MERGER CONTROL

Finland

LEXOLOGY
Getting The Deal Through

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Merger Control

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into legislation and regulators; scope of legislation; thresholds, triggers and approvals; notification and clearance timetable; substantive assessment; remedies and ancillary restraints; involvement of other parties or authorities; judicial review; enforcement record and reform proposals; and recent trends.

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LEGISLATION AND JURISDICTION

Relevant legislation and regulators

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 Provisions on merger control were first included in the now repealed Act on Restrictions on Competition on 1 October 1998.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. Only the Market Court is empowered to block concentrations.

Law stated - 19 May 2022

Scope of legislation

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.

Law stated - 19 May 2022

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 (ie, 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.

Law stated - 19 May 2022

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 majority control may establish joint or sole control, and therefore be caught by the merger control rules.

Law stated - 19 May 2022

Thresholds, triggers and approvals

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, the matter can be discussed with the FCCA.

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

The Ministry of Economic Affairs and Employment is currently assessing the need to amend the notification thresholds. Issues included in the assessment are whether the threshold for the parties' combined turnover should be lowered and whether the FCCA should be allowed to investigate certain acquisitions that fall below the turnover thresholds. The assessment is at an initial stage. It is therefore still unclear whether the motion will proceed and, if so, what the schedule is for the next steps in the process.

Law stated - 19 May 2022

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.

Law stated - 19 May 2022

Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus 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.

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.

Law stated - 19 May 2022

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

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.

Acquisitions of defence industry companies, companies that produce or supply critical products or services related to the statutory duties of Finnish authorities that are essential to the security of society (security sector companies), and companies that are otherwise critical for securing the vital functions of society by a 'foreign owner' are subject to the Act on the Screening of Foreign Corporate Acquisitions in Finland (No. 172/2012) . In the defence industry, monitoring covers acquisitions by all natural persons, organisations or foundations domiciled outside Finland and by Finnish organisations or foundations in which the foreign owner holds at least 10 per cent of votes or has a corresponding de facto influence.

In respect of security sector companies and companies that are otherwise critical for securing vital functions of society, monitoring covers only acquisitions by natural persons, organisations or foundations domiciled outside the EU/EFTA area and by organisations or foundations domiciled in the EU/EFTA area but in which either a natural person, organisation or foundation domiciled outside the EU/EFTA area has the shareholding or de facto influence referred to above.

The Act covers acquisitions in which a foreign owner as defined above acquires 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 a monitored entity. The filings have to be renewed when passing a threshold and thus increasing control. For a specific reason, a filing may be required even if a threshold is not passed.

Acquisitions of defence industry companies and security sector companies are subject to mandatory prior approval by the Ministry of Economic Affairs and Employment, whereas acquisitions of companies considered critical for securing the vital functions of society are only subject to a voluntary notification; however, the Ministry may also separately require a notification to be made for acquisitions of companies that are considered critical for securing vital functions of society.

The Act on the Monitoring of Foreign Corporate Acquisitions in Finland was amended on 11 October 2020 to meet the requirements of Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union.

Law stated - 19 May 2022

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

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 Finnish Competition and Consumer Authority (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.

As there is no specific deadline for filing, sanctions are only relevant when the concentration is implemented before the FCCA has cleared it.

Law stated - 19 May 2022

Which parties are responsible for filing and are filing fees required?

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

Law stated - 19 May 2022

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 within 23 working days of the 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.

Law stated - 19 May 2022

Pre-clearance closing

What are the possible sanctions involved in closing or integrating the activities of the merging businesses 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.

Further, 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 of the closing of the transaction.

There are no decisions to date where sanctions would have been imposed for closing before clearance.

Law stated - 19 May 2022

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 to date where sanctions have been imposed for closing before clearance in foreign-to-foreign mergers.

Law stated - 19 May 2022

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, also prohibited in foreign-to-foreign mergers; however, under the Competition Act, the FCCA has the possibility of deciding to grant permission to implement a merger before clearance.

Law stated - 19 May 2022

Public takeovers

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

No; however, 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.

Law stated - 19 May 2022

Documentation

What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

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 – among other things, 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.

Standard appendices include corporate documents of the parties, the agreements bringing about the transaction being notified, certain internal analysis of the transaction itself, as well as the markets relevant to the assessment of the transaction. Generally, the FCCA has been less stringent on requiring internal documents to be produced (in comparison, for example, to the European Commission).

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.

