

# Merger Control

The international regulation of mergers and joint ventures  
in 71 jurisdictions worldwide

*Consulting editor*  
**John Davies**



2018

GETTING THE  
DEAL THROUGH

GETTING THE  
DEAL THROUGH 

# Merger Control 2018

*Consulting editor*

**John Davies**

**Freshfields Bruckhaus Deringer**

Publisher  
Gideon Robertson  
gideon.roberton@lbresearch.com

Subscriptions  
Sophie Pallier  
subscriptions@gettingthedealthrough.com

Senior business development managers  
Alan Lee  
alan.lee@gettingthedealthrough.com

Adam Sargent  
adam.sargent@gettingthedealthrough.com

Dan White  
dan.white@gettingthedealthrough.com

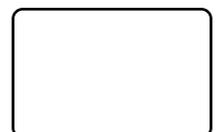


Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 3708 4199  
Fax: +44 20 7229 6910

© Law Business Research Ltd 2017  
No photocopying without a CLA licence.  
First published 1996  
Twenty-second edition  
ISSN 1365-7976

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between June and August 2017. Be advised that this is a developing area.

Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112



## CONTENTS

<b>The growing document burden: coordinating discovery in cross-border merger reviews</b>	<b>7</b>	<b>Chile</b>	<b>101</b>
Michele Davis, Ninette Dodoo, Sascha Schubert and Gian Luca Zampa Freshfields Bruckhaus Deringer		Claudio Lizana, Lorena Pavic and María José Villalón Carey	
<b>Recent economic applications in EU merger control: UPP and beyond</b>	<b>10</b>	<b>China</b>	<b>106</b>
Hans W Friederiszick, Rainer Nitsche, Theon van Dijk and Vincent Verouden E.CA Economics		Nicholas French, Ninette Dodoo, Janet (Jingyuan) Wang and Tracy (Jia) Lu Freshfields Bruckhaus Deringer	
<b>Timelines</b>	<b>14</b>	<b>Colombia</b>	<b>114</b>
Michael Bo Jaspers and Joanna Goyder Freshfields Bruckhaus Deringer		Hernán Panesso and Sebastián Gómez Posse Herrera Ruiz	
<b>Acknowledgements for verifying contents</b>	<b>39</b>	<b>COMESA overview</b>	<b>119</b>
<b>Albania</b>	<b>41</b>	Shawn van der Meulen and Mmadika Moloji Webber Wentzel	
Günter Bauer, Denis Selimi and Jochen Anweiler Wolf Theiss		<b>Croatia</b>	<b>122</b>
<b>Argentina</b>	<b>46</b>	Luka Tadić-Čolić and Luka Čolić Wolf Theiss	
Miguel del Pino and Santiago del Rio Marval, O'Farrell & Mairal		<b>Cyprus</b>	<b>128</b>
<b>Australia</b>	<b>52</b>	Anastasios A Antoniou and Christina McCollum Antoniou McCollum & Co LLC	
Jacqueline Downes, Robert Walker and Felicity McMahon Allens		<b>Czech Republic</b>	<b>133</b>
<b>Austria</b>	<b>61</b>	Martin Nedelka and Radovan Kubáč Nedelka Kubáč advokáti	
Maria Dreher and Thomas Lübbig Freshfields Bruckhaus Deringer		<b>Denmark</b>	<b>138</b>
<b>Belgium</b>	<b>69</b>	Morten Kofmann, Jens Munk Plum, Erik Bertelsen and Bart Creve Kromann Reumert	
Laurent Garzaniti, Thomas Janssens, Tone Oeyen and Amaryllis Müller Freshfields Bruckhaus Deringer		<b>Ecuador</b>	<b>143</b>
<b>Bolivia</b>	<b>75</b>	Roque Bernardo Bustamante and Juan Andrés Gortaire Bustamante & Bustamante Law Firm	
Jorge Luis Inchauste Comboni Guevara & Gutierrez SC – Servicios Legales		<b>European Union</b>	<b>148</b>
<b>Bosnia and Herzegovina</b>	<b>79</b>	John Davies, Rafique Bachour and Angeline Woods Freshfields Bruckhaus Deringer	
Günter Bauer and Naida Čustović Wolf Theiss		<b>Faroe Islands</b>	<b>156</b>
<b>Brazil</b>	<b>84</b>	Morten Kofmann, Jens Munk Plum, Erik Bertelsen and Bart Creve Kromann Reumert	
Marcelo Calliari, Daniel Andreoli, Joana Cianfarani and Vivian Fraga do Nascimento Arruda TozziniFreire Advogados		<b>Finland</b>	<b>159</b>
<b>Bulgaria</b>	<b>89</b>	Christian Wik, Niko Hukkinen and Sari Rasinkangas Roschier, Attorneys Ltd	
Peter Petrov Boyanov & Co		<b>France</b>	<b>164</b>
<b>Canada</b>	<b>94</b>	Jérôme Philippe and François Gordon Freshfields Bruckhaus Deringer	
Neil Campbell, James Musgrove, Mark Opashinov and Joshua Chad McMillan LLP		<b>Germany</b>	<b>173</b>
		Helmut Bergmann, Frank Röhling and Bertrand Guerin Freshfields Bruckhaus Deringer	
		<b>Greece</b>	<b>182</b>
		Aida Economou Vainanidis Economou & Associates	

