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Annual Report on Competition Policy Developments in Finland

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This report is submitted by Finland to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-8 June 2018.

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Executive Summary

1. Year 2017 was a productive year for the Finnish Competition and Consumer Authority (FCCA) in many respects. The Market Court imposed penalty payments on several coach companies, the Finnish Bus and Coach Association and Matkahuolto. The Market Court's decision was partly in line with the penalty proposal made by the FCCA, although the penalty sum was smaller than proposed. Moreover, the FCCA gave decisions regarding competition neutrality and public procurement. In addition, there were important and complex phase II merger cases, which were accepted with conditions. The FCCA publish guidelines on market-based pricing and a brochure on the inspection of business premises of undertakings. Finland entered into a co-operation agreement between the Nordic competition authorities. The Competition Act is partly under review and the Government Bill is expected to be given in 2018. The FCCA published three reports.

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

1.1. Summary of new legal provisions of competition law and related legislation

2. Finland has entered into a co-operation agreement between the Nordic competition authorities, with the aim of improving the handling of cross-border competition cases and the enforcement of competition rules. Finland has not previously been a party to the co-operation agreement between Denmark, Iceland, Norway and Sweden. Now, the 15-year-old agreement has been renewed and Finland is joining it to enhance co-operation with other Nordic authorities. The revised co-operation agreement follows the OECD recommendation of 2014. The treaty process must be completed and the Competition Act amended for the agreement to enter into force in Finland.

1.2. Other relevant measures, including new guidelines

3. The FCCA published guidelines on market-based pricing. The guidelines on market-based pricing outline the principles of how the FCCA assesses the realisation of market-based pricing by public sector entities in their economic activity. The guidelines help public sector entities to assess the competitive neutrality of their own activities. The FCCA's supervision of competitive neutrality is designed to safeguard a level playing field for the public and private sectors. The new guidelines on market-based pricing describe the pricing supervision included in the competition neutrality supervision, and the related assessment of public sector entities' economic activity.

4. The FCCA has also published a brochure on the inspection of business premises of undertakings. The FCCA's brochure describes the typical structure of an inspection of business premises, but exhaustive information on situations that arise during inspections or on the FCCA's inspection practices is not provided. The brochure is especially directed at undertakings and their employees with regards to situations where the FCCA arrives to inspect the undertaking's business premises.

1.3. Government proposals for new legislation

5. The Competition Act (948/2011) is partly under review. The Government Bill is likely to be given in 2018.

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

Competition neutrality / the Finnish Border Guard

6. The FCCA investigated the participation of the Finnish Border Guard in a health care service's helicopter-assisted emergency care in Lapland, based on a request for action by Heliflite Oy. Based on the investigation performed by the FCCA, the competitive neutrality regulations were not applicable to assessing the operations of the Finnish Border Guard, because the flight operations of the Finnish Border Guard were based on an administrative assistance agreement prepared based on legislation. The FCCA terminated its processing of the case on 1 November 2017.

Commitment / payment services

7. In relation to its new mobile payment system, Automatia Pankkiautomaatit Oy has given the FCCA its commitments concerning the technical implementation and procedures of the system. The commitments eliminate any competitive problems regarding in the Automatia system. The commitments also improve the possibility of other companies to gain access to the mobile payment market, increasing the number of options available to consumers.

8. Automatia's system utilises a nationally customised technical standard in processing wire transfers. According to FCCA's assessment, this would reduce the incentives of foreign payment service providers to join Automatia's system and, consequently, the possibility of the customers joining the system to start using competing, Pan-European standards in the future. To avoid a potential problem with competition, Automatia is now also committed to offering interfaces that conform to the Pan-European standard.

9. Automatia is also committed to offering all parties to the system the possibility to participate in decision-making and its preparation, with respect to the common policies and technical requirements. This ensures that Automatia and its shareholder banks or system vendor will not gain a production advantage over other companies operating on the market.

10. In addition, Automatia undertakes to remove the requirement in the system's rules that the identity of the user of the payment service is verified with so-called strong authentication, e.g., online banking credentials. According to FCCA's initial assessment, the requirement on strong authentication would have prevented the possibility of offering consumers the use of weak authentication in connection with low-risk payments. This weak authentication would have been a user name and password the users would have created themselves.

