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COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Finland

-- 2020 --

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Finland

Executive Summary

1. The global pandemic made 2020 a year of drastic changes in the world and its consequences were felt at the Finnish Competition and Consumer Authority (FCCA) as well. Since March 2020, the staff of the FCCA have mostly been working remotely from home which sped up the ongoing transition to a digitally functioning workplace. New ways to communicate as well as ways to work on competition cases were introduced. In addition, the pandemic caused particular challenges to the competition playing field and new approaches had to be considered. In the area of cartels and abuse of dominance, the FCCA complied from the beginning with the policy adopted by the European Union (EU)¹. In merger enforcement it had to assess the suitability of current merger processes on a national level in these exceptional circumstances. As a result, a temporary law extending the merger deadlines in Phase II was adopted.

2. The FCCA, however, was able to continue its work successfully and adjusted to the new situation: in 2020, the FCCA gave several decisions on antitrust and merger cases and continued its active participation in the field of international cooperation. In November, the FCCA also held its annual FCCA Day with a theme “*Economic and power structures are crumbling—is it time for competition and consumer policies to change?*”² The event was successfully held fully virtually with a variety of presentations and discussions ranging from the effects of the pandemic to climate change.

3. This report outlines the activities of the FCCA from the calendar year 2020.

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

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

4. An amendment concerning accounting separation entered into force as of 1 January 2020. Its intention is to prevent competition distortions related to competitive neutrality.³

5. In merger control, a temporary amendment was proposed in June due to the COVID-19 pandemic. According to this proposal, the deadlines in Phase II were to be extended approximately by a month⁴ in order to ensure that the FCCA would be able to handle merger cases requiring further investigation in a proper and timely manner. The

¹ See the FCCA’s press releases here: <https://www.kkv.fi/ajankohtaista/Tiedotteet/2020/23.3.2020-koronaviruksen-aiheuttama-poikkeustilanne-vaikuttaa-kilpailulain-soveltamiseen/> and <https://www.kkv.fi/ajankohtaista/Tiedotteet/2020/9.4.2020-kilpailulainsaadanto-ei-esta-valttamattomia-toimenpiteita-suojavarusteiden-ja-laakkeiden-saannin-turvaamiseksi/>

² “KKV-päivä 2020: Talouden ja vallan rakenteet rutisevat – Pitääkö kilpailu- ja kuluttajapolitiikan muuttua?” The agenda and discussions were held solely in Finnish: <https://www.kkv.fi/ajankohtaista/tapahtumat/2020/kkv-paiva-2020/>

³ See the initial press release from 2019 here: <https://www.kkv.fi/en/current-issues/press-releases/2019/13.8.2019-competitive-neutrality-supervision-to-be-enhanced---accounting-separation-obligation-to-enter-into-force-at-the-beginning-of-2020/>

⁴ From 69 working days to 92 working days.

amendment was planned to apply to mergers filed after the law would have come into force but before 1 November 2020. The amendment was adopted only in October, which is why it was eventually applied retrospectively to mergers filed after 2 July 2020 in accordance with the addition submitted by the government on that said date.

1.2. Other relevant measures, including new guidelines

6. The FCCA did not publish any new guidelines in 2020.

1.3. Government proposal for new legislation

7. The Ministry of Economic Affairs and Employment had appointed a working group to prepare the national enforcement of the ECN+ Directive (Directive (EU) 2019/1). This working group published its draft on the Government proposal in May 2020. The Government submitted its proposal to amend the Competition Act on 5 November 2020.⁵ This proposal is currently under parliamentary review but expected to be finalised soon.

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

8. In 2020, the FCCA gave several decisions in antitrust cases in the taxi and postal markets to name a few. In some cases, the investigations were dropped after no evidence on competition restrictions were found. In antitrust, one penalty payment proposal concerning the hardware company IKH's anticompetitive practice was submitted to the Market Court.⁶ According to the FCCA's investigations, IKH had set recommended prices for the products it sells and pressured its retailers to comply with these prices (RPM). The case is currently pending in the Market Court.

9. Two decisions concerning competitive neutrality were given. The FCCA also continued its work on overseeing the application of Act on Public Procurement and Concession Contracts and two cases concerning unlawful procurements were taken to the Market Court.