<b>Greenland</b>	<b>187</b>	<b>Mexico</b>	<b>276</b>
Morten Kofmann, Jens Munk Plum, Erik Bertelsen and Bart Creve Kromann Reumert		Gabriel Castañeda Castañeda y Asociados	
<b>Hong Kong</b>	<b>190</b>	<b>Morocco</b>	<b>281</b>
Alastair Mordaunt and Joy Wong Freshfields Bruckhaus Deringer		Corinne Khayat and Maija Brossard UGGC Avocats	
<b>Hungary</b>	<b>195</b>	<b>Mozambique</b>	<b>287</b>
László Zlatarov, Dániel Arányi and Dalma Kovács Weil, Gotshal & Manges		Fabricia de Almeida Henriques Henriques, Rocha & Associados Pedro de Gouveia e Melo Morais Leitão, Galvão Teles, Soares da Silva & Associados	
<b>Iceland</b>	<b>199</b>	<b>Netherlands</b>	<b>292</b>
Hulda Árnadóttir and Guðrún Lilja Sigurðardóttir LEX		Winfred Knibbeler and Paul van den Berg Freshfields Bruckhaus Deringer	
<b>India</b>	<b>204</b>	<b>New Zealand</b>	<b>298</b>
Shweta Shroff Chopra, Harman Singh Sandhu and Rohan Arora Shardul Amarchand Mangaldas & Co		Neil Anderson, Simon Peart and Harriet Hansen Chapman Tripp	
<b>Indonesia</b>	<b>210</b>	<b>Nigeria</b>	<b>303</b>
HMBC Rikrik Rizkiyana, Anastasia PR Daniyati and Ingrid Gratsya Zega Assegaf Hamzah & Partners		Babatunde Irukera and Ikem Isiekwena SimmonsCooper Partners	
<b>Ireland</b>	<b>217</b>	<b>Norway</b>	<b>308</b>
Helen Kelly and Simon Shinkwin Matheson		Jonn Ola Sørensen and Eivind Stage Wikborg Rein	
<b>Israel</b>	<b>223</b>	<b>Pakistan</b>	<b>313</b>
Eytan Epstein, Tamar Dolev-Green and Eti Portook M Firon & Co		Waqas Mir, Mian Tariq Hassan, Sameer Khosa, Syed Shahab Qutub and Fatima Waseem Malik Axis Law Chambers	
<b>Italy</b>	<b>230</b>	<b>Philippines</b>	<b>319</b>
Gian Luca Zampa Freshfields Bruckhaus Deringer		Jerry S Coloma and Nicholas Felix L Ty Mosveldtt Law	
<b>Japan</b>	<b>239</b>	<b>Poland</b>	<b>323</b>
Akinori Uesugi and Kaori Yamada Freshfields Bruckhaus Deringer		Aleksander Stawicki and Bartosz Turno WKB Wierciński Kwieciński Baehr	
<b>Kenya</b>	<b>246</b>	<b>Portugal</b>	<b>329</b>
Waringa Njonjo and Linda Ondimu MMAN Advocates		Mário Marques Mendes and Pedro Vilarinho Pires Gómez-Acebo & Pombo	
<b>Korea</b>	<b>252</b>	<b>Romania</b>	<b>336</b>
Seong-Un Yun and Sanghoon Shin Bae, Kim & Lee LLC		Adrian Ster Wolf Theiss	
<b>Liechtenstein</b>	<b>257</b>	<b>Russia</b>	<b>341</b>
Heinz Frommelt Sele Frommelt & Partners Attorneys at Law Ltd		Alexander Viktorov Freshfields Bruckhaus Deringer	
<b>Macedonia</b>	<b>262</b>	<b>Saudi Arabia</b>	<b>346</b>
Vesna Gavriloska and Margareta Taseva Čakmakova Advocates		Fares Al-Hejailan, Rafique Bachour and Anna Biganzoli Freshfields Bruckhaus Deringer	
<b>Malta</b>	<b>269</b>	<b>Serbia</b>	<b>351</b>
Ian Gauci and Cherise Ann Abela GTG Advocates		Maja Stanković and Marina Bulatović Wolf Theiss	

## CONTENTS

<b>Singapore</b>	<b>358</b>	<b>Turkey</b>	<b>415</b>
Lim Chong Kin and Corinne Chew Drew & Napier LLC		Gönenç Gürkaynak ELIG, Attorneys-at-Law	
<b>Slovakia</b>	<b>367</b>	<b>Ukraine</b>	<b>422</b>
Günter Bauer, Zuzana Nikodémová and Michal Stofko Wolf Theiss		Igor Svechkar, Alexey Pustovit and Oleksandr Voznyuk Asters	
<b>Slovenia</b>	<b>373</b>	<b>United Arab Emirates</b>	<b>428</b>
Günter Bauer, Klemen Radosavljević and Tjaša Lahovnik Wolf Theiss		Rafique Bachour and Anna Biganzoli Freshfields Bruckhaus Deringer	
<b>South Africa</b>	<b>378</b>	<b>United Kingdom</b>	<b>433</b>
Robert Legh and Tamara Dini Bowmans		Martin McElwee, Olivia Hagger and Michael Caldecott Freshfields Bruckhaus Deringer	
<b>Spain</b>	<b>388</b>	<b>United States</b>	<b>440</b>
Francisco Cantos, Álvaro Iza and Enrique Carrera Freshfields Bruckhaus Deringer		Ronan P Harty and Mary K Marks Davis Polk & Wardwell LLP	
<b>Sweden</b>	<b>394</b>	<b>Uzbekistan</b>	<b>449</b>
Tommy Pettersson, Johan Carle and Stefan Perván Lindeborg Mannheimer Swartling		Bakhodir Jabborov GRATA International Law Firm	
<b>Switzerland</b>	<b>399</b>	<b>Zambia</b>	<b>453</b>
Marcel Meinhardt, Benoît Merkt and Astrid Waser Lenz & Staehelin		Sydney Chisenga Corpus Legal Practitioners	
<b>Taiwan</b>	<b>404</b>	<b>The ICN in 2016–2017</b>	<b>458</b>
Mark Ohlson, Charles Hwang and Felix Wang YangMing Partners		Andreas Mundt International Competition Network	
<b>Thailand</b>	<b>411</b>	<b>Quick reference tables</b>	<b>459</b>
Panuwat Chalongkuamdee and Pitchapa Tiamsuttikarn Weerawong, Chinnavat & Partners Ltd			

