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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

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**COMMITMENT DECISIONS IN ANTITRUST CASES**

-- Note by Finland --

**15-17 June 2016**

*This document reproduces a written contribution from Finland submitted for Item 9 of the 125th meeting of the OECD Competition Committee on 15-17 June 2016.*

*More documents related to this discussion can be found at  
[www.oecd.org/daf/competition/commitment-decisions-in-antitrust-cases.htm](http://www.oecd.org/daf/competition/commitment-decisions-in-antitrust-cases.htm)*

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## FINLAND

### 1. The powers and the proceeding of the FCCA

1. In Finland, the antitrust proceedings can end at least in three different ways. If the Finnish Competition and Consumer Authority (FCCA) finds enough evidence of infringement of the Competition Act<sup>1</sup>, it can make a proposal of penalty payment to the Market Court and it can at the same time adopt a prohibition decision ordering to stop the infringement. The FCCA can adopt a prohibition decision separately without the proposal of penalty payment or adopt a decision obliging the parties to comply with commitments. The FCCA can impose a periodic penalty payment to enforce the decision issued on the basis of the Competition Act. The Market Court can order a periodic penalty payment to be paid.

2. The FCCA has not published any guidelines on commitment procedures and decisions with the purpose of setting time limits, procedural steps or requirements and due to this has a wide discretion when deciding whether to accept commitments offered.

3. Competition restraints are investigated by the FCCA both on its own initiative and on the basis of complaints. After the preliminary assessment uncovering potential competition concerns, the FCCA communicates the concerns to the parties. The undertakings under the investigations can offer the commitments to the authority at any stage of the proceedings.

4. The FCCA offers the complainants and other third parties possibility to submit observations of the commitments to make sure that the offered commitments address the concerns. In Finland, it is not mandatory to have market testing by publishing a summary of the case and the main content of commitments. Further discussion with the parties can take place with a possibility to amend the initially proposed commitments. The formal decision adopting the commitments ends the investigation into a possible infringement of competition rules. The commitments decisions are binding and public in Finland.

### 2. The commitment decisions adopted by the FCCA

5. The FCCA has adopted altogether nine commitment decisions in 2004-2015 and 15 decisions establishing an infringement of the Finnish Competition Act or article 101 and 102 TFEU, excluding all cartel decisions. The FCCA has accepted commitments in vertical (2), horizontal co-operation (1) and also in dominance cases (6), but not in cartel cases. The FCCA has adopted commitment decisions most often in the telecommunications sectors (4 out of 9), one in the banking sector, one in the motor vehicle sector and the rest in miscellaneous sectors (fuels, explosives, monitoring register of animal breeding).

6. Out of the nine commitment decisions adopted by the FCCA in 2004-2015, in seven cases it took less than five years and in two cases it took roughly five years from the first procedure, complaint or the FCCA's own initiative, to the adoption of the commitment decision. In five of seven cases, it took roughly a year to adopt the decision. During 2004-2015, the FCCA adopted 15

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<sup>1</sup> The Competition Act is available in English at <http://www.kkv.fi/en/facts-and-advice/competition-affairs/legislation-and-guidelines/competition-act/>.

infringement decisions (excluding cartels) and the finality of these decisions is achieved years after the FCCA's decision, as appeals to courts tend to take years in Finland.

7. In some cases, the FCCA has closed cases without the commitment decision based on the fact that the undertaking subject to the investigations has changed its behavior<sup>2</sup> or the complaint has been withdrawn because the complainant has lost its interest after the undertaking subject to the investigations has changed its behavior. The FCCA can close the case with or without formal decision depending on the case.

### **2.1 Examples of commitment decisions in Finland**

8. On 18 June 2009<sup>3</sup>, the ATM operator Automatia Pankkiautomaatit Oy, the joint venture of the three largest banks in Finland: Nordea, OP Group and Sampo Bank, was obligated to comply with the given commitments on the pricing of their ATMs to the FCCA. The banks undertook to price their customers' Otto ATM withdrawals and withdrawals made from the ATMs of the new ATM operators with debit cards in a non-discriminatory manner. The preliminary assessment of the FCCA was that the Automatia Pankkiautomaatit Plc and its member banks, Nordea Bank Finland Plc, OP-Pohjola Group and Sampo Bank Plc, had a joint dominant position in the cash dispensing market in Finland. The services fees charged by the banks from their customers for the withdrawals made from the new operators' banks were suspected to lead to an abuse of joint dominant position by discriminatory pricing and creating obstacles to the entry of the new ATM operator.

9. On 28 May 2010<sup>4</sup>, the FCCA adopted a decision making the commitments binding on Veho Group Oy Ab, Mercedes-Benz importer in Finland. Veho had provided the FCCA with commitments by which it undertakes to improve the independent repairers' access to the technical training. Since the FCCA found the commitments offered by Veho satisfactory and since the FCCA had not found evidence of a significant restriction of competition as regards the other alleged infringements, there was no longer grounds for further action by the FCA.

10. On 5 November 2015<sup>5</sup>, the FCCA accepted commitments offered by two mobile operators, TeliaSonera Finland and DNA, in a mobile network sharing agreement case. The operators merged their networks, including most of their frequency resources, in Eastern and Northern parts of Finland, in an area which covers 50 per cent of the country and 15 per cent of the population. The network was operated through a joint venture. The Finnish mobile market has three players – Elisa, TeliaSonera and DNA - whose turnover practically makes up the entire mobile turnover in Finland. TeliaSonera and DNA committed to offer access to virtual and service operators in their national networks and lease mast and antenna sites to their competitors. The commitments also restricted information exchange, severed ties between the parties and the joint venture and imposed changes in the operation of the joint venture ensuring that the parties could differentiate their products and services in the merged network.

