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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN FINLAND

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Executive Summary

1. The Finnish Competition and Consumer Authority (FCCA) had an active year in 2014. The most important decision in the Competition Division regarded the abuse of dominant position in the production and wholesale market of fresh milk, where the Market Court imposed to a company a €70m fine proposed by the FCCA. The case has been appealed. The FCCA submitted a proposal to the Market Court to impose a fine relating to illegal cooperation in the design and construction market of power lines. Conditional clearance was given to two mergers. In addition, Finland published reports relating to the criminalisation of cartels, the collective management of copyright, service housing, and voluntary work.

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

1.1 *Summary of new legal provisions of competition law and related legislation*

2. Finland has made an amendment (253/2014) to the Finnish Competition Act (948/2011) concerning the right of the FCCA to carry out inspections on businesses that have outsourced their information management to a third party.

3. The amendment was introduced in order to account for the growing trend of cloud computing. The amendment provides the FCCA with the authorisation to access such information directly, thus expediting inspections and making the process more straightforward from the perspective of both the company subject to inspection and the third party service provider. The amendment does not give the FCCA any new powers.

1.2 *Other relevant measures, including new guidelines*

4. No other relevant measures.

1.3 *Government proposals for new legislation*

5. No new proposals.

2. Enforcement of competition laws and policies

2.1 *Action against anticompetitive practices, including agreements and abuses of dominant position*

2.1.1 *Market Court*

2.1.1.1 *Abuse of dominant position*

6. By a decision issued on 26 June 2014, the Market Court rejected Valio's appeal and imposed on the company a €70m fine proposed by the FCCA for abuse of dominant position in the production and wholesale market of fresh milk. The FCCA considers this decision highly important for safeguarding effective competition. The decision is a landmark in evaluating abuse of dominance in Finland. However, the case has been appealed to the Supreme Administrative Court.

7. The Market Court decision upheld the FCCA proposal, which asserted that Valio is guilty of a serious breach of the Competition Act. Valio engaged in predatory pricing in order to remove effective competition from the fresh milk market in Finland.

8. In a decision issued at the end of 2012, the FCCA ordered Valio to cease its abusive conduct and proposed to the Market Court that a fine be imposed for a breach of the Competition Act. The FCCA intervened in Valio's conduct because the predatory pricing, if sustained, would have led to Valio gaining a monopoly on the fresh milk market, which would have caused an increase in prices.

2.1.2 FCCA

2.1.2.1 Cartels

9. The FCCA submitted a proposal to the Market Court to impose a fine of €35m on Eltel Networks Oy and Eltel Group Oy (hereinafter Eltel). The FCCA's investigations show that Eltel and Empower Oy have engaged in illegal cooperation in the design and construction market of power lines in Finland. These prohibited actions began in October 2004 at the latest, and continued without interruption until March 2011 or longer. Empower was exempted from the fine on the basis of the Competition Act for revealing the existence of the cartel.

10. The FCCA initiated its investigation after Empower, the other party to the prohibited actions, provided the FCCA with information and evidence on the cartel's operations in order to be exempted from paying any fines. The FCCA's investigation shows that Eltel and Empower had agreed among themselves the prices, margins and distribution of contracts pertaining to future power line projects.

11. The FCCA considers the actions of Eltel and Empower to be a serious violation of Finnish antitrust legislation and EU's antitrust regulations. The companies colluding in these actions were the two most significant power line contracting companies operating in Finland, and their harmful cooperation covered the entire country.

12. The FCCA granted an exemption from the fine for Empower, which revealed the violation. The FCCA proposes that a EUR 35 million fine be imposed on Eltel. The nature, scope and duration of the violation as well as Eltel's substantial net sales, amounting to around EUR 1.1 billion in 2013, were considered when determining the amount of the fine.

2.1.2.2 Competition neutrality

13. Pirkanmaan Jätehuolto, a cooperative waste management company owned by its stakeholder municipalities, has changed its pricing for the processing of municipal waste after an intervention by the FCCA. In the future, the processing fees for similar waste deliveries will not depend on whether the waste was delivered by municipal or private service providers.