# Finland

Christian Wik, Niko Hukkinen and Sari Rasinkangas

Roschier, Attorneys Ltd

## Legislation and jurisdiction

### 1 What is the relevant legislation and who enforces it?

The relevant legislation is the Competition Act (No. 948/2011) (the Competition Act), which entered into force on 1 November 2011 repealing the Act on Restrictions on Competition (No. 480/92). Provisions on merger control were first included in the now repealed Act on Restrictions on Competition on 1 October 1998. The Competition Act introduced a few substantive amendments to the merger control provisions, which further harmonise the Competition Act with EU rules.

The Finnish Competition and Consumer Authority (FCCA) investigates a concentration in the first stage and either clears it, with or without conditions, or requests the Market Court to prohibit it. The Market Court is empowered to block concentrations.

### 2 What kinds of mergers are caught?

The Competition Act applies to concentrations defined as:

- the acquisition of control of an undertaking;
- the acquisition of the whole or part of the business of an undertaking;
- a merger; and
- the creation of a joint venture performing all the functions of an autonomous economic entity on a lasting basis.

### 3 What types of joint ventures are caught?

The establishment of a joint venture that performs all the functions of an autonomous economic entity on a lasting basis, that is, a full-function joint venture, will be caught by the Competition Act. A full-function joint venture must: have sufficient resources; be independent of its parent companies; have its own staff, including operative management; and operate on a permanent basis. The competition authorities interpret the concept of full-function joint venture in accordance with the guidelines set out by the European Commission.

### 4 Is there a definition of 'control' and are minority and other interests less than control caught?

There is no definition of control in the Competition Act. In practice, the competition authorities interpret the concept of control in accordance with the European Commission's practice. Consequently, acquisitions of minority shareholdings and other interests less than control may establish joint or sole control, and therefore be caught by the merger control rules.

### 5 What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

A concentration must be notified to the FCCA if the combined aggregate worldwide turnover of the parties exceeds €350 million and the aggregate turnover in Finland (including, for example, imports into Finland) of each of at least two of the parties exceeds €20 million.

In the calculation of the relevant turnovers, the turnover of the whole buyer group will be taken into account, whereas of the seller's turnover only the amount relating to the target of the acquisition is relevant. The rules concerning the parties whose turnover will be taken into

account as well as the manner of calculating the turnover correspond for the most part with the provisions of the EU Merger Regulation.

If the target company is acquired in stages, all the acquisitions from the same seller over a period of two years are taken into account in the turnover calculation.

In cases of uncertainty as to whether the turnover thresholds are exceeded or not, the matter can be discussed with the FCCA.

The FCCA cannot under any circumstances investigate transactions that fall below the turnover thresholds.

### 6 Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

The filing is mandatory if the turnover thresholds are met, with no exceptions. However, concentrations meeting the thresholds set down in the EU Merger Regulation fall under the exclusive jurisdiction of the European Commission.

### 7 Do foreign-to-foreign mergers have to be notified and is there a local effects test?

Foreign-to-foreign transactions will be caught if the turnover thresholds are met. The Competition Act does not contain any provisions on a particular local effects test. In practice, the FCCA applies a similar substantive test to foreign-to-foreign transactions as it applies to other transactions (see question 19).

As to joint ventures, it should be noted that joint ventures may have to be notified in Finland even if the joint venture does not have any operations in or sales into Finland. It is sufficient that the turnovers of the parent companies of the joint venture (which are the undertakings concerned) exceed the turnover thresholds.

### 8 Are there also rules on foreign investment, special sectors or other relevant approvals?

There is a special provision concerning transactions in the electricity sector. A concentration that would lead to a 25 per cent share of electricity distribution in Finland in a network with a capacity of 400V can be blocked. The purpose of this provision is to control any negative effects of vertical integration between electricity producers and distributors.

In certain insurance transactions, a notification to the FCCA is exempted if the Financial Supervisory Authority has requested a statement from the FCCA, and the FCCA has found no objections to the concentration. If such statement has not been requested, the concentration shall be notified to the FCCA after the parties have received an approval or a non-opposition decision from the Financial Supervisory Authority.