<sup>2</sup> See decision taken on 15 May 2009 concerning Elisa Oyj <http://www.kkv.fi/ratkaisut-ja-julkaisut/ratkaisut/arkisto/2009/muut-ratkaisut/5296103-8966103-2336104-9346104-2916105-5286105-ja-4706106/> paragraph 175.

<sup>3</sup> See decision <http://www.kkv.fi/ratkaisut-ja-julkaisut/ratkaisut/arkisto/2009/kielto--sitoumus--ja-toimitusvelvoiteratkaisut/964612007/>.

<sup>4</sup> See <http://www.kkv.fi/ratkaisut-ja-julkaisut/ratkaisut/arkisto/2010/kielto-sitoumus-ja-toimitusvelvoiteratkaisut/535612006/>.

<sup>5</sup> See <http://www.kkv.fi/ratkaisut-ja-julkaisut/ratkaisut/arkisto/2015/kielto--sitoumus--ja-toimitusvelvoiteratkaisut/43814.00.002014/>.

11. The decision included a periodic penalty payment of € 1 380 000 (TeliaSonera) and € 811 000 (DNA) for the breach of the commitments. The periodic payment was determined in a commitment decision to enhance the compliance with the commitments. In this case, the periodic penalty payment was set for the first time in a commitment decision.

### 3. Monitoring of the commitments

12. The offered commitments have to address the concerns raised by the FCCA, and sometimes it has been necessary to have changes to the offered commitments. The FCCA can engage in discussions with the complainants or other third parties to make sure that offered commitments address the concerns. In Finland it is not mandatory to have market testing by publishing a summary of the case and the main content of commitments. In Finland, the adopted commitments decisions have been behavioural stating how the undertaking has to behave in certain circumstances. The FCCA has not adopted commitments in the fast-moving sectors.

13. The FCCA does not have a systematic monitoring or evaluation system assessing whether commitment decisions have been successful. The FCCA has not received complaints or other signals stating that certain commitments have not been successful in the antitrust cases. The FCCA has appointed a trustee in two commitments decisions to monitor compliance therewith. The appointed trustee worked well in a commitment decision concerning Veho Group Oy Ab by which it undertook to improve the independent repairers' access to the technical training. In the commitment decision concerning the network sharing agreement a trustee was also appointed, but it is too early to estimate the results in this case.

14. However, the FCCA was not empowered with the separate right to propose penalty payments on undertakings for not complying with a commitment in 2004 when powers to adopt commitment decisions within the framework of the so-called "modernization" of EU competition law<sup>6</sup> were granted to the FCCA and to other national competition authorities ("NCAs"). If the undertaking has acted contrary to the commitment decision, the FCCA has to make a full proposal to the Market court establishing the existence of the infringement. A national Competition Act Working group<sup>7</sup> is assessing whether the FCCA should be granted powers to propose penalty payments for breaching commitment decisions.

15. The commitment decisions adopted by FCCA can be appealed to the Market Court and further to the Supreme Administrative Court, but the Courts have not dealt with any commitment decisions in antitrust cases. The FCCA has not taken any undertakings to the Market Court for infringing the commitment decisions and the undertakings subject to the commitments have not appealed either. The third parties who could have the interest to appeal have not taken the commitment decisions to the Market Court either. The possible third parties to appeal could be competitors, but in order to appeal they have to be a party in procedure and have a direct interest in the matter. In the Finnish administrative system, the competitors or other third parties do not have a direct interest in the matter automatically.

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<sup>6</sup> Council Regulation 1/2003 2003 O.J. (L 1) 7 (EC) <http://eur-lex.europa.eu/legal-content/FI/TXT/PDF/?uri=CELEX:32003R0001&from=EN/>.

<sup>7</sup> A national Competition Act Working group is assessing the need for change in competition legislation in order to make "Finnish food production profitable", one of the aims of the Strategic Programme of the Government and other aspects of Competition Act as well (for example investigation tools, sanctions etc). The mandate of the working group is from September 2015 to the end of April 2016 as far as the Governmental Programme is concerned and until the end of February 2017 as far as the rest of the tasks of the working group is concerned. [http://www.tem.fi/files/43600/paatos\\_kilpailulakityoryhma.pdf/](http://www.tem.fi/files/43600/paatos_kilpailulakityoryhma.pdf/)

#### **4. Conclusions**

16. In Finland, there has not been a great number of commitment decisions and at the same time the Courts have established case law in areas of competition law. The commitment decision proceedings had tackled the competition concerns effectively and quickly in Finland, but it is difficult to estimate if there is any increase in the number of the enforcement actions after the introduction of the commitment procedures. Before 2004, the FCCA adopted many individual exemption decisions and in 2004-2016 the FCCA had a heavy work load in a few cases.

17. The FCCA could consider adopting more commitment decisions particularly when the FCCA has less resources to tackle the competition infringements because of the budget cuts and new tasks. According to the FCCA, it should be granted powers to propose penalty payments for breaches of commitment decisions to enhance compliance therewith. If the FCCA will be granted powers to propose penalty payments for breaches of commitment decisions and it will extend the use of the commitments, it would also be necessary to consider the need for guidelines with the purpose of setting time limits, procedural steps or requirements and a monitoring system to guarantee the fairness of the commitment system.