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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 15-17 June 2016.

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN FINLAND (2015)

EXECUTIVE SUMMARY

The Finnish Competition and Consumer Authority (FCCA) had an active year in 2015. The Market Court imposed a penalty payment to the Finnish Bakery Federation's unlawful price recommendations. The case has been appealed by the FCCA. The Market Court rejected the FCCA's penalty proposal concerning a power line case, which has been appealed by the FCCA. The FCCA submitted a proposal to the Market Court to impose a fine of 38 million euros relating to the alleged cartel of seven major bus companies. Conditional clearance was given to one merger. In addition, the FCCA published three reports relating to the freedom of choice in the health care system, a report relating to waste management and a report relating to the shortcomings in municipal compliance with incorporation requirement.

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

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

No new legislation.

1.2 Other relevant measures, including new guidelines

No other relevant measures.

1.3 Government proposals for new legislation

1. Directive 2014/104/EU of the European Parliament and of the European Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (Damages Directive) was published in the EU's Official Journal on 5 December 2014. Finland has time until 27 December 2016 to implement the Directive. A working group assessing the changes required for the national implementation issued its report in 2015. It is expected that the bill will be brought before the Finnish Parliament in the spring of 2016.

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 Cartels / Finnish Bakery Federation

2. The Market Court imposed a EUR 15,000 penalty to the Finnish Bakery Federation's unlawful price recommendations in 2007–2011. The Market Court's decision is in line with the penalty proposal made by the FCCA, although the penalty sum is smaller than proposed. The case has been appealed by the FCCA.

3. According to the Market Court's decision, the Finnish Bakery Federation's press releases, newsletters to its members and the editorials of the Leipuri magazine have contained recommendations, the purpose of which has been to raise the prices of bakery products on a national scale. Recommendations for price increases are by nature a serious restriction of competition.

2.1.1.2 Cartels / power line companies

4. Market Court rejected the FCCA's penalty proposal concerning a power line matter. The FCCA had proposed that the Market Court impose a EUR 35 million penalty on Eltel Networks Oy and Eltel Group Oy for unlawful collaboration between competitors in power line design and construction contracts in Finland in 2004–2011.

5. In its decision of 30 March 2016, the Market Court found that it had been demonstrated that representatives of these companies met in 2004, 2005 and 2006. As shown by the FCCA, in these meetings they had discussed future power line projects and the distribution of at least some projects between the companies. The companies' representatives had engaged in phone conversations at least a few times a year, and had discussed certain power line projects at least in 2007.

6. The Market Court found that the FCCA's investigations did not provide sufficient evidence of that the cartel had existed until 31 October 2009. The Market Court rejected the FCCA's penalty proposal on the grounds that it had been submitted after the five-year time limit laid down in the Act on Competition Restrictions. The Market Court ordered the FCCA to pay EUR 300,000 of Eltel's court fees. The case has been appealed by the FCCA.

2.1.2 FCCA

2.1.2.1 Cartels / bus companies

7. The FCCA presented the Market Court with a proposal for a EUR 38 million penalty concerning seven of the sector's major bus companies, the Finnish Bus and Coach Association and Matkahuolto. The FCCA has also ordered Matkahuolto to stop anticompetitive actions that are forcing bus companies out of business.

8. The FCCA's investigations have revealed that major bus companies are guilty of forming a cartel. This began no later than autumn 2008 and still continues to some extent. The FCCA originally began looking into the matter alongside the Regional State Administrative Agency for South-Western Finland, when the latter received a request for action.

2.1.2.2 Commitment decision

9. DNA Oy and TeliaSonera Finland Oyj offered the FCCA a commitment that they will change their network partnership concerning Eastern and Northern Finland to ensure that consumers benefit from a more efficient network.

10. The joint venture "Suomen Yhteisverkko Oy" established by DNA Oy and TeliaSonera Finland Oyj will build a new mobile network for Eastern and Northern Finland that will cover 50% of Finland's total area and 15% of its population. In the future, all 2G, 3G and 4G mobile traffic will be carried by a common network in the joint venture's operating area.

11. Regardless of the partnership, DNA and Sonera will continue as independent operators offering competing services to their customers throughout Finland.

2.2 *Mergers and acquisitions*

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

	2009	2010	2011	2012	2013	2014	2015
Number of Mergers Filed	37	35	42	29	20	30	28
Phase II required	1	1	2	3	3	2	2
Conditional Clearance	0	0	1	0	2	2	1
Mergers Blocked	0	0	0	0	0	0	0

2.2.2 *Summary of significant cases*

2.2.2.1 Kesko Food / Suomen Lähikauppa

12. The FCCA approved Kesko Food Ltd's acquisition of Suomen Lähikauppa Oy, subject to certain conditions. The conditions imposed by the FCCA are an obligation to sell 60 stores of Suomen Lähikauppa to competitors and to continue purchases from Suomen Lähikauppa's current wholesaler for a certain period of time.

13. Both Kesko Food and Suomen Lähikauppa operate in the food retail industry. The K-Group's retail network consists of approximately 900 food stores in Finland, and its share of the food retail market stands at 32.7% according to industry statistics. Suomen Lähikauppa's retail network currently consists of more than 600 Siwa and Valintatalo stores as well as one Euromarket. The company's market share stands at 6.4%.