Foreign acquisitions of defence industry companies as well as companies in the civil sector considered critical to securing functions fundamental to society are subject to the Act on the Monitoring of Foreign Corporate Acquisitions in Finland (No. 172/2012). A foreign acquirer of a Finnish defence industry company must apply for an approval from the Finnish Ministry of Economic Affairs and Employment prior to the acquisition. Foreign acquisitions of non-defence industry companies are only subject to notification. In the defence industry, monitoring covers all foreign acquirers and domestic corporate acquirers in which a foreign owner holds at least 10 per cent of votes or has a corresponding de facto influence. In the civil sector, monitoring applies only to foreign

acquirers domiciled outside the EU and EFTA states and corporate acquirers domiciled in such states, in which a non-EEA or non-EFTA owner has the shareholding or de facto influence referred to above. The Act applies to acquisitions of at least 10 per cent, at least 33 per cent or at least 50 per cent of votes in a limited liability company or a corresponding de facto influence. In addition, the authority handling the matter may require an application for approval or a notification to be submitted if the buyer subsequently increases its influence in the target company even if the increase does not exceed the above thresholds.

#### Notification and clearance timetable

##### 9 What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

There is no specific deadline for filing a notification. Notification must be submitted to the FCCA following the conclusion of the acquisition agreement, the acquisition of control, or the announcement of the public bid but prior to the implementation of the concentration. A concentration may also be notified to the FCCA as soon as the parties demonstrate with sufficient certainty their intention to conclude a concentration, for example, by a letter of intent or a memorandum of understanding signed by all parties to the concentration or by a public announcement of the intention to make a public bid. Since there is no specific deadline for filing, sanctions are only relevant when the concentration is implemented before the FCCA has cleared it.

##### 10 Who is responsible for filing and are filing fees required?

The acquirer of control, or those acquiring joint control, the acquirer of business, the parties to the merger or the founders of a full-function joint venture are responsible for filing. There are no filing fees.

##### 11 What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

Under the main rule, no steps may be taken to implement the transaction prior to its clearance. However, when the Market Court is investigating a transaction on the basis of the FCCA's request to block it, the prohibition on the implementation ceases in one month from such request, unless the Market Court orders the suspension to continue.

The FCCA and the Market Court may, upon request, permit certain implementing measures to be taken during the investigation period. Further, a party that has launched a public bid can purchase the shares offered prior to clearance, even though it may not use its voting rights to determine the competitive behaviour of the target company. The same rule applies in certain cases where shares are redeemed.

##### 12 What are the possible sanctions involved in closing before clearance and are they applied in practice?

If the transaction is closed before clearance, a fine of up to 10 per cent of the total turnover of the relevant undertakings may be imposed. The fine is imposed by the Market Court on the basis of the FCCA's request. When the amount of the fine is set, attention is paid to the nature, extent, degree of gravity and duration of the infringement. The fine will be imposed, unless the infringement is considered minor or the imposition of the fine is otherwise unnecessary in view of safeguarding competition.

Furthermore, the Market Court may – at the request of the FCCA – prohibit the concentration or order the concentration to be dissolved or annulled, for example, by requiring the undertakings concerned or assets brought together to be separated or by requiring the cessation of the joint control to restore the conditions of effective competition. The Market Court may, instead of prohibiting the concentration, attach conditions on its clearance. The request of the FCCA must be notified to the parties within one year from the closing of the transaction.

There are no decisions so far where sanctions would have been imposed for closing before clearance.

##### 13 Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

The same rules apply to foreign-to-foreign mergers. However, there are no decisions so far where sanctions have been imposed for closing before clearance in foreign-to-foreign mergers.

##### 14 What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

Implementation of a merger before clearance is, under the main rule, prohibited also in foreign-to-foreign mergers. However, under the Competition Act, the FCCA has the possibility to decide to grant permission to implement a merger before clearance.

##### 15 Are there any special merger control rules applicable to public takeover bids?

No (except for what is described under question 11).

##### 16 What is the level of detail required in the preparation of a filing?

The notification form is broadly similar to Form CO of the EU Merger Regulation. Various types of information must be given – depending on the details of each case – inter alia, on the parties, the transaction structure, relevant markets, competitors, customers, suppliers, market conditions, entry barriers, trade associations and ancillary restraints. The notification form must be completed in Finnish or Swedish; appendices to the notification are generally also accepted in English.

In certain circumstances, the notification may be filed with the FCCA using the 'short-form' notification. The short-form notification is mainly used in notifying joint ventures that do not have connections to the Finnish markets. Such a situation may be deemed to exist where the joint venture – or the jointly controlled undertaking, as the case may be – has no business activities in Finland and generates no turnover from Finland.

The FCCA may, in individual cases, grant waivers in respect of the information to be given if certain information is deemed unnecessary for the investigation or if the transaction affects competition only to an insignificant extent.

##### 17 What is the statutory timetable for clearance? Can it be speeded up?

In the first phase, the concentration will be examined by the FCCA. The FCCA has a period of one month during which it has to clear the concentration as such or with conditions, conclude that the transaction will not be caught by the Competition Act or decide to initiate a second-phase investigation.

If the FCCA decides to initiate a second-phase investigation it must, within three months (or within five months with the permission of the Market Court) of such decision, either clear the concentration as such or with conditions, or request the Market Court to block it. Having received the FCCA's request to block a concentration, the Market Court has to clear the concentration as it is, clear it with conditions or prohibit the concentration within three months.

With the Market Court procedure included, the maximum aggregate investigation period of a concentration may amount to nine months (which includes the possible two-month extension of the FCCA's second-phase investigation period). However, this is expected only in very exceptional cases; under the main rule, most concentrations are cleared in the first phase. Depending on the complexity of the case, the FCCA's first phase investigations typically take approximately two to four weeks.

