matters of concern that emerged from the FCCA's earlier investigations. The aim of the ongoing negotiations is to identify the risks arising from any abuse of dominant market position and to avoid potential conflicts with the law. However, the companies themselves will be responsible for complying with the provision; it is not possible for the FCCA to provide general binding instructions in the matter, because the application of the said provision always requires case-by-case evaluation.

5. In addition, the FCCA is launching further investigations e.g. on customer loyalty schemes and their effects on competition and on the access by goods suppliers to sales data of the trade. The forthcoming FCCA surveys will also examine in more detail the practices related to the trade's private label products.

1.2.2 Competition neutrality

6. The FCCA is able to intervene in the business activities of municipalities, municipal federations or the state, as well as units that are under their control if the means that are used or the structures of the activity prevent or distort competition on the market. The goal of the new Chapter 4 a of the Competition Act, which became effective on 3 September 2013, is to secure balanced conditions for competition, or competition neutrality, between public and private business.

7. New provisions on competition and the municipal legislation make it possible to intervene in many practices for which the European Commission was previously the only body to which a complaint could be sent.

8. The new rules in the Competition Act protect the possibilities for sound and effective competition on the market. This means that the FCCA would not intervene in a situation in which the sole aim is to seek protection against competition coming from a player in the public sphere. A requirement for intervention is that the public entity actually distorts the prerequisites for competition, or prevents the emergence or development of competition in the market. Another requirement is that the matter can be seen to be significant as intended by the law.

9. The FCCA also has the task to ascertain that the pricing of a municipality is market-based in the exceptional situations in which economic activities do not need to be incorporated under the Local Government Act.

2. Enforcement of competition laws and policies

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

2.1.1 Courts

2.1.1.1 Supreme Administrative Court, 14 June 2013

- **The Supreme Administrative Court fines industry association for prohibited price recommendations**

10. The Supreme Administrative Court (hereinafter SAC) gave the decision to the Finnish Hairdressers' Association on June 14, 2013 regarding the pricing recommendations that the association had provided from 2000-2006. The Finnish Hairdressers' Association had appealed a Market Court ruling made in 2009 to the SAC. The SAC rejected the appeal of the Finnish Hairdressers' Association and found the association guilty of conduct violating the competition law. However, the SAC reduced the penalties imposed by the Market Court.

2.1.1.2 Market Court, 28 June 2013

- **Valio must comply with FCCA decision in spite of the appeal**

11. In an interim decision handed down 28 June 2013, the Market Court rejected an appeal by Valio, in which it applied for a prohibition on implementation in the case concerning the abuse of dominant position in fresh milk. Valio must comply with the decision made by the Finnish Competition Authority on 12 December 2012, ordering it to stop abusing its dominant position before the Market Court renders a final decision in the matter.

12. The Finnish Competition Authority (currently the FCCA), gave a decision on 20 December 2012 on Valio's abuse of its dominant position. The decision consisted of a proposal to the Market Court for monetary sanctions (70 million euros) and ordering Valio to cease the use of predatory pricing violating the Competition Act.

13. The interim decision by the Market Court applies to the order by the Authority to cease the violation. The decision is linked to an appeal by Valio that is pending in the Market Court, and in its decision the Market Court has not evaluated the question of whether or not Valio has abused its dominant position. Market Court's decision is expected to come out before the summer break 2014.

2.1.1.3 Market Court, 28 February 2013.

- **Market Court imposed an anti-trust fine related to a bidding process in Rovaniemi**

14. By its ruling of 28 February 2013, the Finnish Market Court imposed a total penalty of EUR 43,000 on Asunto-Väylä Oy and CSC-Consulting Service Centre Oy for illegal cooperation in the bidding processes concerning the sale of properties and residential flats organised by the Lapland Hospital District and the Town of Rovaniemi in 2006 and 2009. The Market Court decision is based on a proposal submitted by the Finnish Competition Authority.

15. The penalty amounts imposed by the Market Court was e.g. influenced by the fact that the companies guilty of the offence had relatively low turnovers. The Market Court rejected the proposal by the FCCA to the extent that the Authority had also proposed imposing a penalty on Hansatalot Oy.

