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**COMPETITION COMMITTEE**

## Annual Report on Competition Policy Developments in Finland

-- 2023 --

This report is submitted by Finland to the Competition Committee FOR INFORMATION.

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## *Finland*

### 1. Legislative changes

#### 1.1. Mergers

1. New merger control notification thresholds came into force in January 2023 as section 22 of the Finnish Competition Act (948/2011) was amended. Following this amendment, the Finnish Competition and Consumer Authority (FCCA) will investigate transactions (which must be notified to the FCCA) where the parties' combined turnover generated in Finland exceeds EUR 100 million and the total turnover generated in Finland of at least two parties exceeds EUR 10 million per each party. Prior to the amendments, a notification had to be submitted to the FCCA if the parties' combined worldwide turnover amounted to EUR 350 million and the turnover in Finland of at least two of the parties exceeded EUR 20 million.

2. The Finnish Government argued that the previous turnover threshold for merger notifications (acquisitions) was too high compared to the overall size of the Finnish economy. The change was also motivated by the fact that the new notification threshold is now determined more accurately on the basis of the combined turnover of the parties generated in Finland, instead of their potential global business activities. The new thresholds should give a better indication of the significance of the transaction particularly in the Finnish markets and for the Finnish economy.

3. The FCCA has argued that reducing the turnover thresholds was an important legislative amendment that has significantly improved its ability to intervene in harmful market concentration. The previous notification threshold was clearly higher than in other EU Member States of a similar size and in the Nordic countries, and entire sectors could end up being excluded from merger control. However, the FCCA holds the view that challenges still remain in terms of merger enforcement. Such challenges occur in local markets, in particular, where markets may still become too concentrated as companies acquire smaller operators. These serial or industry 'roll-up' acquisition strategies come into play when a firm acquires and merges multiple smaller companies in the same industry over time and consolidates them into a large, and potentially dominant, company. This is why the FCCA has proposed the enactment of a so-called 'call-in option', which would also enable intervention in those harmful mergers that are below the current turnover thresholds and consequently not notified to the FCCA.

4. In line with the amended Competition Act, a revised merger notification form was adopted as of 1 January 2023. The rationale has been to reduce the administrative burden of notifying parties in the notification phase.

#### 1.2. Foreign subsidies regulation

5. A legislative amendment that entered into force in November 2023 imposed on the FCCA new tasks associated with the EU Foreign Subsidies Regulation (FSR).<sup>1</sup> The FSR

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<sup>1</sup> Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market.

Regulation is exclusively applied by the European Commission, assisted by designated authorities in each Member State. In Finland, this authority is the FCCA.

### 1.3. New Government Programme

6. In 2023, a new Government came into office. In terms of competition policy, the programme of the Government includes for instance the following initiatives and targets:

#### 1.3.1. FCCA

- to ensure that the FCCA has sufficient powers and to strengthen its supervisory capacity
- to assess possibilities for preliminary decisions of the FCCA
- to consider a service pledge on reasonable handling times in merger enforcement

#### 1.3.2. Public sector business activities

- to strengthen competitive neutrality enforcement of the FCCA
- to monitor public sector business activities as intensively as mergers and cartels
- to prepare legislation for the public sector to further organize duties in a corporate form
- to initiate reforms to better take into account the market effects of municipalities' business

#### 1.3.3. Cartels

- to strengthen cartel enforcement
- to examine whether personal sanctions imposed for cartels are up to date

#### 1.3.4. Digital markets:

- to safeguard fair competition in relation to online stores operating from third countries
- to promote a level playing field between European companies and global digital giants.

## 2. Antitrust

### 2.1. Closed by courts

#### 2.1.1. Resale Price Maintenance / Technical Trade.

- In December 2023, the Supreme Administrative Court (second instance and highest appellate court) imposed a penalty of EUR 1.75 million for illegal resale price maintenance in online retail trade. Originally, the FCCA proposed that the penalty fee for IKH should be EUR 9 million. The Court concluded that Isojoen Konehalli Ltd. (IKH) had imposed minimum resale prices on the online shops of certain retailers. The company had also agreed with its authorised resellers on a fixed resale price in IKH's online shop. The Court found that the violation had been long-term,

serious and reprehensible and caused concrete adverse effects on price levels in the retail market. After the ruling, the case is now legally binding and closed.