It should be noted that the time limits set for the FCCA's decision-making will not start running until a complete notification has been filed. In addition, the FCCA has the power to 'stop the clock' if the parties fail to respond to the FCCA's request for additional information within the set time limit or provide essentially insufficient or incorrect information. In such cases, the FCCA may extend the time limits for decision-making by the corresponding number of days during which the requested information was outstanding.

The merger review procedure in the FCCA may be speeded up by pre-notification discussions, to which the parties are generally encouraged by the FCCA. Also, it might be worth noticing that pre-notification discussions will in most cases de facto speed up the merger review but they do not affect or change the time limits prescribed for the review.

##### 18 What are the typical steps and different phases of the investigation?

Under the main rule, the FCCA will, after it has received a notification, send a market inquiry to the competitors, customers and suppliers of

the parties to the concentration. The aim of the procedure is to establish the structure of the market and the competition conditions therein, and to afford the relevant market players the possibility to be heard on the planned concentration.

Should the FCCA decide to initiate a second-phase investigation, more detailed questions may be sent to competitors, customers and suppliers. The statements as well as other issues pertinent to the case will be discussed with the parties (see question 16).

### Substantive assessment

#### 19 What is the substantive test for clearance?

A concentration may be prohibited if it significantly impedes effective competition in the Finnish market or a substantial part thereof, in particular as a result of the creation or strengthening of a dominant position (SIEC test). The SIEC test, also applied by the European Commission, was introduced in the 2011 reform of the Competition Act and replaced the dominance test applied previously. However, finding of a dominant position remains as a typical example of a situation amounting to a significant impediment of effective competition. Under the Competition Act, an undertaking is considered dominant if it can significantly influence the price level, terms of delivery or other conditions of competition at a given level of production or distribution. In addition to dominance cases, the SIEC test is primarily intended to enable intervention in certain arrangements between competitors on markets that can be considered as oligopolistic, where, however, the market leader is not involved and no dominant position is created.

Certain specific rules apply to concentrations in the electricity markets (see question 8).

#### 20 Is there a special substantive test for joint ventures?

No. The competition authorities will apply the SIEC test as with respect to other concentrations.

#### 21 What are the 'theories of harm' that the authorities will investigate?

The 'theories of harm' based on which the FCCA assesses the notified transactions and the increase in market power include the horizontal effects as well as the vertical and conglomerate effects of the transaction. When assessing whether the concentration may significantly impede effective competition based on these effects, the FCCA takes into account, for example, the market shares of the parties, the economic and financial strength of the concentration, the amount and nature of residual competition, the bargaining power of customers and suppliers, potential competition, barriers to entry and saturation of the markets.

#### 22 To what extent are non-competition issues relevant in the review process?

The only transactions in which non-competition issues are relevant are those concerning electricity distribution (see question 8).

#### 23 To what extent does the authority take into account economic efficiencies in the review process?

In the review process, the authorities will take into consideration the increase in production efficiency and dynamic efficiency resulting from the concentration which appear in the Finnish market, provided that the efficiency gains are passed on to customers and may only be achieved through the concentration. The weight given to economic efficiency considerations depends, inter alia, on the significance of the efficiencies and the likelihood of their achievement. In general, the principles established in the European Commission's Horizontal Merger Guidelines are also applicable in Finland.

### Remedies and ancillary restraints

#### 24 What powers do the authorities have to prohibit or otherwise interfere with a transaction?

The FCCA investigates a concentration and either clears it, with or without conditions, or requests the Market Court to prohibit it. If the impediment to competition may be avoided by attaching conditions to the implementation of the concentration, the FCCA shall primarily order such conditions to be followed. However, the FCCA can only

impose conditions that the parties have approved. Thus, if the FCCA and the parties cannot agree on suitable conditions, the FCCA has to make a proposal to the Market Court to prohibit the concentration.

If the impediment to competition cannot be avoided by attaching conditions or the FCCA and the parties cannot agree on suitable conditions, the FCCA requests the Market Court to prohibit the concentration. If the Market Court finds that the concentration would significantly impede effective competition in the Finnish market or a substantial part thereof, in particular as a result of the creation or strengthening of a dominant position, the Market Court may prohibit the concentration. If the transaction has already been implemented, the Market Court may order it to be dissolved, for example, by requiring the undertakings concerned or assets brought together to be separated or by requiring the cessation of joint control, to restore the conditions of effective competition. Further, the Market Court may, instead of prohibiting or ordering the dissolution of the concentration, attach conditions for its clearance.

It should also be noted that if the parties implement a transaction before clearance or without regard to a prohibition of the concentration or conditions imposed by the competition authorities, an administrative fine of up to 10 per cent of the total turnover of the relevant undertakings may be imposed.

#### 25 Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

Both the FCCA and the Market Court may clear a concentration on the condition that certain undertakings are given by the parties to the concentration. In fact, under the Competition Act, the FCCA should always endeavour to impose conditions rather than request that the Market Court prohibits a concentration. Typically, competition concerns identified by the FCCA may be resolved by imposing conditions on the clearance. Thus far, the FCCA has proposed that a concentration be prohibited only three times, although several cases have entered the second-phase investigation and have been resolved by commitments given by the parties. The Market Court, and its predecessor, has approved, subject to conditions, all the concentrations that the FCCA has proposed to be prohibited. However, one of the concentrations was abandoned due to the strict conditions imposed and one restructured and re-notified to the FCCA. Where conditions are imposed, the authorities usually prefer structural remedies, such as divestments, but behavioural undertakings can also be used.