⁵ See a press release on the Ministry's website, available in English: https://tem.fi/-/kilpailusaantojen-noudattamisen-valvonta-tehostuu?languageId=en_US

⁶ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/20.5.2020-fcca-proposes-a-penalty-of-eur-9-million-to-ikh-for-resale-price-maintenance/>

Table 1.

Antitrust	<p>Investigations dropped/case inadmissible:</p> <ul style="list-style-type: none"> • Postal market: two cases, Posti Group Oyj's alleged predatory pricing in the market of unaddressed postal services⁷ and abuse of dominant position in pricing of addressed business post • Taxi services: six cases (Kokkolan Taksiliikenne Oy, Kuru-Taksi Oy, Pohjanmaan Taksi Oy, PRO-Keskus Oy, Tampereen Aluetaksi Oy and Vaasan Ulataksi Oy)⁸ • iLoq Oy, alleged anti-competitive contractual terms in the locking market • Ab Rafael, alleged dominant position in the asphalt market • Kangasalan Vesi, alleged dominant position in pricing of water • Ålands Telefonandelslag, Jomala Ålands / Telekommunikation Ab, Mariehamn, i.e. alleged predatory pricing of broadband connections • Stora Enso Oyj / UPM-Kymmene Oyj / Metsä Group Finland, alleged anti-competitive cooperation in procurement of wood <p>Penalty payment proposal submitted:</p> <ul style="list-style-type: none"> • Isojoen Konehalli Oy (IKH, a hardware store company), retail price maintenance (RPM)
Competitive neutrality	<ul style="list-style-type: none"> • The Finnish Heritage Agency and three museums, alleged anti-competitive conduct in the market of archaeological research, the parties committed to take measures and the case was removed from processing⁹ • Hospital district of Helsinki and Uusimaa (HUS), after initial research, the case did not require further action and was closed
Procurement	<ul style="list-style-type: none"> • The municipality of Puolanka, direct procurement of social welfare and health care services, a penalty payment proposal was submitted to the Market Court¹⁰ • The federation of municipalities in social and health services in the region of Kymenlaakso, an unlawful direct procurement of ophthalmology services, a penalty payment proposal was submitted to the Market Court¹¹ • Veikkaus Oy, procurement of the central gaming system¹² • Consortium of municipalities in Etelä-Karjala / the Municipality of Savitaipale / Kiinteistö Oy Savitaipaleen Vuokratalot (a real estate company), procurement of housing services

10. In terms of court proceedings, *the Market Court* gave its decision on the case of *SF Anytime* in June. The case concerned an alleged abuse of a dominant position in the national market of collective management of copyrights. The FCCA stated in its initial decision that no actual evidence on restriction on competition was found and therefore closed the case. The case was appealed to the Market Court where the applicant demanded that the court annuls the contested decision and returns the matter to the FCCA's review. The Market

⁷ See more 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/>

⁸ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/4.6.2020-fccas-investigation-into-the-taxi-services-the-investigation-concerning-seven-taxi-dispatch-centres-is-has-ended-but-six-centres-are-still-suspected-of-banned-restrictions-on-competition/>

⁹ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/7.5.2020-the-finnish-heritage-agency-is-committed-to-undertake-measures-to-improve-neutral-competition-conditions/>

¹⁰ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/1.9.2020-the-fcca-proposes-that-the-municipality-of-puolanka-be-sanctioned-for-significant-unlawful-direct-procurement-of-social-welfare-and-health-care-services/>

¹¹ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/24.9.2020-fcca-proposes-a-penalty-payment-to-kymenlaakso-for-the-unlawful-direct-procurement-of-ophthalmology-services/>

¹² See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/28.9.2020-finnish-competition-and-consumer-authority-veikkaus-procurement-of-the-central-gaming-system-was-illegal/>

Court however dismissed the appeal as it considered the FCCA had acted within the limits of its discretion.

11. Additionally, the FCCA had submitted a proposal to the Market Court in the case concerning an antitrust case of *Uudenmaan autokouluyhdistys ry* (the Uusimaa Driving School Association, UAY) and several driving schools in late 2019.¹³ The FCCA proposed penalty payments on UAY and altogether eight driving schools for forming a price cartel and for making price recommendations. In December 2020, the Market Court imposed penalty payments on the association and two driving schools, therefore agreeing with the FCCA's decision only partially. The FCCA has appealed the case to the Supreme Administrative Court.

