

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Finland****-- 2019 --**

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

JT03464717

Table of Contents

Executive Summary	3
1. Changes to competition law, policies, proposed or adopted	3
1.1. Summary of new legal provisions of competition law and related legislation	3
1.2. Other relevant measures, including new guidelines.....	4
1.3. Government proposal for new legislation.....	4
2. Enforcement of competition laws and policies.....	4
2.1. Action against anticompetitive practices, including agreements and abuses of dominant position.....	4
2.1.1. Summary of the activities of the FCCA and courts.....	4
2.2. Mergers and acquisitions	9
2.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws	9
2.2.2. Summary of significant cases.....	10
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies	11
4. Resources of competition authorities.....	11
4.1. Resources overall.....	11
4.1.1. Annual budget (in EUR and USD).....	12
4.1.2. Number of employees (person-years)	12
4.2. Human resources in competition enforcement (person-years) applied to.....	12
4.3. Period covered by the above information	12
5. Summaries of or references to new reports and studies on competition policy issues	12

Tables

Table 1.....	9
--------------	---

Finland

Executive Summary

1. In 2019, the Finnish Competition and Consumer Authority (FCCA) made several decisions on antitrust and merger cases, including a proposal to the Market Court to block one merger. Two cases reached a final decision in the Supreme Administrative Court. The FCCA was also active in its authority on overseeing public procurement and concluded several investigations, four of which resulted in proposals to the Market Court. This was the FCCA's third year in this role.¹ The opening of taxi markets to competition in 2018 employed the FCCA also in 2019.²

1. Changes to competition law, policies, proposed or adopted

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

2. The Finnish Competition Act was amended, and these provisions came into force as of 17 June 2019. The key amendments concerned inspections carried out by the FCCA³, the FCCA's right to obtain information and the exchange of information between authorities.⁴ Additionally, the amendments introduced new merger control timelines: since the amendments came into force, the timeline has been counted in working days instead of months.⁵ In terms of competitive neutrality, the amendment concerning accounting separation entered into force as of 1 January 2020. According to this provision public entities must keep separate accounts of the economic activity they engage in in a competitive market. The provision is intended to prevent competition distortions related to competitive neutrality. It will also enhance the supervision of competitive neutrality as the FCCA shall be provided with reliable data based on accounting and included in auditing.

¹ See more in Section 2.1.1.1.8.

² This report covers the time period from the beginning of 2019 up until the end of April 2020.

³ The inspection provisions were amended to allow the FCCA to conduct searches in temporary copies of data made during inspections also in its own premises. Additionally, the amendments specify the FCCA's right of inspection to be independent of the medium and so to cover e.g. mobile devices.

⁴ The FCCA's right to obtain information from public entities was expanded. The Competition Act was also amended to include authorities to which the FCCA may deliver information and documents notwithstanding the provisions on confidentiality.

⁵ Phase I investigation can now last a maximum of 23 working days and the deadline for phase I decision is calculated from the date following the receipt of a merger notification. Phase II investigation can last a maximum of 69 working days. The Market Court may extend the phase II deadline by a maximum of 46 working days. In May 2020, a further technical amendment to the merger enforcement deadlines has been proposed by in a draft Government proposal. This amendment would change the deadlines of merger cases also in the Market Court to days instead of months.

1.2. Other relevant measures, including new guidelines

3. In 2019 the FCCA did not publish any new guidelines.

1.3. Government proposal for new legislation

4. Due to the ECN+ Directive (Directive (EU) 2019/1), the Finnish Competition Act needs to be amended to meet the requirements set out in the said EU legislation. The deadline for implementing the Directive is 4 February 2021. In Finland, the Ministry of Economic Affairs and Employment appointed a working group to ensure the appropriate national enforcement of the directive. The working group published its draft on the Government proposal in May 2020. The main goal of the ECN+ Directive is to ensure the proper functioning of the internal market and guarantee appropriate enforcement tools to the national competition authorities.