14. The regulations on competitive neutrality that entered into force in September 2013 were applied to the case. The FCCA decreed that the company's practice could have endangered competitive neutrality, in this case by impeding the ability of private service providers to compete for corporate customers on the waste management market.

15. In addition to municipal responsibilities, Pirkanmaan Jätehuolto also serves corporate customers, whose waste is collected by the same collection vehicles that pick up municipal waste. Before the company changed its pricing policy, it was charging a lower processing fee from the company's own contractors than from private service providers with equivalent waste deliveries.

16. An investigation into the company's pricing policy as a potential case of dominant market position abuse was initially launched as a result of a request for action. The September 2013 amendment to the Competition Act has since enabled the agency to investigate the matter on its own initiative, from the perspective of the new regulations on competitive neutrality.

2.1.2.3 Commitment decision

17. The Faba co-operative, owned by Finnish livestock farming entrepreneurs; Proagria; and the Agricultural Data Processing Centre (Suomen Maatalouden Laskentakeskus Oy), co-owned by them, have provided the FCCA with a commitment to create the type of interfaces in their breeding and production monitoring registers that will enable businesses operating in the commercial software market to access these registers.

18. In Finland, thoroughbred animals of a certain breed are entered in a pedigree maintained by an officially approved community engaged in breeding operations. The pedigree for cattle is maintained by the Faba co-operative, while the pedigree for sheep is maintained by ProAgria. The pedigree communities also maintain breeding and production monitoring registers closely related to pedigree maintenance.

19. The Finnish Agricultural Data Processing Centre provides farms with ERP software that can be used both to send information to the breeding and production monitoring registers and retrieve information from these registers. Until now, the Agricultural Data Processing Centre was the only party with the ability to use the information in these registers.

20. In June 2014, the FCCA stated as its preliminary opinion that Faba, ProAgria and the Agricultural Data Processing Centre have abused their dominant position by preventing other companies from accessing their breeding and production monitoring registers. Efficient market competition requires access to these registers.

21. The parties have now committed to creating interfaces in their breeding and production monitoring registers. In the future, the markets will be able to engender competition as other companies will also be able to provide farms with software services.

22. The commitments of the parties and the FCCA decision based on these commitments enables a faster solution to the competition problem than that provided by a Market Court process.

2.2 Mergers and acquisitions

2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws

	2008	2009	2010	2011	2012	2013	2014
Number of Mergers Filed	38	37	35	42	29	20	30
Phase II required	1	1	1	2	3	3	2
Conditional Clearance	1	0	0	1	0	2	2
Mergers Blocked	0	0	0	0	0	0	0

2.2.2 Summary of significant cases

2.2.2.1 DAVA Foods Holding A/S / Muna Foods Oy

23. On 21 October 2014, the FCCA approved an acquisition whereby DAVA Foods Holding A/S, a Danish company, acquires control of the Finnish company Muna Foods Oy. Muna Foods Oy is a company yet to be established, to which the producers' cooperative Munakunta, owned by approximately 150 Finnish egg producers, plans to transfer its entire business in connection with the acquisition. The condition for approval of the acquisition was that Munakunta's minority holding in the chicken feed manufacturer Rehux is sold to a party independent of the parties to the deal.

24. DAVA Foods Holding A/S is part of the Danish Agro Group that operates in the agricultural sector. Its egg products division includes the Denmark-based Hedegaard Foods A/S and Sweden-based Svenska Lantägg Ab. Following the ongoing arrangement, Danish Agro would also acquire control of Muna Foods Oy that operates in Finland and Estonia. Hankkija Oy, which produces chicken feed in Finland, is part of the same group and holds a strong position in other agricultural products in Finland as well.

25. If the planned acquisition had been approved as such and not been subject to conditions, according to FCCA's estimate it would have significantly impeded effective competition in the egg business in Finland. Chicken feed markets are highly concentrated in Finland, and there are currently very few actors within the sector.