## **2.2. Pending in courts**

### ***2.2.1. Price agreement/Real Estate Management.***

7. The Supreme Administrative Court is currently assessing whether six companies operating in the real estate management sector and the Finnish Real Estate Management Federation proceeded to illegal price fixing arrangements with the aim of increasing the national price level in the real estate management sector. The FCCA proposed penalty payments worth EUR 22 million in total. The Market Court (first instance appellate court) lowered the penalty payments to around EUR 5 million in total due to the fact that in terms of intensity and turnout, the Market Court did not find the illegal conduct as extensive as what the FCCA had argued. The ruling of the Supreme Administrative Court is expected during 2024.

### ***2.2.2. Collective tendering / Local Bus markets.***

8. In November 2023, the Market Court imposed EUR 1.54 million in penalty payments for prohibited co-operation on six companies operating in the public transport sector in the City of Turku region (third largest city in the country). The case was initiated as the FCCA proposed that the Market Court impose fines on the companies. The Market Court found that the bus companies had illegally submitted joint bids in tendering processes for public transport services, and that the joint bids constituted prohibited co-operation between competitors, including price fixing and market sharing. The case is currently pending at the Supreme Administrative Court.

### ***2.2.3. Infrastructure Pipeline Markets***

9. The Market Court is currently assessing whether a number of companies operating in infrastructure pipeline markets have infringed competition rules, for instance by cooperating between themselves but also by hindering the operation of companies outside this cooperation mechanism. The FCCA proposed that the Market Court impose a fine of EUR 44 million in total. The Market Court ruling is expected during 2024.

## **2.3. Published cartel investigations**

10. The FCCA carried out a number of dawn raids in 2023.

11. In January 2023, the FCCA made public its cartel investigation and dawn raids concerning nursing service markets, particularly sheltered housing services for older citizens. Investigations are pending.

12. In January 2023, the FCCA also assisted in the European Commission's unannounced inspections (dawn raids) in Finland focusing on tyre industry. The products concerned in the inspections are new replacement tyres for passenger cars, vans, trucks and busses sold in the European Economic Area. The Commission is concerned that price coordination took place amongst the inspected companies, including via public communications. Investigations are pending.

13. The FCCA also announced that it had launched cartel investigations in the wild berries markets. In the course of these investigations, dawn raids were conducted, partly in cooperation with the Swedish Competition Authority. Investigations are pending.

### 3. Illegal Direct Awards

14. State and municipal authorities and other contracting entities referred in the Act on Public Procurement shall arrange competitive tendering of their procurements and concession contracts as provided in that Act. The FCCA is empowered to take actions against illegal direct procurement (illegal direct awards). In an illegal direct procurement, the contracting entity (acquiring goods or services) negotiates directly on the contract terms with its selected supplier(s), and no statutory call for bids is organised although required by the Act.

#### 3.1. Closed by courts

##### *3.1.1. City of Turku (medical procurement).*

15. In February 2023, the Market Court decided not to investigate a case where an illegal direct award was suspected. In this case, the City of Turku was acquiring gastroenterological endoscopic examinations. The FCCA had originally proposed that the Market Court impose a fine of EUR 30,000 on the City for illegal direct contract award. During the proceedings at the Market Court, however, the contracting entity made appeal to the fact that its estimate of the anticipated total value of the contract had been incorrect. The actual value of the contract was below the euro-denominated threshold for which a call for bids must be organised. Given that the value of the direct procurement did not exceed the obligatory euro-denominated threshold which would have obliged the city to put the procurement of the medical goods out to tender, the Market Court dropped the case.

##### *3.1.2. Municipality of Isokyrö (transport services).*

16. In February 2023, the Market Court imposed a fine of EUR 35,000 on the Municipality of Isokyrö for illegal direct award. The ruling was based on the FCCA's proposal of imposing a fine of this amount. While the municipality should have put this procurement out to tender, it had acquired school transport services from one transport contractor without a tendering process. The value of the contract was approximately EUR 1.6 million. The municipality did not offer any reasons for which the court should consider the procurement lawful. It admitted its error and terminated the procurement with the transport contractor during the court proceedings.