12. In 2019, the FCCA had also submitted four proposals on public procurement matters concerning *the Hospital District of Helsinki and Uusimaa* (HUS) to the Market Court. The decisions in the first two cases were given in August 2020. The Market Court imposed a total penalty payment of EUR 50.000 on HUS regarding the direct procurement of waste disposal bags and tissue paper products.¹⁴ The next two decisions on the direct procurements of DNA analysis services and negative-pressure wound therapy products were given in October. These penalty payments amounted to EUR 110.000. All these decisions were in line with the proposals submitted by the FCCA.

13. In December, *the Supreme Administrative Court* confirmed the initial proposal of the FCCA on unlawful direct procurement by the municipality of Parainen. The FCCA's proposal was from 2018.¹⁵

2.2. Mergers and acquisitions

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

Table 2. Merger cases overview 2010–2020

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mergers filed	35	42	29	20	30	28	36	32	39	34	22
Phase II required	1	2	3	3	2	2	3	6	8	4	4
Conditional clearance	0	1	0	2	2	1	2	2	5	4	2
Mergers blocked	0	0	0	0	0	0	0	0	0	1	1

¹³ See the press release from 2019 here: <https://www.kkv.fi/en/current-issues/press-releases/2019/21.11.2019-the-fcca-proposes-penalty-payments-to-driving-schools-for-a-price-cartel-and-a-price-recommendation/>

¹⁴ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/27.8.2020-the-market-court-imposes-eur-50000-penalty-payments-in-total-on-hus-for-direct-procurement-that-breaches-the-act-on-public-procurement-and-concession-contracts/> No English press release available from the other two.

¹⁵ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2018/11.4.2018-fcca-proposes-imposition-of-sanctions-against-the-town-of-pargas-for-illegal-direct-award/>

2.2.2. Summary of significant cases

14. In 2020, the FCCA processed altogether 22 merger filings, which was a little less than in the previous years.¹⁶ However, the merger control activities in 2020 included some interesting cases.

15. In late 2019, the FCCA proposed prohibiting a merger between *Kesko* and *Heinon Tukku*, the grocery wholesaler. According to the investigations, the merger would have led to Kesko having a dominant position in the market. The decision of the Market Court was published in February 2020 resulting in the merger being prohibited in accordance with the FCCA's proposal.¹⁷ In March, Kesko announced that it would not appeal to the Market Court decision, making the prohibition final.¹⁸

16. In September 2020, the FCCA proposed the Market Court to prohibit the merger between *Mehiläinen* and *Pihlajalinna*.¹⁹ Both parties are significant healthcare operators in the Finnish market and according to the FCCA's investigations, after the merger only two nationwide healthcare companies would have remained in the market. Prohibition decisions are very rare, and this prohibition proposal was only the fifth ever made by the FCCA. The investigation was also the largest merger investigation in the FCCA's history. In late November, Mehiläinen announced that it would not execute its tender offer and Pihlajalinna stated that the merger process between the parties would not continue. According to the FCCA's view, the arrangement was therefore cancelled, and it submitted its view to the Market Court stating that the case should be closed as inadmissible or a decision confirming the merger's cancellation should be issued. In its decision in late December 2020, the Market Court confirmed that the merger had been cancelled as the purchase offer stated in the merger documentation was not going to be implemented and thus there was no longer a basis for the court to proceed with the case.

17. In 2020, the FCCA also cleared two mergers subject to conditions: *Donges Teräs/Ruukki*²⁰ (steel structure suppliers) and *Loomis/Automatia*²¹ (parties providing cash management and supply services).

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

18. In early 2020, the FCCA published a memorandum on taxi markets. The focus of the report was to determine 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 made

¹⁶ All decisions available in Finnish on the FCCA's website: <https://www.kkv.fi/ratkaisut-ja-julkaisut/kilpailuasiat/yrityskaupparatkaisut/2020/>

¹⁷ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/17.2.2020-keskos-acquisition-of-heinon-tukku-blocked-by-the-finnish-market-court/>

¹⁸ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/19.3.2020-the-prohibition-of-the-merger-between-kesko-and-heinon-tukku-became-legally-binding/>

¹⁹ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/29.9.2020-the-fcca-proposes-the-market-court-to-prohibit-the-merger-between-mehilainen-and-pihlajalinna/>