#### 26 What are the basic conditions and timing issues applicable to a divestment or other remedy?

The FCCA may impose conditions on the implementation of a concentration if the harmful effects on competition (the significant impediment of effective competition in the Finnish market or a substantial part thereof, in particular as a result of the creation or strengthening of a dominant position) can thus be avoided. The FCCA may not require a remedy that does not strictly address and have an effect on the harmful effects that the Competition Act aims to avoid. The remedies may be structural or behavioural. The possibility of imposing conditions should be explored prior to prohibiting the concentration. The conditions imposed should not be more severe than necessary for the removal of the anticompetitive effects of the concentration. The FCCA can only impose conditions that the parties have approved.

The FCCA may decide that a condition (eg, divestment requirement) imposed on an involved party is to be fulfilled within a certain time period. The FCCA supervises the implementation of the conditions in accordance with its decision to approve the concentration and may, for instance, nominate a trustee to monitor the implementation of the conditions and to report to the FCCA thereof.

#### 27 What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

Up to this point, there have been no foreign-to-foreign merger cases in which the FCCA would have required remedies.

#### 28 In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

It is possible to request in the notification form the clearance by the FCCA of restrictions ancillary to the notified concentration. Typically

### Update and trends

On 23 August 2016, the FCCA conditionally approved the acquisition of Kirjavälitys Oy (Kirjavälitys) by the Otava Group (Otava). Otava is a media corporation publishing fiction and non-fiction, teaching materials and periodicals in Finland. Kirjavälitys is a service company owned by Finnish publishers and bookstores providing logistics services, e-services and wholesale services. The FCCA found that Otava's competitors, which also publish teaching materials, are dependent on Kirjavälitys, which has approximately an 80 to 90 per cent market share in the distribution market of teaching materials. The FCCA had concerns that Otava's control in Kirjavälitys could negatively affect competitors in the negotiation of annual distribution terms and conditions. In addition, the FCCA had concerns that Kirjavälitys would offer teaching materials published by Otava's competitors to schools and municipalities with less favourable terms compared to teaching materials published by Otava. In order to remove the competition concerns, the FCCA imposed behavioural commitments, requiring Kirjavälitys to apply similar contractual terms in distribution agreements to Otava and its competitors. In addition, Kirjavälitys is prohibited from disclosing to Otava any confidential information regarding its competitors. These behavioural commitments will be in force for three years from the approval decision.

On 11 April 2016, the FCCA conditionally approved the acquisition of Suomen Lähikauppa Oy (Suomen Lähikauppa) by Ruokakesko Oy (Ruokakesko). Both companies are active in the food retail industry in Finland. Ruokakesko's store network comprises approximately 900 grocery stores, and at the time of the decision its market share in the market for retail of daily consumer goods was 32.7 per cent. Suomen Lähikauppa operates over 600 smaller grocery stores and its market share was 6.4 per cent.

The Finnish market for retail trade of daily consumer goods was already highly concentrated and the FCCA's investigation showed that, following the transaction, the market would become increasingly concentrated because one nationwide grocery chain would exit the market. The FCCA used a variety of econometric methods to analyse the effects of the transaction on competition and identified 60 out of 667 local markets, where the transaction was likely to raise competition concerns. The FCCA also assessed the effects of the transaction on Ruokakesko's prices. Even though in some local markets prices could increase considerably, the FCCA concluded that, overall, the transaction would not have a significant impact on the price level. As regards the market for procurement of daily consumer goods, the FCCA found that the transfer of Suomen Lähikauppa's volumes from Tuko Logistics

Cooperative (Tuko Logistics), a long-term supplier and logistics partner of Suomen Lähikauppa, to Ruokakesko's procurement and logistics system could weaken Tuko Logistics's competitive position, thereby affecting competition on the wholesale level. Finally, in making its assessment the FCCA took into account that Suomen Lähikauppa's poor competitive position and financial standing would force the company out of the market in the near future. The FCCA's investigation showed that there were no other Finnish or foreign prospective acquirers interested in Suomen Lähikauppa. Thus, the Finnish food retail industry would have become increasingly concentrated even without the transaction.

In order to address the FCCA's competition concerns, Ruokakesko offered a remedy package, including both structural and behavioural commitments. First, Ruokakesko committed to divest a Suomen Lähikauppa store in each of the 60 problematic local markets to existing or potential competitors. However, the FCCA did not make the implementation of the transaction conditional on the success of the divestment, because it noted that the parties might face difficulties in finding a suitable buyer and the exit of Suomen Lähikauppa from the market in the near future was inevitable in any case. Second, Ruokakesko committed to continue purchasing from Tuko Logistics for a fixed period of time and to transfer its procurement on a gradual basis. The FCCA found that, without the transaction, Suomen Lähikauppa's business would certainly have ended and, therefore, its supplies from Tuko Logistics would also have ceased rapidly. According to the FCCA, the commitments will help Tuko Logistics adapt its business in a controlled manner.

Soon after the FCCA's conditional clearance decision, Tuko Logistics made an application to the Market Court to prohibit the implementation of Ruokakesko's commitment concerning continued purchasing from Tuko Logistics. However, Tuko Logistics withdrew its application before the Market Court handled the case. Nevertheless, the FCCA lifted the said condition in October 2016 based on Ruokakesko's request, as Ruokakesko and Tuko Logistics had reached an agreement on Suomen Lähikauppa's exit from Tuko Logistics. In these circumstances, the FCCA found that the condition had become redundant.