The provision of wrong or misleading information to the FCCA is sanctioned by a fine or even imprisonment of up to six months under the Criminal Code (39/1889) .

Law stated - 19 May 2022

Investigation phases and timetable

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 enquiry 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.

Parties are generally advised to engage in pre-notification consultations with the FCCA in all cases and in cases where the horizontal overlap or vertical links between the parties' activities are considerable, it is recommended to approach the FCCA as early as possible, even prior to definitive signing of the transactional agreements, to ensure that the process starts as early as possible.

Law stated - 19 May 2022

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

In the first phase, the concentration will be examined by the FCCA. In Phase I, the FCCA has 23 working days within 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 Phase II investigation.

If the FCCA decides to initiate a Phase II investigation, it must, within 69 working days of such decision, either clear the concentration as such or with conditions, or request the Market Court to block it. The Market Court can extend the deadline by 46 working days, giving the FCCA a maximum of 115 working days for a Phase II investigation. Having received the FCCA's request to block a concentration, the Market Court has 69 working days to clear the concentration as is, clear it with conditions or prohibit it.

With the Market Court procedure included, the maximum aggregate investigation period of a concentration may amount to 207 working days, or over nine months. However, this is expected only in cases where there is significant overlap between the parties' activities and the resulting market shares are high; 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.

The time limits set for the FCCA's decision-making will not start running until a complete notification has been filed. In recent years, the FCCA has adopted a more stringent approach to the assessment of completeness of notifications.

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 those 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. 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.

Law stated - 19 May 2022

SUBSTANTIVE ASSESSMENT

Substantive test

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 (the 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, but where the market leader is not involved and no dominant position is created.

The substantive test may be countered with the failing, or 'flailing', firm defence. In the Kesko/Lähikauppa case, the Finnish Competition and Consumer Authority (FCCA) allowed the acquisition of Lähikauppa by one of the major retail grocery chains Kesko even though the market shares of the combined entity in some of the relevant regional markets was nearly 100 per cent.

Law stated - 19 May 2022

Is there a special substantive test for joint ventures?

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

Law stated - 19 May 2022

Theories of harm

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.

Law stated - 19 May 2022

Non-competition issues

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

Non-competition issues are not relevant in the FCCA's review process.

Law stated - 19 May 2022

Economic efficiencies

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 that 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, among other things, 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.

Law stated - 19 May 2022

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

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

The Finnish Competition and Consumer Authority (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.

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 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.

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.

Law stated - 19 May 2022

Remedies and conditions

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. Under the Competition Act, the FCCA should always endeavour to impose conditions rather than request that the Market Court prohibit a concentration.

Thus far, the FCCA has proposed that a concentration be prohibited only five times, while the vast majority of cases that have entered a Phase II investigation have been resolved by commitments given by the parties. Out of the five prohibition proposals, the Market Court has prohibited only one concentration. One of the remaining four concentrations was abandoned during the Market Court process, and the remaining three were approved subject to conditions by the Market Court; however, one of those concentrations was abandoned owing to the strict conditions imposed, and one restructured and re-notified to the FCCA.

Where conditions are imposed, the authorities prefer structural remedies, such as divestments. Behavioural remedies are typically not considered sufficient to remedy competition concerns, but have been approved in exceptional cases.

Law stated - 19 May 2022

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, although behavioural remedies are typically not considered sufficient to remedy competition concerns.

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.

Until recently, the FCCA accepted post-closing implementation of remedies within a certain period, for example, six months for a divestment; however, in 2021, in a conditional clearance of a merger between Altia Oyj and Arcus ASA , the FCCA used, for the first time, an upfront buyer obligation, which entails that the transaction cannot be implemented before the parties have entered into a binding agreement to sell the divested business to a buyer approved by the FCCA.

Subsequently, the FCCA has made it known that it is likely to apply the upfront buyer obligation in most cases in the future. In early 2022, it even applied a fix-it-first obligation, a stricter version of the upfront buyer obligation, requiring that the parties find a suitable buyer for the divestment business and enter into a binding agreement with the buyer during the FCCA's investigation. The FCCA has, however, indicated that the upfront buyer obligation will likely be preferred over a fix-it-first obligation in its future case practice.

The FCCA supervises the implementation of the conditions in accordance with its decision. The appointment of a trustee to monitor the implementation of the conditions and to report to the FCCA has become common practice.

Law stated - 19 May 2022

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.