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 the activities of the FCCA and courts

The FCCA

5. Especially the latter part of the year was active for the FCCA. In August, two important cases, one concerning trade associations and the other market foreclosure, received final judgement in the Supreme Administrative Court. In November, four proposals to the market court were made: one in a cartel case concerning anticompetitive practice and four concerning public procurement. Also, several other decisions on public procurement were given in the course of the year. Altogether five decisions on competitive neutrality were published.⁶

6. In 2019, the FCCA closed investigations in three proceedings as no negative effect on competition or enough evidence indicating otherwise was found (*OP Osuuskunta*⁷, *VR-*

⁶ A selection of these cases will be discussed in more detail below.

⁷ In its investigation on the OP Financial Group bonus system, the FCCA did not find evidence that the bonus scheme would significantly restrict competition in the non-life insurance market to the detriment of consumers. See more on the case here: <https://www.kkv.fi/en/current-issues/press-releases/2019/the-finnish-competition-and-consumer-authority-terminates-investigation-into-the-op-financial-group-bonus-system>.

*Yhtymä Oy*⁸ and *Säveltäjän Tekijänoikeustoimisto Teosto ry*⁹). In one case, the FCCA decided not to investigate the matter any further as the initial research showed that despite the suspected competition infringement, the market as whole was considered active enough (*Oy Tomra AB*¹⁰). The FCCA also terminated investigations in one case as no competition infringement was found (*Kestopuuteollisuus ry*¹¹).

7. In August 2019 the FCCA also started a self-imposed investigation on the cooperation of *Sanoma Media Finland Oy* and *Fox Network Group Oy* in the selling of TV advertisement space. The investigation was, however, closed in March 2020 as according to the investigation conducted, there was still significant competition in the market regardless of the cooperation.

8. In early 2020, the FCCA finished its investigations on predatory pricing in the distribution of unaddressed advertising. The investigation was conducted to find out whether *Posti Oy*, the largest Finnish postal operator, abused its dominant market position by providing unaddressed advertising distribution service to its customers at a price below cost. In the end, no evidence that *Posti*'s actions would restrict competition was found.¹²

Cartels/ the Uusimaa Driving School Association and eight driving schools

9. In November 2019, the FCCA made proposal to the Market Court in a case concerning eight driving schools and the local association for a price cartel and price recommendation. The penalty payments sum up to EUR 300.000 in total. According to the FCCA, the association and six of the driving schools on its board had encouraged driving schools to raise their prices. In the city of Porvoo, these activities led to a price cartel involving three driving schools. This dates back to 2013, when legislative reforms, such as remodelling the phases required for obtaining a driver's license, in the sector took place. The case marks the first time the FCCA used its authority to inspect personal mobile devices in its investigation proceedings.

Prohibition decision/ the Finnish national hockey league (SM-liiga)

10. The FCCA gave a decision concerning an agreement concluded between the member teams of the national hockey league (altogether 15 teams) and *SM-liiga Oy* (the Finnish national league) that essentially prohibited the recruitment of players from the former national league team *Jokerit* as well as playing rehearsal matches with the team. In

⁸ It was suspected by the complainant that *VR-Yhtymä Oy* was abusing its dominant position in the market of railroad cargo between Finland and Russia. According to the FCCA's investigation, *VR* had, in individual cases favoured end customers in its pricing. The investigation did not however reveal enough evidence that the action taken by *VR* would lead to a restriction of competition. Additionally, the FCCA noted that *VR* changed its pricing policy during the investigations.

⁹ The case concerned suspected abuse of dominant position on collective management of IPRs in music industry.

¹⁰ The market concerned maintenance and selling of spare parts of return bottle machines.

¹¹ This case concerned a suspected restriction competition in quality rating of timber.

¹² See more on the case here: <https://www.kkv.fi/en/current-issues/press-releases/2020/31.3.2020-fcca-finds-no-evidence-of-predatory-pricing-in-the-distribution-of-unaddressed-advertising-by-posti/>.

addition, agreements on loaning players in the following season were not allowed to be made during the ongoing season. This understanding was reached already in 2014 but was confirmed in writing in 2016. According to the FCCA's decision, the league teams are competitors and should therefore be able to decide on their player acquisitions (signing of players) independently. The intention of the aforementioned agreement was seen to be protecting the financial interests of the member teams by restricting competition. The concluded agreement was thus deemed to be in breach of the Competition Act. A periodic penalty payment of EUR 75.000 per party was set down to increase the effectiveness of the decision.