Further, it should be noted that the deadline set for the divestments under the first commitment expired on 11 April 2017. By the deadline only 10 of the stores to be divested had been sold, leaving the future of the remaining 50 stores to be decided by Ruokakesko. Ruokakesko decided to close 42 of these stores by the end of April 2017.

accepted ancillary restrictions are limited non-compete obligations on the seller, supply or purchase agreements and licence agreements.

### Involvement of other parties or authorities

#### 29 Are customers and competitors involved in the review process and what rights do complainants have?

Under the main rule, competitors, customers and suppliers of the parties to the concentration will be heard in the investigation. However, the Supreme Administrative Court has held that competitors are normally not allowed to appeal against a decision to clear a concentration, as the right to complain requires that the decision may have had a direct effect on the complainant's rights, obligations or interests.

#### 30 What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

The FCCA lists the received notifications on its website (the names of the parties and the notification date). Otherwise, the FCCA is reluctant to comment publicly on pending merger control procedures. Confidential information is protected by clearly indicating the business secrets in all documents submitted to the FCCA.

#### 31 Do the authorities cooperate with antitrust authorities in other jurisdictions?

Yes, the FCCA cooperates on a regular basis with other antitrust authorities in other jurisdictions. The FCCA is part of the European Competition Network (ECN), which is a cooperation forum of the European Commission and the national competition authorities of the member states. The operation of the ECN is based on Council

Regulation No. 1/2003 and facilitates the exchange of information and case allocation between the participating authorities. While the work of the ECN does not directly relate to merger control, the members of the ECN engage in cooperation and exchange of best practices in the area of merger control in the context of the EU Merger Working Group. The FCCA is also a member of the European Competition Authorities (ECA). One of the main focuses of the ECA is the cooperation of national authorities in relation to multinational merger control processes. As regards the allocation of and information exchange between the national authorities and the European Commission in merger cases, please refer to the EU Merger Regulation. In addition to the European cooperation networks, the FCCA cooperates closely with competition authorities in other Nordic countries. The Nordic competition authorities meet annually and form special working groups in order to facilitate the cooperation. All in all, the FCCA participates in approximately 30 different international working groups relating to competition policy.

### Judicial review

#### 32 What are the opportunities for appeal or judicial review?

The FCCA's decision on whether it will initiate a second-phase investigation may not be appealed. Further, in the 2011 reform of the Competition Act the right of the notifying party to appeal a decision whereby the FCCA has conditionally approved a transaction was removed.

As a general rule, other decisions of the FCCA made under the merger control rules may be appealed to the Market Court by such parties whose rights, obligations or interests the FCCA's decision has directly affected. Decisions of the Market Court may be further appealed to the Supreme Administrative Court.

Both the Market Court and the Supreme Administrative Court have confirmed that the FCCA's clearance decision does not normally have a direct effect on the rights, obligations or interests of the competitors of the undertakings concerned, and thereby the competitors do not generally have the right to appeal such decisions to the Market Court.

### 33 What is the usual time frame for appeal or judicial review?

When decisions of the FCCA are appealed to the Market Court, the Market Court does not have a time limit on its decision making. However, when the FCCA proposes to the Market Court that a concentration be prohibited, the Competition Act sets a three-month time limit on the Market Court to rule on the case.

The Market Court did not rule on any merger control cases during the first half of 2017 or in 2016. The most recent ruling of the Market Court in a merger control matter is from 2013, when the Market Court rejected the FCCA's request to prohibit the creation of a joint venture by Uponor Oyj and KWH-Yhtymä Oy and approved the concentration subject to conditions. The decision was delivered in three months due to the time limit set in the Competition Act for such decisions.

In other types of cases, the handling times in the Market Court vary greatly depending on the nature of the case. To give some examples, in 2009 the Market Court delivered a decision concerning an appeal against the conditions imposed by the FCCA on the clearance of an acquisition (acquisition of C More Group AB by TV4 AB, MAO:525/09), which was delivered in approximately 10 months. A similar decision on appeal against conditions imposed on the clearance of an acquisition delivered in 2008 (acquisition of E.ON Finland Oyj by Fortum Power and Heat Oy, MAO:123/08) took approximately 20 months. Interim decisions, such as interim injunctions concerning remedies, are typically made within one to three months. For example, in 2009, a decision concerning an application for an interim injunction to avoid implementing conditions imposed on the clearance of an acquisition while the appeal against the conditions was pending (acquisition of C More Group AB by TV4 AB, MAO:580/08/KR) was delivered in approximately two months.

The Market Court's decisions (eg, decisions to prohibit a transaction) are appealed to the Supreme Administrative Court. The handling times of the Supreme Administrative Court vary significantly depending on the nature of the case. The Supreme Administrative Court did not rule on any merger control cases between 2011 and the first half of 2017. In 2010, the Supreme Administrative Court ruled on only one merger control case, where it dismissed the FCCA's appeal against the Market Court's decision that removed the conditions imposed on the acquisition of E.ON Finland Oyj by Fortum Power and Heat Oy. The decision was issued by the Supreme Administrative Court in approximately 28 months. In 2009, the Supreme Administrative Court delivered one merger control decision concerning an interim injunction, where the decision was issued in approximately three months due to its urgent nature. In all competition law cases decided by the Supreme Administrative Court in 2016, the average decision-making time was 17.5 months.