Application for an amendment to the terms concerning the sales obligation of raw milk

11. The FCCA approved an amendment to the terms related to Valio's sales obligation of raw milk. With the amendment, Valio's competitors will be set limits to the maximum amount of skimmed milk and raw cream they can buy monthly from Valio.

12. According to the terms and conditions of the merger, dating to 2000 and 2004, Valio must sell annually a maximum total amount of 185 million litres of raw milk to its competitors in the domestic market. The competitors can buy the product not only as raw milk, but also as a milk component such as skimmed milk or cream. On 9 October 2017, Valio filed an application with the FCCA, proposing an amendment to the terms that would set maximum limits to component purchases of skimmed milk and raw cream.

13. According to the analyses by the FCCA, the market conditions have, with regard to the component purchases, changed permanently compared to the situation prevailing at the time the terms and conditions were set. The world market prices of milk components have fluctuated greatly after 2007. From the milk quota, the competitors purchase those components that have the best profit expectation at the time, leaving Valio the responsibility for refining the less profitable component. The milk reception and joint processing capacity of the competitors has also increased, which has reduced the need to purchase milk components that have been already separated.

14. According to the FCCA's assessment, the amendments proposed by Valio in its application as the monthly and customer-specific maximum limits for skimmed milk and cream will continue to allow entry into the field, sufficiently safeguard competition, and do not cause undue hardship to the milk quota customers.

15. The application now approved does not affect the application filed by Valio on 1 October 2015 with the FCCA, concerning the lifting of the entire sales obligation of quota milk. This application is still pending at the FCCA.

Discrimination / Teosto

16. The FCCA has concluded that the pricing practices of Teosto could have discriminated against providers of paid streaming services vis-à-vis providers of traditional pay-television services. Teosto has, however, changed its pricing model, which can be considered as a move in the right direction. Further investigation is not necessary at this time.

17. In July 2015, MTV Sisällöt Oy submitted to the FCCA a request for action regarding the activities of Säveltäjän Tekijänoikeustoimisto Teosto ry, a non-profit performance rights organisation that collects royalties on behalf of songwriters and composers in Finland. MTV alleged that Teosto had abused its dominant market position through its pricing regarding music use compensation for audio-visual content services. According to investigations by the FCCA, Teosto's pricing has not been technology neutral. Rather, competing actors have had different tariffs. According to the FCCA, a pricing model such as this could have resulted in distortion of competition.

18. During the course of the FCCA's investigation, Teosto has changed its pricing practices and introduced new tariffs from the beginning of 2017. The revised tariffs treat traditional and new methods of distributing audio-visual contents equally. However, two separate tariffs continue to exist – one for free services and one for paid services.

19. The reform implemented by Teosto can be regarded as a move in the right direction with respect to technology neutrality. Application of the pricing model in practice will show whether or not Teosto's terms and conditions or other practices continue to result in clearly excessive pricing or discrimination of customers. It is not necessary to continue to investigate the matter at the moment, but the FCCA may re-examine the matter if there are indications in the future that Teosto's terms and conditions or other practices lead to significant anti-competitive effects.

Public procurement / Central Ostrobothnia's joint municipal authority

20. The FCCA gave its first decision about the supervision of public procurement. As of 1 January 2017, the FCCA has been supervising adherence to the Act on Public Contracts, especially illegal direct procurement. The Authority has drawn the attention of Central Ostrobothnia's joint municipal authority dealing with social welfare and health care matters with regard to the objectives and implementation of principles referred to in the Act on Public Contracts. The FCCA's view was that the procurement unit should have carried out the call for bids concerning senior telemedicine physician services and set comparison criteria in a way to enable a genuine competitive situation between various health care providers but without compromising service quality.

Public procurement / Länsi-Pohja Healthcare District

21. According to the decision of the FCCA the Länsi-Pohja Healthcare District did not act in compliance with the Act on Public Contracts when selecting contractors for the renovation of an outpatient clinic of internal medicine. The contracting authority had sent an invitation to tender to suppliers of its choice, without publishing a contract notice on the procurement in advance, for reasons of urgency of the procurement. The joint municipal authority of the healthcare district should have put up the selection of construction firms for tender as required by the Act on Public Contracts.