Competitive neutrality/ Oulun seudun ympäristötoimi liikelaitos / The city of Oulu

11. The FCCA investigated a suspected competition infringement in the market of small animal veterinary services. According to the request for action the city veterinarian clinics offer the same services during the same working hours as the private clinics and therefore compete in the same market. The FCCA was requested to investigate why the services in question were not corporatised in the city of Oulu, as pursuant to the Local Government Act corporatisation would be required. According to the FCCA, part of the services offered by the veterinarian clinic of the city competed in the market but its effect on the market was anticipated to be relatively small. Due to the fact that the city also did adjustments to its input pricing, and that the sector's legislation was being re-revised, the FCCA terminated its investigation.

Competitive neutrality/ The city of Tampere

12. The FCCA started investigations on its own initiative with the assistance of the Regional State Administrative Agencies in order to find out whether the requirements arising from the competitive neutrality legislation regarding a city-owned entity were met. Further investigations were conducted on a public utility in the city of Tampere operating in the catering and cleaning sectors. FCCA did not proceed with the investigations as the city of Tampere had incorporated the entity in question and it partially withdrew from the market as a result of discussions and guidance given by the FCCA. The effect on the functioning of the market and healthy competition was deemed not to be significant enough anymore.

Competitive neutrality/ The city of Helsinki

13. The FCCA's investigation arose from the intention to investigate whether the requirements arising from the competition neutrality legislation are met. Another one of the public utilities taken into closer examination was the construction service of the city of Helsinki (*Stara*) and its external sales to customers that were not covered by the exemptions and therefore resulted in *Stara* essentially engaging in economic activity. *Stara*, however, committed to gradually withdraw from the market after the investigations conducted by the FCCA and as a result, further investigations could be terminated.

Competitive neutrality/ Pohjois-Savon ELY-keskus, TVV lippu- ja maksujärjestelmä Oy

14. According to the request for action received from *Matkahuolto*, the Centre for Economic Development, Transport and the Environment of North Savo (ELY Centre of North Savo) had overstepped its competence as an authority when it prohibited the

acquisition of ticketing and payment services offered in the market freely and instead required the use of a certain service within the contract transportation it organized as an authority. The FCCA concluded in its investigation that the ELY Centre of North Savo acted as an authority and not as an entity performing economic activity. Therefore, the relevant provision of Competition Act did not apply. This applies to the service provider as well. In addition, it was also alleged that the case had characteristics of an abuse of dominant position. No evidence was, however, submitted and the FCCA did not investigate this specific matter any further as it concluded that the probability of such behaviour was only remote.

Competitive neutrality/ The city of Kuopio

15. The FCCA investigated the activities of the city of Kuopio in the fields of municipal engineering, food services, residential care, equipment maintenance, and property and logistics services. The investigations were, however, terminated after the city of Kuopio initiated measures to correct the suspected competitive neutrality problems after receiving guidance from the FCCA. The entities in question were already incorporated or would soon be incorporated and they had already reduced their external sales (market activities).

Public procurement/ summary

16. 2019 was the third year the FCCA has overseen the compliance of the Act on Public Procurement and Concession Contracts.¹³ The FCCA focuses on essential issues and avoids inflexible and prolonged procedures and its supervision covers the activities of procurement units. In the course of the year, the FCCA gave out altogether 10 decisions in public procurement cases. Altogether four cases were addressed to municipalities and cities and the rest to Hospital Districts. The amount of actively investigated cases in the FCCA was lower than in 2018 but the agency kept on giving administrative guidance on the matter as well, and therefore the number of issued decisions was not significantly lower.¹⁴

17. The FCCA is required by law to report on its work concerning public procurement. Therefore, a report was published on the FCCA's website in March 2020.¹⁵ It discussed also the challenges faced by the FCCA in 2019. In public procurement cases, the FCCA is required to make a proposal for the Market Court in 6 months. This deadline was proven to be rather short also in 2019 and the FCCA continued to argue that the deadline is particularly short in order to fully and effectively fulfil the duty given to it by the aforementioned Act.