Law stated - 19 May 2022

Ancillary restrictions

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

It is possible to request in the notification form that the FCCA also clear any restrictions ancillary to the notified concentration. Typically, accepted ancillary restrictions are limited to non-compete obligations on the seller, supply or purchase agreements and licence agreements.

Law stated - 19 May 2022

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

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 appeal requires that the decision may have had a direct effect on the complainant's rights, obligations or interests.

Law stated - 19 May 2022

Publicity and confidentiality

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

The Finnish Competition and Consumer Authority (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.

Third parties may request access to public versions of documents provided to the FCCA during or after the FCCA's investigation period. Confidential information is protected by clearly indicating the business secrets in all documents submitted to the FCCA.

Law stated - 19 May 2022

Cross-border regulatory cooperation

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 (EC) 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. With regard to 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 and, in 2017 it joined the Cooperation in Competition Cases Agreement between Denmark, Iceland, Norway and Sweden. The Nordic competition authorities meet annually and form special working groups to facilitate the cooperation.

All in all, the FCCA participates in approximately 30 different international working groups relating to competition policy. In recent cases, it has been clear that in transactions notified in various Nordic countries, the competition authorities of the Nordic countries cooperate very actively.

Law stated - 19 May 2022

JUDICIAL REVIEW

Available avenues

What are the opportunities for appeal or judicial review?

The decision of the Finnish Competition and Consumer Authority (FCCA) 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 parties whose rights, obligations or interests have been directly affected by the FCCA's decision. 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.

Law stated - 19 May 2022

Time frame

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 time limit of 69 working days on the Market Court to rule on the case.

In 2021 or the first half of 2022, the Market Court did not issue any decisions in merger control cases. In 2020, it handed down six decisions in merger control cases. One was the first prohibition decision in Finland (Kesko Oyj/ Heinon Tukku Oy , MAO:50/20). Another proposal by the FCCA to prohibit a concentration was deemed dismissed after the parties abandoned the transaction (Mehiläinen yhtiöt Oy/Pihlajalinna Oyj , MAO:581/20).

Both of the aforementioned decisions were delivered in three months owing to the time limit set in the Competition Act for such decisions (the statutory time limit has since been amended to 69 working days). The remaining four decisions concerned the extension of the FCCA's Phase II investigation period and were delivered in a few days owing to their urgent nature.

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 was delivered in approximately two months (acquisition of C More Group AB by TV4 AB , MAO:580/08/KR).

The Market Court's decisions (eg, decisions to prohibit a transaction) can be 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 2022. In 2010, it 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 owing to its urgent nature.

In all competition law cases decided by the Supreme Administrative Court in 2021, the average decision-making time was 20.1 months.

Law stated - 19 May 2022

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

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

At the time of writing, the Finnish Competition and Consumer Authority (FCCA) has issued 13 unconditional clearance decisions in Phase I and taken three cases to Phase II in 2022. Out of the three Phase II cases, one was cleared unconditionally (Lantmännen ek för/Sponmill Oy), one was subject to conditions (Mehiläinen Oy/Fysios Holding Oy), and one is still pending.

In 2021, the FCCA issued a total of 32 decisions in merger cases, the vast majority of which were unconditional Phase I clearance decisions. Three cases were approved subject to conditions after a Phase II investigation. In addition, the FCCA issued one decision concerning the modification of merger conditions.

The FCCA has not officially identified any particular sectors or issues as its current enforcement concerns; however, on the basis of 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 and other consumer goods markets, transportation, telecommunications, intellectual property rights, digital goods and services, energy, construction, primary production and competition neutrality of public sector services.

Law stated - 19 May 2022

Reform proposals

Are there current proposals to change the legislation?

Directive (EU) 2019/1 (the ECN+ Directive), which aims to empower the competition authorities of member states to be more effective enforcers and ensure the proper functioning of the internal market, was transposed into Finnish law on 24 June 2021. In addition to amendments implementing the ECN+ Directive, the law reform introduced other amendments (eg, to increase the predictability of fine levels). In respect of merger control, the law reform introduced a technical amendment to the Market Court's investigation deadline of the FCCA's proposal to prohibit transactions.

In addition, the Ministry of Economic Affairs and Employment (MEAE) is assessing the need to amend the merger notification thresholds and launched a public consultation on the issue in January 2022. The consultation stems from a report published by the FCCA in June 2021. Currently, transactions are notifiable in Finland if the combined worldwide turnover of the parties exceeds €350 million and the turnover in Finland of each of at least two of the parties exceeds €20 million.