Public procurement / the municipality of Liperi

22. According to a decision by the FCCA the municipality of Liperi did not follow the Act on Public Contracts in the acquisition of temporary school centre premises when it failed to publish the contract notice required by law. The renting of temporary barracks does not fulfil the conditions for deviations concerning the purchase of immovable property specified in the Act on Public Contracts. Neither were the conditions in Liperi such as to enable direct procurement due to urgency.

2.1.2. Description of significant cases

Cartels / the Finnish Bus and Coach Association and co.

23. The Market Court imposed penalty payments on several coach companies, the Finnish Bus and Coach Association and Matkahuolto. In its decision issued on 14 December 2017, the Market Court considered that the coach companies, Finnish Bus and Coach Association and Matkahuolto have been guilty of participating in a cartel. The Market Court's decision was partly in line with the penalty proposal made by the FCCA, although the penalty sum is smaller than proposed.

24. The FCCA's investigations indicated that the coach companies, Finnish Bus and Coach Association and Matkahuolto conspired to prevent the market from being opened and new competitors from entering the market. The parties had agreed to limit mutual

competition and prevented competing bus routes from using Matkahuolto's travel and parcel services.

25. The procedure constituted a serious breach of the Finnish Competition Act and EU competition rules. On 25 January 2016, the FCCA made a proposal to the Market Court for the imposition of a EUR 38 million penalty payment. The Market Court ordered the companies, Finnish Bus and Coach Association and Matkahuolto to each pay a penalty payment of EUR 100,000 for prohibited restraints on competition. The case has been appealed by the FCCA and parties.

2.2. Mergers and acquisitions

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

Table 1. Statistics on number, size and type of mergers notified and/or controlled under competition laws

	2010	2011	2012	2013	2014	2015	2016	2017
Number of Mergers Filed	35	42	29	20	30	28	36	32
Phase II required	1	2	3	3	2	2	3	6
Conditional Clearance	0	1	0	2	2	1	2	2
Mergers Blocked	0	0	0	0	0	0	0	0

2.2.2. Summary of significant cases

The acquisition of Restel Hotellit Oy by Scandic Hotels Oy

26. The FCCA has approved the acquisition of Restel Hotellit Oy by Scandic Hotels Oy, with conditions. As a condition for the approval of the sale, the FCCA obliged Scandic to sell one hotel in Pori, Lahti and Kuopio to its competitors. In addition, Scandic has undertaken not to acquire two new hotels planned for Lappeenranta and two planned for Vantaa. In the view of the FCCA, this will eliminate the reduction of competition caused by the acquisition. In such a case, the cities will have the same number of hotel operators as before the acquisition, leaving sufficient options open for customers. Scandic also committed to not purchasing back the sold hotels.

The acquisition of Stockmann Group's Delicatessen business by Suomen Osuuskauppojen Keskuskunta

27. The FCCA approved the acquisition of Stockmann Group's Delicatessen business by Suomen Osuuskauppojen Keskuskunta, SOK (The Central Finnish Cooperative Society), HOK-Elanto Liiketoiminta Oy, Pirkanmaan Osuuskauppa, Turun osuuskauppa and Meira Nova Oy subject to certain conditions. As condition for the approval of the acquisition the FCCA required that Stockmann Delicatessen (Stockmannin Herkku) continue to make its purchases from Tuko until 31 December 2018.

28. According to FCCA's estimate, the removal of Stockmann Delicatessen's purchase volume from Tuko will lead to the weakening of Tuko's purchase terms and economies of scale, and because of the acquisition Tuko will face difficulties in adapting to the situation. This would also have an impact on the competitive position of the owners

of Tuko, Wihuri and Heinon Tukku. The weakening of small competitors would contribute to further strengthening of the S Group in particular and partly the K Group as well on the retail grocery market.