Public procurement/ the Hospital District of Helsinki and Uusimaa (HUS)

18. In November 2019, the FCCA submitted four proposals to the Market Court on the imposition of penalty payments against *the Hospital District of Helsinki and Uusimaa (HUS)* for its violation of the Act on Public Procurement and Concession Contracts.

¹³ See more on the FCCA's website: <https://www.kkv.fi/en/facts-and-advice/competition-affairs/supervision-of-public-procurement/>.

¹⁴ In 2019, the FCCA made 4 proposals to the Market Court and 6 decisions giving administrative guidance when in 2018 the numbers were 5 and 6.

¹⁵ Available in Finnish here: <https://www.kkv.fi/globalassets/kkv-suomi/julkaisut/raportit/julkisten-hankintojen-valvonnan-tulosten-raportointi-2019.pdf>.

19. According to the FCCA's investigations, HUS has paid for goods and services without putting them out to tender. The total amount of the penalty payments proposed by the FCCA is EUR 160.000. The FCCA began investigations on its own initiative.

20. The proposals concern four different products and services: negative-pressure wound therapy, tissue paper, garbage bag products and DNA analysis services. The value of purchase of these products and services amounts to millions of euros annually. The aforementioned products and services were purchased without putting them out to tender. During the timeframe under the FCCA's investigation only tissue paper had been put out to tender in 2013 and 2014, but after these contract periods had ended, HUS had primarily purchased products directly from the suppliers that had been selected previously. In a several instances, HUS had signed off the orders by emails without drafting and signing any official procurement contracts. The case is still pending at the Market Court.

The Market Court

21. In 2019, the Market Court of Finland gave out five decisions concerning decisions on public procurement based on proposals submitted by the FCCA. The cases concerned all individual cities as procurement units. The concerns were related to procurement decisions and service agreements and whether they meet the requirements set out in the Act on Public Procurement and Concession Contracts. The individual cases concerned the cities of Loviisa, Jämsä, Parainen and Naantali and the joint municipal authority of Kainuu. The issues that were assessed in the Market Court included e.g. changes in the procurement contracts during contract period and procurement made without competitive bidding taking place. One of the proposals submitted by the FCCA was eventually deemed inadmissible by the Market Court. No decisions on antitrust cases were given by the Market Court in 2019.

The Supreme Administrative Court

Cartels/ The Finnish Bus and Coach Association, Matkahuolto and seven bus companies

22. This cartel case concerned a cartel seeking to prevent market opening and the access to the market of new competitors. The initial proposal to the Market Court of Finland was submitted in January 2016. In the Supreme Administrative Court's ruling handed down in August, it was stated that competition infringement was used to systematically impede and delay the opening of the market to competition. The Court imposed penalty payments summing up to EUR 8,9 million in total which was more than imposed by the Market Court but still less than the FCCA's proposal initially. Especially according to the FCCA's view, this case again brought up the discussion on whether Finland is in need of guidelines on the method of setting fines, and in order to increase the level of fines in serious competition law infringements.

Trade associations/ The Finnish Bakery Federation

23. According to the Supreme Administrative Court, *the Finnish Bakery Federation*, by giving price recommendations, went beyond what can be considered conventional communication by a trade association. The proposal to the Market Court was made in 2016 resulting in a penalty payment of EUR 15.000 instead of the initially proposed approximately EUR 40.000. In its ruling in August 2019, the Supreme Administrative

Court increased the payment imposed by the Market Court, resulting in a final penalty payment of EUR 30.000.

The Supreme Court of Finland

Damages in a competition law case

24. In 2019, a case concerning damages in competition law case was resolved in the Supreme Court (KKO:2019:90). The case was related to the nationwide cartel in the asphalt market in Finland. As explained in the case, the plaintiff had entered into asphalt works contracts with a company participating in the cartel and incurred additional costs due to overpricing resulting from the cartel.