2.1.1.4 Market Court, 24 May 2013

- **Uponor / KWH**

16. The Finnish Market Court decided in its ruling on 24 May 2013, to set stringent conditions for a corporate acquisition deal by Uponor and KWH Group. The court ruled in accordance with a proposal made by the FCCA on 25 February 2013 that without changes, the corporate arrangement would have prevented the emergence of efficient competition in the market for plastic tubing used in civil engineering construction in Finland. The conditions set by the court for approval of the deal were more stringent than the commitments that the parties had originally presented to FCCA. The FCCA cannot impose conditions on corporate acquisitions that the announcer of the deal does not accept.

17. The Market Court's decision applied to an arrangement announced to the FCCA on 24 September 2012, in which Uponor and KWH would transfer all of their civil engineering activities to a new joint venture that they were setting up. The so-called building services engineering business activities linked with piping installed inside buildings are combined in the same connection in such a manner that KWH's building services engineering activities would transfer to Uponor. The corporate deal unites Finland's two overwhelmingly largest players in plastic piping solutions, and if implemented as such, the deal would probably have led to a rise in the prices of the goods and an increase in the cost of civil engineering construction.

18. The Market Court set as a condition of its approval of the arrangements that the transaction should exclude the seven production lines mentioned in the decision, which the companies agreed to sell to other manufacturers of piping system products. In addition, the companies should reserve production capacity for certain types of pipe for the use of other manufacturers.

19. A proposal to reject the deal was the only option for the FCCA after the commitments submitted by the parties could not be seen to effectively remove the harmful impact of the deal on competition. In its decision, the Market Court concurred with the view of FCCA according to which the arrangement, if left unchanged, would have prevented efficient competition in the Finnish piping supply market for delivery pipes, storm drain pipes, sewage pipes, land drainage pipes, drain pipes for buildings, and piping to protect cables. The Market Court also concurred that the undertakings presented by the two sides to the FCCA could not avert anticompetitive consequences. In this respect, the FCCA acted properly when it proposed to the Market Court that the corporate deal should be rejected.

20. The Market Court noted in its decision that the combined market share of the parties to the deal is well above 50 per cent in several types of piping, and that the shares of their competitors were significantly smaller than those of the two sides. In addition, Uponor and KWH are, according to the decision, each others' closest competitors in the Finnish plastic piping market, which can be seen to be likely to lead to more severe problems in competition than might be imagined on the basis of pure market share examination. The better the products of the parties can replace each other in the customers' minds, the more likely it is that the concentration will lead to considerable price increases, unless balancing factors are strong enough.

21. According to the Market Court, entry into the market cannot be assumed to be likely, timely, or sufficiently extensive to prevent or counteract the anticompetitive impact of the concentration. Reasons for this include the weak economic situation and overcapacity in the field and the fact that high transport costs

make it especially difficult for foreign companies to enter the market, and for any increase in imports to take place. Customers also do not have the kind of negotiating power that would offset the anticompetitive impact of the concentration

2.1.1.5 Helsinki District Court, 28 November 2013

- **Asphalt cartel trial concluded at Helsinki District Court**

22. On the proposal of the Finnish Competition Authority, the Supreme Administrative Court ordered on 29 September 2009 Lemminkäinen Oyj, VLT-Trading Oy, Skanska Asfaltti Oy, NCC Roads Oy, SA-Capital Oy, Rudus Asfaltti Oy and Super Asfaltti Oy to pay a total of EUR 82.55 million of what are called infringement fines for their participation in a cartel that operated on the Finnish asphalt market in 1994-2002.

23. In 41 claims for damages brought at the Helsinki District Court, the State of Finland and 40 local authorities have claimed compensation from the above-mentioned companies and one other company for the overcharges they have paid for the paving works. The companies have contested the claims.

24. The Finnish state (Finnish Transport Agency) has claimed a compensation of EUR 56.7 million in total from the companies. The District Court has dismissed the action by the state in its entirety, and has obligated the state to compensate the companies for their legal costs by the total sum of EUR 2.6 million.