14. The merger will make Finland's food retail industry even more concentrated, as one nationwide chain will disappear from the market. Suomen Lähikauppa's competitiveness and financial situation have, however, been extremely poor for a long time. According to information provided to the FCCA concerning Suomen Lähikauppa's financial situation, the company would have exited the market in the near future regardless. The FCCA's investigation also revealed that there were no Finnish or foreign companies that were interested in purchasing Suomen Lähikauppa other than Kesko Food. The food retail industry would have therefore become more concentrated even without the merger.

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

3.1 Motions and statements

15. The FCCA promoted the proper operation of the market by issuing several statements on proposed legislation that may have an impact on competition policy.

4. Resources of competition authorities

4.1 Resources overall

16. The total number of staff of the FCCA is 123, of which 53 people currently work for the Competition Division. (2014: 143).

4.1.1 Annual budget (in EUR and USD)

17. For the FCCA totally (covering both consumer and competition enforcement): €10,058m (\$11,64m) (2014: €10,82m (\$12,32m)).

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

- economists 17 (-4)
- lawyers 22 (-3)
- other professionals 10 (-3)
- support staff 4 (0)
- all staff combined 53 (-10)

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

- Enforcement against anticompetitive practices: 41
- Merger review and enforcement: 5
- Advocacy efforts: 8

4.3 *Period covered by the above information*

The information is based on the situation in 31 December 2015.

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

5.1 *Report on the freedom of choice in the health care system*

18. According to a study by the FCCA, patients can only exercise their freedom of choice if the scope, standard and volume of information disseminated about service providers is improved. Common rules need to be established for the communications of primary health care and specialist medical care service providers to ensure the comparability of the information disseminated.

19. Since the beginning of 2014, patients have been able to choose their health center and their specialised medical care treatment facility freely out of all the public health centers and hospitals in Finland. Exercising freedom of choice nevertheless requires that patients have enough comparable information on the services offered by each service provider as well as on their standard and availability.

20. The FCCA's study shows that ample information on the choice of service providers is available on the websites of local authorities, joint authorities and hospital districts, but that the information is not as user-friendly as it could be. No common rules have been agreed for communicating information about patients' freedom of choice, and each service provider lays out the information from their own perspectives. As a result, the information is not always easy to find, and the information provided by different service providers cannot be compared against each other.

21. This is a follow-up report to the freedom of choice in the health care system report published early (see 5.4. below).

22. Recommendations made in the report by the Nordic competition authorities on the waste sector include increased use of market solutions and clarification of the role of municipalities. The report prepared by the FCCA jointly with Regional State Administrative Agencies also highlights the need to ensure a fair competition framework for municipalities and private companies.

23. In the future, the waste sector must prepare to develop and introduce new uses for waste, while continuing to process waste for which recovery options have yet to be identified. Meeting this challenge requires coordination between industry actors and the development of legislation.

5.3 *Report on Sweden's experiences in promoting patient freedom of choice*

24. The FCCA assessed the impacts of the system of patient freedom of choice, which Sweden introduced in 2010. On the basis of the analysis, freedom of choice has improved the availability of services and customer orientation. The service production structure has also become more extensive. Patients are mainly satisfied with the new system. On the other hand, the Swedish system also involves challenges or development needs. Sweden is well aware of these, however, and continuous work is being done to develop solutions.

5.4 *Report on the freedom of choice in the health care system*

25. The FCCA found in its report that although the right of patients to freedom of choice is enshrined in legislation, the present system-oriented method of implementation in many instances negates the actual possibility of exercising choice in the place of treatment. The economic and health policy-related benefits – such as the creation and adoption of new, innovative operating models – which, in principle, ensue from freedom of choice have thus, so far, failed to materialise.

5.5 *Report on the shortcomings in municipal compliance with incorporation requirement*

26. The FCCA assessed how well the municipalities have complied with the incorporation obligation based on the Local Government Act. The assessment has revealed shortcomings in the actions of the municipalities, which the FCCA will investigate more closely.

27. Under the Local Government Act, the municipalities were required to incorporate all the functions they perform on the same market as private enterprises by the end of 2014. The aim of the Act has been to ensure equal operating conditions, i.e. competitive neutrality between public and private business activities.

28. In collaboration with the state regional administrative authorities, the FCCA has ascertained how well the incorporation requirement is being realised within municipalities. In April 2015, the FCCA requested information from all municipalities in Finland on their municipal enterprises and on business activities conducted in the form of undertakings controlled by the public sector. A total of 286 municipalities responded to this request for information.

29. According to a preliminary estimate by the FCCA, of the municipal enterprises and other activities notified by the municipalities, several dozen may still be operating on the same market as private enterprises, in which case they may fall within the sphere of the incorporation requirement. However, the FCCA will have to assess the fulfilment of the incorporation requirement on a case-by-case basis, as some of the activities may not necessarily have to be incorporated because of the exceptions listed in the Local Government Act or a transition period.

30. The responses received by the FCCA suggest that the municipalities lack means to achieve certainty that their pricing is market-based, as required under the Act. Many of the municipalities were unclear about what was meant by market-based pricing and about when the services would have to be priced on a market basis.