“The issue before the Supreme Court was whether V Ltd was liable for the conduct of A Ltd, X Ltd liable for the conduct of B Ltd, and Y Ltd liable for the conduct of C Ltd, regarding the harm caused to the plaintiff city as a result of the cartel, when V Ltd, X Ltd and Y Ltd had acquired the shares of the companies participating in the cartel, dissolved the said companies and continued their commercial activities.”¹⁶

25. The case also touched upon the economic continuity test. The Supreme Court made a reference for a preliminary ruling to the European Court of Justice (ECJ) in the case.¹⁷

Cartels/ Power cable cartel

26. In the beginning of June, the Supreme Administrative Court of Finland ruled in the power cable cartel case that it would refer a question to the Court of Justice of the European Union (CJEU) for a preliminary ruling. The question concerned the duration and termination of the infringement and, thus, the expiration of the penalty proposal made initially in 2014. This is the first time a reference for a preliminary ruling has been made in a case concerning the penalty proposal made by the FCCA. The case is still pending in the CJEU.

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.

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Mergers filed	35	42	29	20	30	28	36	32	39	34
Phase II required	1	2	3	3	2	2	3	6	8	4
Conditional clearance	0	1	0	2	2	1	2	2	5	4
Mergers blocked	0	0	0	0	0	0	0	0	0	1

¹⁶ See <https://korkeinoikeus.fi/en/index/ennakkopaatokset/shortsummariesofselectedprecedentsinenglish/2019/kko201990-damagesinacompetitionlawmatter.html>.

¹⁷ See the case C-724/17 – *Skanska Industrial Solutions et al.*

2.2.2. Summary of significant cases

27. In 2019, the FCCA gave out altogether 29 decisions in cases clearing mergers as they had been filed to the FCCA. In addition, the FCCA gave out one decision on moving a merger case into Phase II, one decision on changing the remedies in a previous merger, one decision on inadmissibility and one statistically historical proposal to the Market Court to prohibit a planned merger.

28. In four cases, commitments were agreed on in order to guarantee the respective mergers to not impede effective competition. In January 2019, the FCCA approved the acquisition of *Suomen Transval Group Oy* by *Posti Group Oyj*. The condition for the approval was that Posti undertakes to offer internal logistics outsourcing services for one year to competing 3PL operators. The business operations of the Posti Group Oyj and its subsidiaries include delivery of mail and messages, logistics operations, service and information logistics operations, payment transaction and credit institution operations and real estate business. Suomen Transval Group Oy is an internal logistics company.

29. In February 2019, an acquisition of *AS TMB* by *Parma Oy* was cleared on the condition that Parma would sell its business operators in a certain area. Parma is part of the *Consolis Group*, engaged in the design, manufacture and production of precast concrete. AS TMB is involved in the manufacture, design and installation of concrete elements.

30. In October, the FCCA approved the acquisition of *A-Katsastus Group* by *MB Equity Fund V Ky*. FCCA made the transaction conditional on that the Muster software used in vehicle inspections be offered to competitors with the current terms for the duration of 24 months. A-Katsastus provides vehicle inspection services and registrations, arranges driving tests, performs vehicle damage inspections and provides vehicle damage repair, maintenance and spare part services in addition to the provision of testing, repair shop equipment and maintenance services. B Funds is a Finnish private equity investment firm, the portfolio of which includes *Protacon*, a company that developed the Muster software used in vehicle inspections.

31. The merger between *Caverion Industria Oy* and *Maintpartner Group Oy* was approved in November. The condition the FCCA set for the merger involves Caverion selling part of its industrial maintenance business. Caverion specialises in technical solutions for buildings and industrial operators, including technical maintenance services for industrial facilities. Maintpartner offers operation and maintenance services for various industrial sectors, as well as project engineering and installation services to complement maintenance operations.

