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Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE

English - Or. English

## Annual Report on Competition Policy Developments in Finland

-- 2016 --

21-23 June 2017

*This report is submitted by Finland to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2017.*

JT03414155

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## *Executive Summary*

Year 2016 was a productive and successful year for the FCCA in many respects. In a decision issued 29th December, the Supreme Administrative Court upheld the Market Court's ruling of 26 June 2014 in a landmark case of abuse of dominance: predatory pricing in the fresh milk markets. The Market Court had imposed a penalty of EUR 70 million to Valio as proposed by the FCCA, representing the largest fine in a competition case to a single company in Finland. Moreover, 2016 was an active year for the FCCA regarding legislation, in particular. The new act on the compensation of damages related to infringement of competition law entered into force on 26 December 2016. The FCCA updated guidelines on immunity from and reduction of fines in cartel cases. The Competition Act is partly under review and the Government Proposal is expected to be given in 2017. As of 1 January 2017, the FCCA supervises adherence to the public procurement act, with a particular focus on illegal direct procurement. In addition, the FCCA published four reports.

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

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

##### *1.1.1 New act on compensation of damages related to infringement of competition law*

1. New Act on compensation of damages related to the infringement of competition law entered into force on 26 December 2016. The Act implements the EU directive on antitrust damages actions. The Act is significant for enterprises, which can be either a plaintiff or a defendant in cases concerning the compensation of damages. The Act on compensation of damages related to the infringement of competition law aims to clarify and ease the raising of claims for damages and their processing, and to ensure that those targeted by infringements of competition law are fully compensated for the resulting damages.

2. The Act will be applied by the Finnish courts in cases related to the compensation of damages for the infringement of both EU competition rules and Finland's Competition Act. The proposal clarifies and eases the act of raising claims for damages and their processing, and ensures that those targeted by infringements of competition law are fully compensated for the resulting damages.

##### *1.1.2 FCCA tasked with supervision of legality of public procurement*

3. As of 1 January 2017, the FCCA supervises adherence to the Public Procurement Act, with a particular focus on illegal direct procurement. According to the Public Procurement Act the FCCA will, when supervising public procurement activities, focus primarily on illegal direct procurement and other corresponding procurements conducted in a blatantly erroneous or discriminatory manner.

4. The FCCA may issue reminders to procurement units if it observes unlawful conduct, and, in the case of illegal direct procurement, may prohibit the implementation of a procurement decision. The agency may also propose that the Market Court impose

sanctions, such as penalty payments, shortening of the contract, or the annulment of a procurement decision.

## 1.2 Other relevant measures, including new guidelines

5. The FCCA updated guidelines on immunity from and reduction of fines in cartel cases. The updated guidelines take into account the amendments to the Competition Act that entered into force on 26 December 2016 and the Act on Antitrust Damages.

6. The concept of a leniency statement was added to the Competition Act and the utilisation of information and evidence in damages court proceedings was enabled. The Act on Antitrust Damages includes provisions on using a leniency statement as evidence in damages court proceedings.

7. The updated guidelines replace the previous leniency guidelines of the Finnish Competition and Consumer Authority from October 2011 (guidelines 2/2011).

8. Guidelines on immunity from and reduction of fines in cartel cases: <http://www.kkv.fi/en/decisions-and-publications/publications/guidelines-on-the-application-of-the-competition-act/leniency/>

## 1.3 Government proposals for new legislation

9. The Competition Act (948/2011) is partly under review. The Government Proposal is likely to be given in 2017.

## 2. Enforcement of competition laws and policies

### 2.1 Action against anticompetitive practices, including agreements and abuses of dominant position

#### 2.1.1 Summary of activities / FCCA

##### 2.1.1.1 SOK Corporation / dominance / loyalty scheme

10. The FCCA has investigated the customer loyalty scheme of Suomen Osuuskauppojen Keskuskunta (SOK). The investigation did not produce any proof of a restriction of competition that would have required further investigation.

11. The FCCA launched an unprompted investigation into the matter after the special provision of the Competition Act concerning consumer goods trade (Section 4a) entered into force in 2014. According to the special provision, an undertaking with a minimum of 30 per cent market share in the Finnish daily consumer goods retail trade is deemed to occupy a dominant position in the Finnish daily consumer goods market. As a result of the provision, enterprises with a market share exceeding the limit have to comply with the prohibition of the abuse of a dominant position laid down in the Competition Act. SOK's market share in the Finnish daily consumer goods retail trade exceeds 30 per cent, so pursuant to Section 4a of the Competition Act, it occupies a dominant position

12. SOK has had a national discount scheme since 1994, which gives customers bonus points for loyalty. The bonus points are accumulated on the basis of the S Group customers' monthly purchases according to the bonus table of each cooperative.