25. The District Court has received some new evidence after the trial at the SAC, and the District Court has found that the National Board of Public Roads and the Finnish Road Enterprise participated in a cartel concerning work commissioned by the state from at least the year 1998. In addition, representatives of the National Board of Public Roads have been aware of the existence of the cartel from as early as 1994. The District Court considers that no damage has been caused to the state on the basis of the activity which the state has approved at the time it took place; which the state has participated in; and from which the state itself considers to have benefited from.

26. The claims by the local authorities have been allowed for the most part, a total of EUR 37.4 million. The interest based on rate of return and the penal interest add considerably to the amount of damages awarded. The local authorities have mostly been overcharged by 15% for asphalt work; some by 20%. In 1996-1997, a period of a price war prevailed in Finland, and contracts concluded during these years did not usually involve overcharging.

27. For more information, see <http://www.kkv.fi/File/75dceb51-fdd7-4dd7-a14f-1c1287d81d63/Media-release-28-11-2013.pdf>

2.2 *Enforcement Actions of Finnish Competition and Consumer Authority*

2.2.1 *Abuse of Dominance*

2.2.1.1 Abloy

28. The FCCA finished a case that dealt with Abloy's suspected abuse of dominant position in locking and door environment product markets. The investigation that began in 2006 was based on the suspicion that Abloy sought to prevent the market entry of competitive products e.g by weakening the price and buying conditions of those Abloy authorised stores which had taken new competing products into their assortment or visibly marketed them.

29. The Finnish Competition Authority presented its preliminary assessment in 2010, which was followed by commitment negotiations between the authority and Abloy in order to remove potential competition problems that related to authorisation and rebate schemes. As a result of counseling given during the commitment negotiations, Abloy changed its conduct to more positive direction, and therefore imposing commitments or the continuing the investigation were unnecessary.

2.2.1.2 Elixia/SATS

30. In 25 February 2014, the FCCA conditionally approved an arrangement, in which Altor Fund III and TryghedsGruppen smba acquired joint control of HFN Group AS. The conditions relate to the fitness centre markets in Espoo and Vantaa. Economic evidence and the Upward Pricing Pressure (UPP) test applied by the FCCA played an important role in the assessment of the merger. The case was transferred from the European Commission to the FCCA.

31. Altor Fund III controls the Elixia fitness center group, and TryghedsGruppen smba owns Health & Fitness Nordic AB, which operates in Finland through the SATS chain. Elixia and SATS offer their members a full range of fitness services, which include many kinds of group exercise sessions, gym training facilities and personal training services.

32. The FCCA examined the effects of the acquisition on competition for the fitness centre markets in Helsinki, Espoo, Vantaa, Turku and Jyväskylä, because both groups are present in these areas. Based on the FCCA's analysis, the merger between Elixia and SATS would impede competition and probably lead to price rises on the local fitness centre markets of Espoo and Vantaa.

33. The FCCA carried out a survey in 2013 for the customers of Elixia and SATS. The FCCA's economic analysis of the results indicated that Elixia and SATS are clearly each other's closest competitors, and that their customers do not see other fitness centres as alternatives to them. This closeness of competition was a key factor in the FCCA's assessment of the competitive effects of the merger.

34. In order to address these competition concerns, Altor and TryghedsGruppen undertake to sell the business operations of SATS Iso Omena fitness centre in Espoo and those of SATS Tikkurila in Vantaa. This divestiture will, to a significant degree, remove the horizontal overlap between the parties and prevent price rises on the fitness centre markets in Espoo and Vantaa.

35. The FCCA also analysed the competitive situation on the fitness markets in Helsinki, Turku and Jyväskylä but concluded that the acquisition will not impede efficient competition on those markets. After the acquisition, there will be enough alternative operators on these markets to create competitive pressure to the concentration. Therefore, the FCCA did not have sufficient grounds to intervene in these markets.

2.2.1.3 DNA/Plus TV

36. The FCCA decided on 24 June 2013 to initiate further proceedings concerning an acquisition that will give DNA Oy a controlling interest in Digi TV Plus Oy. Both parties of the deal are strong actors in the pay-TV market. DNA is also a significant player in the mobile communication device and broadband markets.

37. Further proceedings will establish if this acquisition will essentially hinder effective competition in Finland. As a result, the FCCA may approve the acquisition as such, approve it conditionally or propose that the Market Court prohibit the deal.