Mergers/ Kesko Oyj/ Heimon Tukku Oy

32. In November, the FCCA made a proposal to the Market Court to prohibit the merger between *Kesko* and *Heimon Tukku*. The parties to the intended merger are broadline distributors offering a broad range of products and serving foodservice customers nationwide. The now presented prohibition proposal was the fourth of its kind. According to the FCCA's investigation, the intended merger would significantly impede effective competition in the sale of daily consumer goods to food service customers as the merged entity would gain a dominant position in the market for broadline distributors. The case was then moved into the consideration of the Market Court. In February 2020 the Market Court of Finland uphold the FCCA's decision to prohibit the merger. This marks the first time a merger prohibition proposal has been approved by the Market Court in Finland. On

19 March 2020 Kesko announced that it will not make an appeal against the Market Court's decision, therefore making it final.

*Recent cases*¹⁸

During the first part of 2020, the FCCA has published decisions on some merger cases. In March, the FCCA approved *Sanoma Oyj* to buy the local newspaper and printing company *Alma Manu Oy* from *Alma Media Oyj*. It was assessed whether the transaction would impede effective competition in the local markets as *Sanoma Oyj* owns the biggest newspaper in Finland. The FCCA conducted a survey and found out that local consumers would not see a newspaper from another publisher as a substitute to the newspaper they are currently subscribed to.

33. In April, a case was cleared subject to conditions. It concerned a transaction where *Donges Teräs Oy* intended to buy *Ruukki Building Systems Oy*. The FCCA cleared the merger on the condition that *Donges Teräs Oy* sells a certain factory. Both parties in the transaction operate as steel structure suppliers.

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

34. In May 2019, the FCCA established a new unit focusing on impact assessment of competition and consumer policies. The Market Research Unit's main assignment is to conduct competition and consumer policy-related research, surveys and comparisons. The Market Research Unit may also prepare proposals and initiatives for promoting the functionality of the market as well as assess new legislative proposals.¹⁹

35. As the taxi market was opened for competition back in 2018, the FCCA focused on the development of the market in 2019. The results of the research were published on the FCCA's website in early 2020 (available only in Finnish). The report was compiled by several experts and included not only a competition but also a consumer protection perspective. The focus of the report was to find out what action should be taken in the taxi market to make it work better and this way benefit the customers and the economy as a whole. The FCCA gave several recommendations in its reports concerning e.g. the needs in the development of regulation as well as taximeters.

4. Resources of competition authorities

4.1. Resources overall

36. The overall resources of the FCCA in 2019: 207,7 person-years

¹⁸ These cases are from the first part of 2020 and are therefore not included in the statistics presented above.

¹⁹ See a press release here: <https://www.kkv.fi/en/current-issues/press-releases/2019/12.4.2019-the-fcca-develops-the-impact-assessment-of-competition-and-consumer-policy-a-new-unit-will-start-in-may-2019/>.

37. Competition enforcement: 71,5 person-years (34,4% of the overall resources)

4.1.1. Annual budget (in EUR and USD)

38. For the FCCA totally (covering both consumer and competition enforcement) – EUR 11.568.000 (+ EUR 274.000)²⁰ (approx. USD 12.537.282,72)

4.1.2. Number of employees (person-years)

39. Competition enforcement:

- economists: 17,46 (-0,01)²¹
- lawyers: 40,50 (+11,30)
- other professionals: 10,19 (-0,96)
- support staff: 3,29 (-1,10)
- all staff combined: 71,44 (+1,15)

40. Additionally, 13,13 person-years in the new Market Research Unit (not included in the competition enforcement statistics).

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

- Enforcement against anticompetitive practices: 49,935
- Merger review and enforcement: 13,30
- Advocacy efforts: 20,425 (13,13 person years from the Market Research Unit included)

4.3. Period covered by the above information

41. The information provided is based on the situation on 31 December 2019.

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

42. The FCCA published a report on competition and consumer protection in data economy. The main interest of the publication was to specify questions and challenges arising from the data economy on a high level as well as to examine these based on concrete examples. The focus is on the Finnish market. The report was published on the FCCA's website, but it is available only in Finnish.

²⁰ Change to previous year.

²¹ Change to previous year.