In its report, the FCCA suggests that the first threshold should be amended to the parties' combined turnover of €100 million generated in Finland. The latter threshold would remain unchanged. In addition, the FCCA suggests that it should be granted the right to require notification even if those turnover thresholds are not met, provided that one or more of the parties generate a combined turnover of €50 million in Finland.

In the MEAE's initial view , the amendment of the threshold concerning the parties combined turnover would be justified. In respect of the right to investigate transactions that fall below the turnover thresholds, the MEAE did not take a clear position in the consultation documents. The deadline for comments was 11 February 2022. The assessment is at an initial stage. It is therefore still unclear whether the motion will proceed and, if so, what the schedule is for the next steps in the process.

Law stated - 19 May 2022

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

In April 2021, the Finnish Competition and Consumer Authority (FCCA) cleared the merger between alcoholic beverage suppliers Altia Oyj and Arcus ASA subject to conditions. It found that, without remedies, the merger would have distorted effective competition in the Finnish markets for aquavit and berry liqueur.

To remedy the FCCA's concerns, the parties agreed to divest an aquavit brand and terminate a distribution agreement concerning berry liqueurs. In respect of the divestment, the FCCA applied an upfront buyer obligation for the first time in Finland, which entails that the parties could complete the merger only after a binding agreement on the required divestiture was concluded with a buyer approved by the FCCA.

Subsequently, the FCCA has made it known that it is likely to apply the upfront buyer obligation in most divestment cases in the future. The upfront buyer obligation was applied again a few months later when the FCCA conditionally approved the acquisition of Fidelix Holding Oy by Assemblin AB .

In early 2022, the FCCA continued the trend of laying down stricter conditions in its merger approvals, when it applied a fix-it-first obligation for the first time in its conditional clearance of Fysios Holding Oy by Mehiläinen Oy . A fix-it-first obligation requires that the parties find a suitable buyer for the divestment business and enter into a binding agreement

with the buyer during the FCCA's investigation, thus putting considerably more pressure on the time frame to negotiate and agree on the divestment transaction. The FCCA has, however, indicated that the upfront buyer obligation will likely be preferred over a fix-it-first obligation in its future case practice.

The FCCA also resorted to behavioural remedies in one case in 2021, even though such remedies are typically not considered sufficient to resolve competition concerns. In the conditional clearance of the acquisition of Heinon Tukku Oy by Valio Oy , the FCCA identified a risk of Valio gaining access to competing manufacturers' wholesale pricing and other sensitive information through Heinon Tukku, which could influence Valio's incentives in pricing and significantly restrict competition between manufacturers.

To address the FCCA's concern, Valio undertook to ensure that no such information would be passed on within the organisation in a way that would hinder competition for a period of 10 years from the FCCA's decision. As the transaction did not raise any horizontal competition concerns, the FCCA considered this behavioural remedy to be sufficient to eliminate the identified competition concerns.

On the legislative side, the Ministry of Economic Affairs and Employment (MEAE) is assessing the need to amend the merger notification thresholds and launched a public consultation on the issue in January 2022. The consultation stems from a report published by the FCCA in June 2021. Currently, transactions are notifiable in Finland if the combined worldwide turnover of the parties exceeds €350 million and the turnover in Finland of each of at least two of the parties exceeds €20 million.

In its report, the FCCA suggests that the first threshold should be amended to the parties' combined turnover of €100 million generated in Finland. The latter threshold would remain unchanged. In addition, the FCCA suggests that it should be granted the right to require notification even if those turnover thresholds are not met, provided that one or more of the parties generate a combined turnover of €50 million in Finland.

In the MEAE's initial view , the amendment of the threshold concerning the parties combined turnover would be justified. In respect of the right to investigate transactions that fall below the turnover thresholds, the MEAE did not take a clear position in the consultation documents. The deadline for comments was 11 February 2022. The assessment is at an initial stage. It is therefore still unclear whether the motion will proceed and, if so, what the schedule is for the next steps in the process.

Law stated - 19 May 2022

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Belgium	Freshfields Bruckhaus Deringer
Bosnia and Herzegovina	Wolf Theiss
Brazil	TozziniFreire Advogados
Bulgaria	Boyanov & Co
Canada	McMillan LLP
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Colombia	Posse Herrera Ruiz
Costa Rica	Zurcher Odio & Raven
Croatia	Wolf Theiss
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Denmark	Kromann Reumert
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