13. Discounts given by a business in a dominant position may benefit consumers, but can also distort competition. Based on the FCCA's overall assessment, SOK's discount scheme does not, in its current form, have considerable anti-competition impacts on the consumer goods trade in Finland. The FCCA based its assessment on its report on the effect of customer loyalty schemes on consumers' purchasing behaviour. The report concludes that customer loyalty schemes only have a minor impact on the consumers' choice of shopping venue.

14. The report (in Finnish): <http://www.kkv.fi/globalassets/kkv-suomi/julkaisut/selvitykset/2015/kkv-selvityksia-1-2015-kanta-asiakasjarjestelmat.pdf>

#### *2.1.1.2 The Finnish Association of Funeral Services / cartels*

15. The FCCA has investigated the communications and other procedures of the Finnish Association of Funeral Services – which the Association was suspected of using to influence pricing by entrepreneurs in the funeral services business – and the use of other competitive tools. To clarify the matter, the FCCA performed an investigation at the office of the Finnish Association of Funeral Services and heard companies operating in the business.

16. The FCCA's investigations identified no cause for further action. The FCCA gave advice to the Finnish Association of Funeral Services on the contents of competition legislation and issued instructions on what can constitute unlawful activities within an industry association. For example, industry associations may not intervene in free competition or the pricing practices of enterprises active on the market. The proceedings in the matter have been terminated.

#### *2.1.1.3 Kesko Food Ltd and SOK Corporation / dominance / refusal to supply*

17. The FCCA has investigated the practices of Kesko Food Ltd and Suomen Osuuskappojen Keskuskunta (SOK) related to the sharing of sales data. The investigation did not produce any proof of restriction of competition that would have required further investigation.

18. The FCCA launched an unprompted investigation into the matter when the special provision of the Competition Act covering the consumer goods trade (Section 4a) had entered into force in 2014. According to the said special provision, an undertaking with a minimum of 30 per cent market share in the Finnish daily consumer goods retail trade is deemed to occupy a dominant position in the Finnish daily consumer goods market. As a result of the provision, enterprises with a market share exceeding the limit have to comply with the prohibition on the abuse of dominant position according to the Competition Act. Both Kesko Food and SOK have over 30 per cent market shares in the Finnish daily consumer goods retail trade, so pursuant to Section 4a of the Competition Act, they occupy a dominant position.

19. When assessing whether the practice of the retail chains can be regarded as a prohibited abuse of dominant position, the FCCA has taken into account the objectives of Section 4a of the Competition Act and the established legal praxis concerning refusal to supply. The FCCA has not received any proof on the basis of which the retail chains' current data sharing practices could be considered to impair or distort competition in the daily consumer goods market. Moreover, no proof was found that the elements of refusal to supply, as adopted in the legal praxis, would be fulfilled.

#### 2.1.1.4 Banks / commitment decision

20. Aktia Bank, Danske Bank, Nordea, OP Financial Group, POP Bank Alliance, Handelsbanken, Savings Banks' Union Coop and Bank of Åland have given the FCCA commitments to restrict the banks' right to increase charges and fees for customer credit.

21. The banks operating in Finland have collaborated with the Federation of Finnish Financial Services regarding standard terms and conditions resulting in general loan terms and conditions concerning consumer credit lending. These terms and conditions have included a model term and condition according to which a bank may increase charges and fees for consumer credit on account of increased costs or for other justified reasons. The banks have incorporated the term in question in their consumer credit agreements.

22. The commitment decision solves the competition problem and improves the position of the consumers. The banks will replace the model term and condition with a new term restricting the banks' right to adjust charges and fees for existing consumer credit agreements. Changes in charges and fees pursuant to new terms and conditions will be possible only due to a decision or provision of the relevant authority or on the basis of an amendment to the legislation. The increases may not exceed the actual costs incurred by the banks. Equivalent restrictions will also be applied to new consumer credit agreements concluded over the next three years.