26. The competition problem could be solved in such a manner that Danish Agro pledged to sell its minority holding in the chicken feed manufacturer Rehux to a party independent of the parties to the deal. The pledge ensured that Rehux, almost the only competitor to Danish Agro, maintains its position as an independent alternative in the chicken feed market in Finland.

2.2.2.2 *Elisa Oyj / Anvia Oy*

27. On 8 April 2015, the FCCA has accepted conditionally the transaction whereby Elisa Oyj will gain control over Anvia Oyj. The conditions relate to broadband services on a landline network to consumers in the city of Vaasa, and the municipalities of Mustasaari and Laihia.

28. The parties to the transaction operate in the telephone and data communications services markets in Finland, with their core business consisting of services provided in landline and mobile networks. The condition that was set for the approval of the transaction consisted of the commitments concerning landline broadband services to consumers in Vaasa, Mustasaari and Laihia.

29. Elisa undertakes to sell, in the form of a business acquisition, the contracting parties' overlapping network and the related consumer customers' broadband service agreements in Vaasa, Mustasaari and Laihia. If it had not been for these commitments, the result may have been a rise in the price of broadband services in the area's landline network.

30. The FCCA also studied the effects of the acquisition in terms of landline broadband services in other Ostrobothnian municipalities where Anvia has been operating for a long time. However, Elisa does not have consumer customers other than in Vaasa, Mustasaari and Laihia, and stopped selling landline broadband services in other municipalities already in August 2008. The intervention threshold based on the Competition Act was therefore not exceeded in this market.

31. The FCCA also assessed the competitive situation with regard to broadband service, corporate communication service and backbone network service markets and phone mast markets, but concluded that this transaction does not prevent effective competition in the market. The pressure by other actors in the market is so considerable in this market that competition problems are unlikely.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

3.1 The Finnish icebreaking market

32. On 28 November 2014, the FCCA submitted an initiative to the Ministry of Transport and Communications with the aim to increase competition in the Finnish icebreaking market.

4. Resources of competition authorities

4.1 Resources overall

33. The total number of staff of the FCCA is 143, of which 63 persons currently work for the Competition Division. (2013: 150).

4.1.1 Annual budget (in EUR and USD):

34. For the FCCA totally (covering both consumer and competition enforcement): €10,82m (\$12,32m), (2013: €11,3m (\$15,69m)).

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

- economists 21 (-4)
- lawyers 25 (-1)
- other professionals 13 (+6)
- support staff 4 (-1)
- 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

4.3 Period covered by the above information

35. The information is based on the situation in 31 December 2014.

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

5.1 Report on the Criminalisation of Cartels

36. The objective of the report project initiated in June 2013 was to outline potential needs for legislative change in Finland and to estimate the appropriateness of potential modernisations, the possibility of implementing the change and the potential effects. Within the project, two partial reports commissioned by the FCCA were completed to analyse the prerequisites for the criminalisation of cartels

from the national and international point of view, the potential for implementation, the benefits and the adverse effects of criminalisation. The report can be used in the future to estimate the need for personal responsibility and its suitability for the Finnish competition and criminal system.

37. Personal criminal responsibility does not exist in our current national competition legislation. However, several benefits have been associated with criminalisation at the international level, and personal criminal responsibility has been increasingly extended to cartels in several European countries. On the other hand, there are challenges related to criminalisation, such as ensuring the functionality of the leniency system.

38. In Finland it has been considered that criminalisation jeopardises the workability of the leniency system. Therefore, the further preparation will most likely focus on the possibilities to expand a ban on business operations to apply to cartels.

5.2 *Report on collective management organisations and the functioning of the copyrighted works market*

39. The ambiguity of the legislation and the complexity of the market serve to fortify the monopoly of the collective management organisations on the market, says the FCCA in its report on collective management organisations and the functioning of the copyrighted works market.

40. As part of the Government's programme to promote healthy competition, the FCCA investigated the impact of copyright legislation and the operations of collective management organisations on the markets using copyright-protected music and audio-visual content. The report discusses the relationship of four collective management organisations – Teosto, Gramex, Kopiosto and Tuotos – to the users of copyright-protected works, such as TV and radio companies; enterprises in the tourism, hotel and restaurant sectors; and telecommunications operators.