## Enforcement practice and future developments

### 34 What is the recent enforcement record and what are the current enforcement concerns of the authorities?

During the first half of 2017, the FCCA issued a total of 20 merger control decisions. All but two of these cases were approved unconditionally after a first-phase investigation. Both cases moved to the second phase were approved unconditionally after the second phase investigation (acquisition of Diacor Terveyspalvelut Oy by Terveystalo Healthcare Oy and acquisition of Konekesko Oy's leisure boat production and sales business and boat representation business by Yamaha Motor Europe N.V.'s subsidiary Inhan Tehtaat Oy Ab).

In 2016, the FCCA issued a total of 33 merger clearance decisions. In all but two of these cases the FCCA approved the acquisitions without conditions after Phase one. The remaining two cases were approved subject to conditions after a second phase investigation (acquisition of Suomen Lähikauppa Oy by Ruokakesko Oy and acquisition of Kirjavälitys Oy by the Otava Group (see 'Update and trends')). In addition, the FCCA moved two other cases to the second phase in 2016. One of these cases was withdrawn due to the abandonment of the transaction (acquisition of joint control in Anvia Telecom Oy by Anvia Oyj and Finda Oy) and the other case was approved unconditionally in 2017. Further, the FCCA handled one case concerning lifting of conditions imposed in a previous clearance decision (application of Ruokakesko Oy concerning the acquisition of Suomen Lähikauppa Oy by Ruokakesko Oy (see 'Update and trends')). During 2016 and the first half of 2017, the FCCA did not make any proposals to the Market Court to prohibit a concentration.

The FCCA has not officially identified any particular sectors or issues as its current enforcement concerns. However, on the basis of the recent decisions by the FCCA and the statements given by officials of the authority in the national media, it appears that the FCCA has a particular interest in the social and health services, grocery market, transportation, telecommunications, intellectual property rights, digital goods and services, energy, construction, primary production and competition neutrality of public sector services.

### 35 Are there current proposals to change the legislation?

In August 2015, the Finnish Ministry of Economic Affairs and Employment appointed a working group to assess the need for reform of the Competition Act. However, no major amendments are expected to be proposed to provisions on merger control in the upcoming reform. In addition, the Ministry of Economic Affairs and Employment has recently published a legislative proposal concerning temporary lowering of merger control thresholds in the social and healthcare services market. The proposal is currently under consultation.

# ROSCHIER

Christian Wik  
Niko Hukkinen  
Sari Rasinkangas

christian.wik@roschier.com  
niko.hukkinen@roschier.com  
sari.rasinkangas@roschier.com

Keskuskatu 7 A  
00100 Helsinki  
Finland

Tel: +358 20 506 6000  
Fax: +358 20 506 6100  
www.roschier.com

## Getting the Deal Through

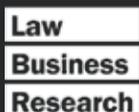
Acquisition Finance  
Advertising & Marketing  
Agribusiness  
Air Transport  
Anti-Corruption Regulation  
Anti-Money Laundering  
Arbitration  
Asset Recovery  
Automotive  
Aviation Finance & Leasing  
Banking Regulation  
Cartel Regulation  
Class Actions  
Commercial Contracts  
Construction  
Copyright  
Corporate Governance  
Corporate Immigration  
Cybersecurity  
Data Protection & Privacy  
Debt Capital Markets  
Dispute Resolution  
Distribution & Agency  
Domains & Domain Names  
Dominance  
e-Commerce  
Electricity Regulation  
Energy Disputes  
Enforcement of Foreign Judgments  
Environment & Climate Regulation  
Equity Derivatives  
Executive Compensation & Employee Benefits  
Financial Services Litigation  
Fintech  
Foreign Investment Review  
Franchise  
Fund Management  
Gas Regulation  
Government Investigations  
Healthcare Enforcement & Litigation  
High-Yield Debt  
Initial Public Offerings  
Insurance & Reinsurance  
Insurance Litigation  
Intellectual Property & Antitrust  
Investment Treaty Arbitration  
Islamic Finance & Markets  
Labour & Employment  
Legal Privilege & Professional Secrecy  
Licensing  
Life Sciences  
Loans & Secured Financing  
Mediation  
Merger Control  
Mergers & Acquisitions  
Mining  
Oil Regulation  
Outsourcing  
Patents  
Pensions & Retirement Plans  
Pharmaceutical Antitrust  
Ports & Terminals  
Private Antitrust Litigation  
Private Banking & Wealth Management  
Private Client  
Private Equity  
Product Liability  
Product Recall  
Project Finance  
Public-Private Partnerships  
Public Procurement  
Real Estate  
Restructuring & Insolvency  
Right of Publicity  
Securities Finance  
Securities Litigation  
Shareholder Activism & Engagement  
Ship Finance  
Shipbuilding  
Shipping  
State Aid  
Structured Finance & Securitisation  
Tax Controversy  
Tax on Inbound Investment  
Telecoms & Media  
Trade & Customs  
Trademarks  
Transfer Pricing  
Vertical Agreements

Also available digitally



# Online

[www.gettingthedealthrough.com](http://www.gettingthedealthrough.com)



Merger Control  
ISSN 1365-7976



THE QUEEN'S AWARDS  
FOR ENTERPRISE:  
2012



Official Partner of the Latin American  
Corporate Counsel Association



Strategic Research Sponsor of the  
ABA Section of International Law