##### *3.1.3. City of Hanko (reception services).*

17. The contracting entity (City of Hanko) acquired health centre reception services - without a call for bids - from one private undertaking in two parts: the first contract period covered the period between January and April and the second one the period between May and December, both in 2022. The FCCA and the Market Court concluded that under law, the two contracts as a whole formed a single procurement contract. As a result, the monetary worth of the procurement (two contracts in total) exceeded the EUR 400,000 threshold, and the procurement should have been put out to tender. The total value of the procured reception services was approx. EUR 1.4 million.

18. The City of Hanko argued that to its knowledge, there were no other potential private sector service providers in the market and that a number of uncertainties, some of them relating to the care relationship of the patients and clients, were associated with the procurement, hindering the City of Hanko from launching a tendering procedure.

19. According to its interpretation of the Act on Public Procurement, the Market Court found no basis for these arguments. The Court noted that contracting entities need to

anticipate their needs. The argument of urgency, even if acknowledged in the Act as a potential justification for not organising a tendering procedure, is not applicable if the situation was not anticipated even if there was time for doing so. The key to this case was that the contracts were part of the same procurement. The Market Court noted that under the Act on Public Procurement, dividing a procurement or reducing its value by exceptional means in order to evade the provisions of the Act is against the law.

## 3.2. Pending in courts

### 3.2.1. *In-house procurement.*

20. The Act on Public Procurement contains exemptions that allow derogations from the obligation to call for bids. In certain situations, a procurement of goods or services need not be put out to tender if the procurement is for instance made from an in-house entity, meaning that there is a legally acceptable in-house connection between the contracting entity and the supplier. However, an additional requirement for the supplier being an in-house entity is that the contracting authority exercises control over the supplier in question itself or jointly with other owners.

21. In 2023, the FCCA brought two separate cases before the Market Court in order for the court to terminate a procurement contract with suppliers. In both cases, the FCCA found that the contracting entity had awarded contracts to an in-house entity over which it had not exercised a controlling interest as required by law. As a result, without the valid in-house connection, the direct contract awards were illegal, and contracts should have been put out to tender.

22. Both contracting authorities were wellbeing services counties, one in Western and the other in Southern Finland. In terms of the Western Finland case, which is pending at the Market Court, the procurement related to debt collection services (worth EUR 1.9 million), and the contracting authority had a 0.09 per cent ownership share in the supplier. As to the case in Southern Finland, which is pending at the Supreme Administrative Court, the procurement related to personnel management services (worth EUR 9.3 million), and the contracting entity had a 0.04 per cent ownership share in the supplier.

23. In both cases, the FCCA also proposed that the Market Court impose a fine of EUR 1,000. The level of the proposed fine took into account that the detailed requirements of exercising control (criteria for an in-house entity) were somewhat unclear to contracting authorities. Cases are highly important in principle as they part of a larger phenomenon due to an excessively broad interpretation of the notion of an in-house entity.

## 3.3. Reprimands

24. The FCCA also issued a reprimand for four separate illegal direct awards relating to procurements of real estate maintenance (Municipality of Hämeenkyrö), rock and stone materials (City of Alajärvi), excavator loaders (City of Lohja) and closing valves (Helsinki Region Environmental Services). The FCCA closed 34 cases relating to suspected illegal direct awards without further actions.

#### 4. Competitive Neutrality

The FCCA has powers to enforce provisions of the Competition Act which aim to secure a level playing field (competitive neutrality) between publicly and privately owned undertakings. In 2023, the major case concerned a database which is needed to find a foster care unit for a child. The database compiles information on various foster care units into one place, and it helps the responsible authority to find a foster care unit for a child protected under the Child Welfare Act. A private sector entity requested the FCCA to investigate whether competitive neutrality was infringed, for instance due to the fact that private undertakings were denied access to the database by public sector entities. It was claimed that this was a distortion of competition between public and private undertakings. The FCCA rejected the complaint largely on the basis that the database was closely connected to the powers of a public authority under the Child Welfare Act. The FCCA concluded that this function is a non-economic activity and hence outside the enforcement powers of the FCCA. The case is pending at the Market Court.