41. The complexity of copyright legislation, the agreement practices of collective management organisations, and the obscurity of ownership and cash flows pertaining to copyright or components of copyrighted works, make competition law assessment of the status of collective management organisations difficult. According to the FCCA, ambiguities concerning the concept of 'author' should in particular be resolved in an open and transparent way so that the organisations holding a dominant position on the market would not disrupt the operations of the market by expanding the scope of that concept little by little.

42. The FCCA questions the necessity and reasonability of certain contractual clauses found in the agreements of collective management organisations. Such questionable clauses include the exclusivity clauses and restrictions on the transfer of rights that appear in agreements signed by authors with collective management organisations. The scope and extent of such clauses should be reassessed.

43. According to the FCCA, the market for copyright-protected works is a content market, not a technology market or a distribution channel market. Pricing practices that treat competing technologies unequally without objective reason, for instance charging a different licence fee for the use of the same content on TV on the one hand and on mobile phones on the other, are detrimental to the development of the sector.

44. From the perspective of competition, it is essential to secure that the private copying levy system does not cause market disruption in the consumer retail trade or prevent or obstruct the introduction of more advanced recording devices.

45. In all, clarity and easy availability of licence pricing information could lower the threshold of entry to the market for new, innovative services, as enterprises would have better potential for estimating the implementation costs of new business ideas.

46. The report is available in Finnish: <http://www.kkv.fi/globalassets/kkv-suomi/julkaisut/selvitykset/2014/kkv-selvityksia-2-2014.pdf>

5.3 *Report on the conditions of competition of special groups' service housing*

47. Municipalities and supervisory authorities have a significant impact on the effectiveness of the service housing supply market. The report, commissioned and implemented by the Ministry of Employment and the Economy, includes eight proposals to promote the functioning of the market.

48. The report is part of the Well-being programme – GOOD –launched by the Ministry of Employment and the Economy in 2011 aiming at the employment and economic policy development of the care services sector in Finland. Some of the proposed measures also apply to the Housing Finance and Development Centre of Finland (ARA) and other authorities, as well as undertakings of this sector.

49. The report is available in Finnish: <http://www.kkv.fi/globalassets/kkv-suomi/julkaisut/selvitykset/2014/kkv-selvityksia-3-2014-palveluasuminen.pdf>

5.4 *Report on opportunities for and obstacles to voluntary work*

50. The FCCA published a report funded by Sitra, the Finnish Innovation Fund, on opportunities for and obstacles to voluntary work. Although the report points out that a good basis exists for such work, there is still room for improvement. Among other measures, the report recommends a set of common practices, the creation of guidelines laying down the ground rules for voluntary work, and the simplification of tax laws. In addition, there should be greater recognition and awareness of the importance of voluntary work in all of the public administration branches concerned.

51. The report found that at least some of the obstacles to voluntary work highlighted in public discussions have been imaginary. For example, voluntary work does not hamper the efficiency of the markets.

52. In the interviews conducted for the report, tax laws, which are regarded as open to interpretation and sources of uncertainty, emerged as a particular drawback. In addition, interviewees expressed a wish for closer cooperation between municipalities and parties organising voluntary work. At the very least, there appears to be a need among the smallest organisers of voluntary work, or those just getting started, for clear practices and a guide on various grey areas. The report also recommends that opportunities for voluntary work and existing good practices should be more actively communicated in various contexts.

53. In addition, organisations other than those belonging to the charity sector should be eligible to pay tax-exempt compensation for expenses, in order to create more room for voluntary work within organisations such as social firms and social enterprises. Unemployment security legislation should be clarified to ensure that unemployed benefit entitlements are not endangered by participation in voluntary work.

54. The report is available in Finnish: <http://www.kkv.fi/globalassets/kkv-suomi/julkaisut/selvitykset/2014/kkv-selvityksia-4-2014-vapaaehtoistoiminta.pdf>