²⁰ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/17.4.2020-fcca-approved-donges-teras-oys-acquisition-of-ruukki-building-systems-ltd-subject-to-conditions/>

²¹ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/14.10.2020-the-fcca-conditionally-approves-acquisition-of-automatia-by-loomis/>

several recommendations in its reports concerning e.g. the need for the development of regulation as well as taximeters. The report is available in Finnish on the FCCA's website.²²

19. In November, the FCCA published a statement concerning the pharmacy market in Finland. According to the FCCA, the pharmacy market in Finland does not work for the good of the consumer in its current state. The statement is available on the FCCA's website, however, only in Finnish.²³ A press release in English can be found on the FCCA's website.²⁴

20. In terms of Nordic cooperation, the Nordic Competition Authorities released a joint memorandum on digital platforms with the title "*Digital platforms and the potential changes to competition law at the European level*". The memorandum is available on the FCCA's website.²⁵

4. Resources of competition authorities

4.1. Resources overall

21. The overall resources of the FCCA in 2020: 221,95 person-years

22. Competition enforcement: 77,93 person-years (approx. 35 % of the overall resources)

4.1.1. Annual budget (in EUR and USD)

23. For the FCCA totally (covering both consumer and competition enforcement and including an additional EUR 3.7 million for Consumer Advisory Services) – EUR 18.200.000 (+ EUR 2.932.000)²⁶ (approx. USD 21.618.000). For Competition enforcement approx. EUR 6.926.000 (approx. USD 8.358.000)

4.1.2. Number of employees (person-years)

24. Competition enforcement:

- economists: 20,16 (+2,7)²⁷
- lawyers: 44,47 (+3,97)
- other professionals: 8,45 (-1,74)

²² Report (in Finnish): <https://www.kkv.fi/ratkaisut-ja-julkaisut/julkaisut/muistiote/taksimarkkinaselvitys/>

²³ Statement (in Finnish): <https://www.kkv.fi/globalassets/kkv-suomi/julkaisut/selvitykset/2020/kkv-selvitysasia-5-2020-apteekkimarkkinoiden-kehittaminen.pdf>

²⁴ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/11.11.2020-the-fcca-pharmacy-market-study-proposes-measures-to-reduce-the-costs-of-medicines-for-consumers-and-society/>

²⁵ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2020/28.9.2020-nordic-competition-authorities-release-joint-memorandum-on-digital-platforms/>

²⁶ Change from previous year. It should be noted that last year the EUR 3.700.000 allocated for Consumer Advisory Services was excluded from the reported budget. Here the comparison is made to the overall budget for 2019 (EUR 15.268.000) including that amount.

²⁷ Change from previous year.

- support staff: 4,86 (+1,57)
 - all staff combined: 77,93 (+6,49)
25. Additionally, 18,17 (+5,04) person-years in the Advocacy and research department.²⁸

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

- Enforcement against anticompetitive practices: 52,71
- Merger review and enforcement: 17,16
- Advocacy efforts: 25,24 (18,17 person-years from the Advocacy and research department included)

4.3. Period covered by the above information

26. The information provided is based on the situation on 31 December 2020.

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

27. The FCCA took part in the Action Plan against the Shadow Economy and Economic Crime. A report on the shadow economy and public procurement, to which the FCCA has also contributed, was published already back in August 2019, but the action plan itself was drawn up for the years 2016–2020. The report is available only in Finnish, but a press release outlining the key takeaways can be found on the FCCA’s website.²⁹ What is important, is that in 2020 the theme was selected for the new strategy for tackling the grey economy and economic crime. The FCCA also continued its participation in the discussion concerning anti-corruption over the course of the year.³⁰

²⁸ Also called the Market Research Unit. These figures are not included in the Competition Enforcement statistics as the department serves both the Competition and Consumer Divisions in the agency.

²⁹ See more here: <https://www.kkv.fi/en/current-issues/press-releases/2019/15.8.2019-report-on-shadow-economy-and-public-procurement-combating-corruption-requires-good-public-procurement-competence/>

³⁰ See more on the role of the FCCA in terms of combating corruption in Finland here: <https://korruntorjunta.fi/en/combating-corruption-in-finland>

The press release published by the government is available here: https://valtioneuvosto.fi/-/1410877/hallitus-torjuu-harmaata-taloutta-laajalla-toimenpideohjelmalla?languageId=en_US