#### 5. Merger Enforcement

25. In 2023, the FCCA received 47 merger notifications, which was roughly 1.5 times the yearly average between 2017–2022. The median of Phase I processing times was 8 working days in 2023 (12.5 working days the year before). The median for the duration of pre-notification discussions in Phase I was 6 working days in 2023 (12 working days the year before).

##### 5.1. Phase II investigations.

26. The FCCA began an in-depth Phase II investigation in four mergers/acquisitions. One of them was conditionally cleared (Triton/Caverion). This transaction related to building technology and industrial maintenance services. According to the FCCA, the acquisition would have had harmful competition effects on building automation projects and maintenance services in Eastern Finland. Among others, the merged entity would have had high market shares as well as only one significant competitor in the relevant regional area. The FCCA's approval was conditional upon the sale of the building automation business in Eastern Finland.

27. The FCCA also launched in-depth investigations into Enersense/Voimatel and Optigroup/Pamark acquisitions. In Enersense/Voimatel acquisition relating to telecommunications infrastructure services, incl. construction and maintenance of fixed and mobile networks, the FCCA concluded that the merger would have led to harmful effects on competition. The FCCA presented its assessment to the parties in January 2023; Enersense announced in February 2023 that it would abandon the notified merger. The parties did not offer the FCCA remedies.

28. In OptiGroup Pamark case relating to wholesale markets of cleaning and hygiene products, the FCCA noted that the merger would have resulted in harmful effects on competition in the wholesale market of cleaning and hygiene products. The FCCA presented its assessment to the parties in June 2023; Optigroup announced in August 2023 that it would abandon the notified merger. The parties did not offer the FCCA remedies.

29. In November 2023, the FCCA opened an in-depth Phase II investigation into PostNord Strålfors's proposed acquisition of Edita Prima. The merging parties engaged in overlapping activities especially in customer communication management services (e.g.



processing and printing services of invoices, payslips and other administrative documents offered to companies and authorities). Based on the FCCA's initial investigations, the merger might have had harmful effects on competition in these services. The notification was cancelled later in 2024.

## 5.2. EUMR art 22 referral.

30. In August 2023, the European Commission accepted the requests submitted by the FCCA (in addition to the Danish, Swedish and Norwegian competition authorities) to assess the proposed acquisition of Nasdaq's European power trading and clearing business by European Energy Exchange AG ('EEX') under the EU Merger Regulation ('EUMR'). The referral request was submitted to the Commission pursuant to Article 22(1) of the EUMR. This provision allows Member States to request that the Commission examine a merger which does not have an EU dimension, but which affects trade within the single market and threatens to significantly affect competition within the territory of the Member States making the request.<sup>2</sup>

## 5.3. Breach of remedies.

31. In December 2023, the FCCA proposed that the Market Court impose a penalty payment of EUR 900,000 on Valio Ltd for breaching commitments in relation to its acquisition of Heinon Tukku, a grocery sector and food service wholesaler.

32. Valio, a food manufacturer, was able to obtain - through the ownership of Heinon Tukku - pricing information of other food manufacturers competing with Valio. Before the acquisition was cleared, the FCCA concluded that Valio's access to pricing information of competing food manufacturers would restrict competition between manufacturers for food service customers (e.g., hotels, cafés and restaurants, public institutions). As a remedy, Valio committed to ensuring that this competitor information inside Heinon Tukku would not be passed on to those who were responsible for the pricing of Valio's products. This way, the Valio/Heinon Tukku acquisition would not mean that competitors' confidential pricing information would be passed on to Valio. However, at the end of 2022 Valio informed the FCCA that it had detected an error in the information system firewall. As a result, Valio staff responsible for food service customers had access to the confidential price information of Valio's competitors for several months.

33. This was the first time the FCCA proposed a fine for breaching a commitment in relation to merger enforcement. Given that mergers are often approved after the notifying party offers commitments to solve the FCCA's potential competition concerns, a precondition for the efficiency and credibility of merger enforcement is that remedies and commitments are respected and that the FCCA intervenes effectively in detected remedy violations. In this respect, the case in question is an important precedent that highlights the importance of compliance with and effective fulfilment of commitments. The case is pending at the Market Court.

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<sup>2</sup> According to article 22(1), one or more EU Member States may request that the European Commission to examine any concentration (as defined in Article 3 of the EUMR) which does not have an EU dimension (within the meaning of article 1 of the EUMR) but affects trade between EU Member States and threatens to significantly affect competition within the territory of the Member State or States making the request.