2.2.1.4 Elisa/PPO

38. The FCCA decided 24 April 2013 to approve the deal in which Elisa Corporation acquires control of the companies PPO-Yhtiöt Oy, Kymen Puhelin Oy and Telekarelia Oy. However, the FCCA imposed conditions on the deal. The conditions concern fixed network broadband services provided to consumers in Joensuu, Kontiolahti and Outokumpu.

39. The parties to the deal operate on the Finnish market for telephone and telecommunications services and their core activities are services provided in fixed and mobile networks. The condition for the approval of the deal was that Elisa makes commitments to the FCCA concerning fixed network broadband services provided to consumers in Joensuu, Kontiolahti and Outokumpu.

40. In the conditions, Elisa commits to an asset deal in which it sells the overlapping network entity owned by the parties in Joensuu and Kontiolahti and the connected consumer agreements on broadband services. Elisa will also provide the buyer with the option to acquire the overlapping DSL network entity in the municipality of Outokumpu. Without the commitments, the prices of fixed network broadband services in the area would have been at risk of increasing.

41. The FCCA investigated the effects of the concentration on fixed network broadband services also in the operating areas of PPO and Kymen Puhelin. However, the operations of the parties to the concentration do not significantly overlap in those areas, and Elisa quit selling new fixed network broadband subscriptions in the area already in August 2008. Therefore, the threshold for intervention under the Competition Act was not exceeded on the markets in question.

42. The FCCA also examined competition, for example, on the markets for mobile broadband services, comprehensive ICT services provided to businesses and backbone services and on the mast market, but came to the conclusion that the concentration does not impede effective competition on the markets in question. On the markets, the pressure of competition from other market players is so significant that competition problems are considered unlikely even though the concentration will make Elisa the market leader on some of the markets.

2.2.1.5 Merger Statistics

	2007	2008	2009	2010	2011	2012	2013
Number of Mergers Filed	48	38	37	35	42	29	20
Phase II required	1	1	1	1	2	3	3
Conditional Clearance	0	1	0	0	1	0	2
Mergers Blocked	0	0	0	0	0	0	0

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

3.1 *More competition in taxi services through legislative reform*

43. The FCCA has made an initiative to the Ministry of Transport and Communications for reform in taxi legislation. To increase competition and consumer choice, the setting of maximum numbers for taxi licences through means testing should be eliminated.

44. At present, the number and availability of taxis is currently regulated in many different ways. The FCCA proposes that legislation concerning taxi transport should be reformed in such a way that sound and effective competition might gain strength in the field.

45. Primarily the regulation of the maximum number of taxi licences based on means testing should be abandoned. However, getting into the business would still be subject to a licence. The professional competence of taxi drivers and the quality of taxi services would continue to be monitored in the future.

46. The FCCA also proposes changing the Taxi Transport Act in such a way that a vehicle based in any community would be allowed to stay at a taxi rank of any community and wait for a fare. Taxi entrepreneurs should also be allowed to offer their vehicles for use in competitive bidding in nearby municipalities, which would lead to greater efficiency in public acquisitions.

3.2 *The reform of utility model legislation*

47. The FCCA has made an initiative for the reform of the utility model legislation. Firstly, there are good grounds that the examination times of appeals seeking to declare a utility model invalid would be briefer. Secondly, an applicant who seeks to declare a utility model invalid should have the right to do this only once for each issue, not for indefinite times as is presently the case.

3.3 *The reform of chimney sweeping legislation*

48. The FCCA has made an initiative for reform in the legislation on chimney sweeping. The FCCA proposes that district chimney sweeping system based on the Rescue Act should be abandoned. In practice, this would imply adaption of the agreement-based chimney sweeping system.

3.4 *Report papers*

49. See also several report papers in chapter 5 below.

4. Resources of competition authorities

4.1 *Resources overall*

50. The total number of staff of the FCCA is 150, of which 63 persons currently work for the Competition Affairs Division.