29. To eliminate the competitive disadvantages resulting from the acquisition, SOK, HOK-Elanto, Pirkanmaan Osuuskauppa, Turun Osuuskauppa and S-Herkkukeittiö Oy commit themselves to continuing to make the purchases for Stockmann Delicatessen from Tuko until 31 December 2018. According to the agency's estimate, the commitments will guarantee that the market structure of the procurement market for the grocery sector is retained at a level corresponding with the prevailing competitive situation.

Merger between YIT and Lemminkäinen

30. The FCCA approved a transaction based on which Lemminkäinen Oyj will merge with YIT Oyj. The FCCA's investigations suggest that the acquisition will not significantly impede effective competition on the construction market. YIT is a construction company that develops, builds and repairs homes, offices, infrastructure and entire areas. Lemminkäinen is a construction company engaged in building and infrastructure engineering and the sale of stone products.

31. The FCCA postponed further proceedings on the merger between YIT and Lemminkäinen to 28 September 2017, because the FCCA's preliminary investigations indicated that the acquisition might have had adverse impacts on competition in the building and infrastructure engineering markets. In December 2017, the Market Court extended the deadline for proceedings on the merger until 26 January 2018.

32. The FCCA's investigations indicate that the building and infrastructure engineering markets will remain sufficiently competitive for all types and size categories of construction after the acquisition. In addition, the reduction in the number of tenderers for road maintenance will not affect the competitiveness of the market and the acquisition will not significantly impede effective competition in the Finnish construction market.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

3.1. Motions and statements

33. 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 Finnish government is moving to reform the social and healthcare sector away from the centralised 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 the FCCA has also produced reports on the subject.

4. Resources of competition authorities

4.1. Resources overall

34. The total number of staff of the FCCA is 138, of which 68 people currently work for the Competition Division. (2015: 125).

4.1.1. Annual budget (in EUR and USD)

35. For the FCCA totally (covering both consumer and competition enforcement): 2017: 10.619.000 € (13.068.803 \$) 2016: € 9.969.000 EUR (\$ 10.510.316))

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

- Economists 20 (+4)
- Lawyers 31 (+9)
- Other professionals 10 (-2)
- Support staff 3 (-1)
- All staff combined 68 (+13)

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

- Enforcement against anticompetitive practices: 37
- Merger review and enforcement: 8
- Advocacy efforts: 22

4.3. Period covered by the above information

36. The information is based on the situation in 31 December 2017.

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

5.1. Platforms

37. There are several competition and consumer legislation issues related to platform economies. The FCCA review highlights the personal information of consumers in particular, the control of which consumers have lost or handed over to companies. The problems associated with platforms cannot be solved by means of new regulation, but by ensuring efficient enforcement of the existing provisions.

38. Platform economies have changed the traditional relationships and roles between buyers and sellers, and production and offering of commodities. The FCCA actively monitors the development of platforms to remain up to data on the impacts of platforms on the functioning of the market. The FCCA has now prepared a review of what kind of competition and consumer perspectives are currently associated with the companies and consumers operating on platforms.

5.2. Hotel booking sites

39. The FCCA has studied the experiences both consumers and hotels have of hotel booking sites. The views were mostly positive. However, one quarter of consumers had also encountered problems related to their bookings. Most hotels that responded to the survey regarded the booking sites to limit their freedom of operation.

40. The FCCA has followed the proliferation of the use of platforms in the operating environments of both consumers and enterprises. In June 2017, the FCCA published a study examining platforms from the perspectives of competition law and consumer rights.

To get practical examples of the impacts of platforms, the FCCA conducted studies on the views of both consumers and hotels on hotel booking sites.

5.3. Health service markets

41. The FCCA has studied how health service marketing is currently regulated and what kinds of challenges the health and social services reform is setting for health service marketing. Health service marketing affects both customers' freedom of choice and competition between service providers. The key is not restricting competition too much and harmonising the regulation and oversight of marketing by private, public and third-sector service providers.

42. The FCCA's report emphasises that the regulation of health services must not be too detailed. Excessively strict regulation limits service providers' possibilities to employ different kinds of competitive techniques and has a negative impact on new providers' entry into the market. Excessive regulation also makes it more difficult for consumers to get information about the services they need.