#### 2.1.2 Description of significant cases / Supreme Administrative Court

23. The Supreme Administrative Court imposed a penalty payment on Valio for milk pricing. The Supreme Administrative Court considered Valio's milk pricing a violation of the Competition Act and ordered a penalty payment of EUR 70 million.

24. In 2012, the FCCA deemed Valio guilty of predatory pricing in Finland's fresh milk markets, with the objective of foreclosing competition in them. In its decision issued in late 2012, the FCCA ordered Valio to discontinue the abuse of its dominant market position and proposed that the Market Court impose a EUR 70 million penalty payment on Valio for its violation of the Competition Act. In its ruling in the matter on 26 June 2014, the Market Court imposed a penalty payment on Valio as proposed by the FCCA.

## 2.2 Mergers and acquisitions

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

	2009	2010	2011	2012	2013	2014	2015	2016
Number of Mergers Filed	37	35	42	29	20	30	28	36
Phase II required	1	1	2	3	3	2	2	3
Conditional Clearance	0	0	1	0	2	2	1	2
Mergers Blocked	0	0	0	0	0	0	0	0

### 2.2.2 Summary of significant cases

#### 2.2.2.1 Kesko / Suomen Lähikauppa merger

25. The conditions relating to Tuko Logistics Cooperative in the decision concerning the merger between Kesko Food Ltd and Suomen Lähikauppa Oy have become redundant. The FCCA removed them by its decision of 4 October 2016. The decision

will not affect Kesko Food's obligation to sell Suomen Lähikauppa stores in 60 locations to competitors.

26. The FCCA approved a merger between Kesko Food and Suomen Lähikauppa subject to conditions on 11 April 2016. Tuko was Suomen Lähikauppa's primary supplier and logistics partner prior to the completion of the merger. In its merger decision, the FCCA endeavoured to alleviate competition problems in the procurement market for daily consumer goods and the HoReCa wholesale market by obligating Kesko Food to continue purchases from Tuko for a fixed period of 18 months.

27. Suomen Lähikauppa was also a member of Tuko. The conditions set by the FCCA for the merger required Suomen Lähikauppa to withdraw from membership in Tuko at the latest within a transitional period. Furthermore, the FCCA restricted the possibilities of Suomen Lähikauppa and Kesko Food to participate in decisions taken in Tuko.

28. Tuko and Kesko Food have reached consensus on the procurement and supply relationships between Suomen Lähikauppa and Tuko and on the conditions relating to Lähikauppa's withdrawal from Tuko. The conditions relating to Tuko defined in the FCCA's decision thus became redundant. The FCCA concludes that this constitutes a substantial cause, as referred to in section 30 of the Competition Act, on the basis of which the conditions can be removed.

### 3. The role of competition authorities in the formulation and implementation of other policies

#### 3.1 Motions and statements

29. The FCCA promoted the proper operation of the market by issuing several statements on proposed legislation that may have an impact on competition policy. The competition reforms advocated by the FCCA took major steps forward. The opening hours in the retail sector were liberalized on 1 January 2016. The new Transport Code encompassed many pro-competitive features, such as the liberalization of the taxi market, as advocated by the FCCA for years. The Finnish government is moving to reform the social and healthcare sector away from the centralized system to allow for market-oriented solutions and to introduce a broader possibility for citizen's choice. The FCCA serves in an expert advisory capacity in this reform, and FCCA has also produced several reports on the subject.

### 4. Resources of competition authorities

#### 4.1 Resources overall

30. The total number of staff of the FCCA is 125, of which 55 people currently work for the Competition Division. (2015: 123).

##### *4.1.1 Annual budget (in EUR and USD)*

31. For the FCCA totally (covering both consumer and competition enforcement): 2016: € 9.969.000 EUR (\$ 10.510.316) (2015: €10,058m (\$11,64m))

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

Economists	16 (-1)
Lawyers	22 (0)
Other professionals	12 (+2)
Support staff	3 (-1)
All staff combined	55 (+2)

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

Enforcement against anticompetitive practices	37
Merger review and enforcement	4
Advocacy efforts	8

#### 4.3 Period covered by the above information

32. The information is based on the situation in 31 December 2016.

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

#### 5.1 Joint authorities adhere to competitive neutrality regulations insufficiently

33. The FCCA cooperated with Regional State Administrative Agencies to investigate the fulfilment of the incorporation requirement in joint authorities. According to the results, joint authorities had deficiencies in adhering to the incorporation requirements, taking account of the requirements of market-based pricing, and determining when the activities are seen as minor in nature.