## 6. Market Studies

### 6.1. Taxi markets

34. The FCCA published two studies on taxi markets in 2023. The first study focused on the impacts of the 2018 taxi market liberalisation and regulatory reforms and, in particular, on how taxi fares had developed in different areas and how the reforms had influenced the availability of taxis. The study found that the price levels had increased in all areas of the country after the reform. A closer examination of the reasons for this price increase will be needed, however. In addition, price variations between taxi companies proved great, especially in larger cities. In these areas, customers were price conscious (elastic demand in relation to prices). In larger cities, the number of taxi companies in the market increased after the reform. On the other hand, the average turnover and profit per company dropped in these areas. In rural areas and in smaller towns, the number of taxi companies remained relatively constant, although the profit per company dropped there as well. The reason for the effects of the 2018 taxi reform being somewhat different in larger cities compared to smaller areas related to taxi call centre services; companies in larger areas were able to benefit more often from economies of scale (more taxi rides/call centre) compared to taxi companies using call centre services in smaller and rural areas.

35. The second study explored taxi entrepreneurs' views of how the markets worked in general and, in particular, of taxi call centres. Two thirds of the taxi entrepreneurs argued that the taxi call centres have attempted to prevent taxi companies from dealing with several call centres (simultaneously), consequently attempting to restrict competition.

36. The turnover of the taxi market in Finland exceeds EUR 1 million a year. Publicly subsidised taxi rides (granted on social or health grounds, for instance) account for approx. 40% of this turnover. According to the FCCA, publicly subsidised taxi rides are an important factor in maintaining a competitive market, owing to the fact that they may increase the supply of taxi services and consequently competition.

### 6.2. Pharmacies

37. The FCCA continued to explore how the pharmacy market functions and to what degree the exclusive right of pharmacies to sell medicines reduces competition. In December 2023, the FCCA published a study on pharmacy markets. The authority concluded that although there are taxation models, such as the pharmacy tax, which aim to ensure that pharmacy services are available throughout the country, income differences between pharmacies are levelled out and other harmful effects of the pharmacies' exclusive rights are eliminated, the current taxation models do not adequately accomplish their aims. The FCCA has proposed new regulatory options to remedy the situation. According to the FCCA, the profit levels of the Finnish pharmacies are relatively high, which plays a role in increasing the costs of medicines for consumers and society as a whole.

### 6.3. Competition in public procurement

38. In December 2023, the FCCA published a study on competition in public procurement. The study found that there continues to be a significant lack of competition in all sectors and geographic areas. The largest number of competitive bidding processes in which only one tender was received were found in construction contracts, which is explained by the large number of these procurements. In relative terms, the greatest number of single-tender processes were seen in contracts for laboratory accessories and farming supplies. The FCCA estimates in the study report that if one additional tender could be

obtained in all single-tender procurements, the public sector could save up to EUR 150 million annually.

#### 6.4. Railways

39. The FCCA continued to explore how railway services are functioning in Finland, both in terms of passenger and freight train services. As for passenger services, the FCCA recommends subjecting publicly subsidised passenger rail services to competitive bidding and establishing a rolling stock leasing company to hire out this stock to operating companies which have won the bidding competition. The evidence of whether or not competition would be increased by establishing a rolling stock leasing company for freight services is not similarly clear as with passenger train services.

### 7. New Investigative Tools

40. In 2023, the FCCA introduced statistical methods developed to detect cartels in cartel enforcement. They are used to analyse quantitative data to find features that indicate the existence of a potential cartel in a certain market. In this work, the FCCA draws especially on public procurement data, to which it has access. The methods have been developed in active collaboration with other EU Member States and Nordic competition authorities. The FCCA also uses statistical methods to assess suspected cartel conduct tip-offs.

### 8. Mergers - Statistics overview 2012–2023

Table 1.

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Mergers filed	29	20	30	28	36	32	39	34	22	38	35	47
Phase II required	3	3	2	2	3	6	8	4	4	5	3	3
Conditional clearance	0	2	2	1	2	2	5	4	2	3	2	1
Mergers blocked	0	0	0	0	0	0	0	1	1	0	0	0