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

51. For the FCCA totally (covering both consumer and competition enforcement): EUR 11,3 million (15,69 million USD)

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

- economists 25
- lawyers 26
- other professionals 7
- support staff 5
- all staff combined 63

4.2 Human resources in competition enforcement (person-years) applied to:

- Enforcement against anticompetitive practices: 50
- 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 barriers to entry for housing production in the Helsinki region

52. A survey published by the FCCA shows that a shortage of building plots, plot allocation terms that favour large operators and strict regulation reduce the interest of small and medium-sized construction firms in particular from entering the market in the Helsinki region. The problems are especially acute in the construction of state supported rental accommodation, which is difficult to build at the prices and conditions offered.

53. The demand in the housing markets in the Helsinki region constantly exceeds supply, which can be seen in the price increases of both old and new housing. Getting new players involved in the housing construction in the region will be key to increasing supply. However, not all firms consider it worth entering the market under the current conditions, although strong demand and high prices should support market entry.

54. According to the FCCA's survey, the problems of supply lie largely in land use and public sector regulation. There are few reasonably priced plots that are suitable for building land in the Helsinki area and the plot allocation terms are often structured to favour the large players. The regulation of construction and the interpretation of regulations are also stricter in the Helsinki region than elsewhere in the country.

55. The report is available in Finnish: <http://www.kkv.fi/File/9af27e67-4734-4ca0-a47c-a48fafe2fe1f/KKV-Selvityksia-1-2013.pdf>

5.2 Report on groceries trade, primary producers and food supply chain

56. This report is a follow-up of a study on buyer power in the groceries trade published by the Finnish Competition Authority in January 2012, which highlighted trading practices that are questionable in terms of effective competition. In part, these practices also appear to be detrimental from the perspective of primary producers. The study also points out that the regulation to which primary producers are subjected results in imbalances in the conditions of competition.

57. This study based on questionnaires sent to the various links of the food supply chain in autumn 2012 throws light on the manifestations and impacts of buyer power and bargaining power from the viewpoint of primary producers. The sectors under scrutiny included meat production, fish farming and open air and glasshouse cultivation.

58. The report is available in Finnish: <http://www.kkv.fi/File/1ed36990-17cd-413e-9c67-301358027f4b/KKV-Selvityksia-2-2013.pdf>

5.3 Report on the regulation of store locations

59. A report Regulation of store locations – Perspective of entry and competition, published 6 June 2013 by the FCCA finds that if the regulation of store locations or municipal plotting policy do not make way for retail competition, other social efforts to increase competition may prove fruitless to a large extent.

The report shows that swift steps should be taken to review the way in which store locations and the sale of plots is regulated.

60. According to the report, the present regulation system, which is complicated, detailed and open to interpretation, strengthens the position of the field's leading companies. For example, in spite of being an essential part of modern retail competition, due to their efficiency and current consumer behaviour, special regulation of plots and locations has made it nearly impossible to establish new large retail units.

61. The report is available in Finnish: <http://www.kkv.fi/File/a3ba00c5-2250-4adf-bf14-619db2423ac6/KKV-Selvityksia-3-2013.pdf>

5.4 *Report on the interface of competition and consumer policy*

62. The FCCA published a report on the interface of competition and consumer policy. The purpose was 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 was also to assess the role of economics (and different types of economics) in competition and consumer policy. The issue was analysed on the basis of the Finnish legislative framework and international research literature.

63. The report is available in Finnish: <http://www.kkv.fi/File/6391a498-dd9f-457d-b7da-cd74f2634f8f/KKV-Selvityksia-4-2013.pdf>

5.5 *Report on the lack of uniformity in licensing and supervision practices*

64. The lack of uniformity among authorities in licensing and supervision practices make it more difficult for companies to enter the field and expand their operations, according to a report released by the FCCA. Uncertainty in the interpretation of rules does not encourage investment, enterprise, or the creation of something new. Non-uniform practices also distort competition conditions, weakening the possibilities of companies to lower costs by using the same business model in different parts of the country.

65. The report tells about differing practices in interpretation, especially in construction and zoning, social and health care services, and in the restaurant and taxi businesses. The existence of similar problems has been observed in perishable goods and in the energy sector.

66. The report is available in Finnish: <http://www.kuluttajavirasto.fi/File/526913a0-ae2c-46df-974c-14a5d2ec2824/Viranomaisk%C3%A4yt%C3%A4nn%C3%B6n%20yhten%C3%A4isyys%20ja%20kilpailun%20edist%C3%A4minen.pdf>