34. In order to safeguard equal operating conditions, the Competition Act and the Local Government Act were amended in 2013 to include provisions on local authorities' and joint authorities' corporatization obligation and on the FCCA's authority to intervene in public sector business activities if their structure or proceedings distort competition. Regulations on competitive neutrality oblige local authorities and joint authorities to incorporate all functions they perform in a competitive market environment.

35. The FCCA's investigation into joint municipal authorities set out to examine their operations in the market and recognise key shortcomings where the FCCA might have to intervene.

36. See the Report (in Finnish): <https://www.kkv.fi/en/current-issues/press-releases/2017/4.1.joint-municipal-authorities-actions-may-have-negative-effects-on-markets/>

#### 5.2 Competition improves the quality of social welfare and health care services

37. The FCCA has studied the realisation of competition and its effects on public social welfare and health care services. The FCCA's report indicates that the cost management, quality and effectiveness of these services can be improved by applying competitive means to service coordination. Competition can also encourage service providers to create new, innovative services that respond to the versatile needs of citizens and contribute to their welfare.

38. The FCCA has assessed the realisation of competition and its effects on public social welfare and health care services particularly from the viewpoint of citizens' choices. In the case of simple services such as dental care and housing services, citizens' freedom of choice concerning their service provider can result in a broader selection and higher quality of services. In more complex services such as heart surgeries and care services for the elderly, citizens need comprehensive information, support and expert opinions to make a choice.

39. See the Report (in Finnish): <https://www.kkv.fi/globalassets/kkv-suomi/julkaisut/selvitykset/2016/kkv-selvityksia-5-2016-kilpailun-mahdollisuudet-ja-edellytykset-sote-palveluissa.pdf>

### 5.3 Obstacles to supply – construction regulation and the need for a paradigm shift

40. To ensure a sufficient supply of housing, fundamental changes must be made to the construction regulation and land use control. In practice, this means shifting from what currently amounts to limiting the overall supply to genuinely improving the situation. Examined from this viewpoint, regulation is clearly not efficient enough, says a report published by the FCCA.

41. The FCCA's report 'Tarjonnan tiellä – rakentamisen sääntely ja paradigmaattisen muutoksen tarve' (Obstacles to supply – construction regulation and the need for a paradigm shift) (in Finnish), takes a look at the need to develop regulation from the viewpoint of ensuring overall supply. The report presents four key development proposals: 1. Speeding up the processing of local detailed plans and increasing the landowners' right of initiative; 2. Lighter planning procedure regarding changes in the purpose of buildings; 3. Regional government reform and better strategic control of land use; 4. Distorted incentive structures and the need to develop real estate taxation.

42. See the Report (in Finnish): <https://www.kkv.fi/globalassets/kkv-suomi/julkaisut/selvitykset/2017/kkv-selvityksia-1-2017-tarjonnan-tiella.pdf>

### 5.4 Room for competition in transport sector insurance

43. According to a study by the FCCA, competition concerning insurance required by companies operating in the transport sector could function better. Few businesses go into the trouble of finding the best insurance deals, and are generally reluctant to switch insurance companies, although a tender process could result in significant cost savings.

44. The FCCA has investigated the phenomena related to the operation of the insurance market by looking at transport companies' insurance experiences. The goal was to form an understanding of how well competition is functioning in terms of transport companies' obligatory and voluntary insurance policies. Functional competition is particularly important in sectors that have significant effects on the national economy, such as the insurance sector, as they affect the operating conditions of small and medium-sized companies

45. See the Report (in Finnish): <https://www.kkv.fi/globalassets/kkv-suomi/julkaisut/selvitykset/2016/kkv-selvityksia-4-2016-vakuutusmarkkinoiden-toimivuus.pdf>

## 5.5 The evaluation of the Finnish Competition and Consumer Authority

46. The Competition and Consumer Authorities were united in 2013. The new tasks of the Agency are virtually the same as the functions of the previous separate agencies. The main objective of the unification has been to increase the social value and impact of competition and consumer affairs. The evaluation project examined the effectiveness of the FCCA and the efficient allocation of its resources from different perspectives. The main issues raised were how the FCCA's operations meet the expectations set for it, and how the objectives set for combining the Competition Authority and the Consumer Authority have been achieved.

47. See the Report (in Finnish): <http://urn.fi/URN:ISBN:978-952-327-082-4>