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Information Sharing in Competition Policy – Note by Finland

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1. This paper has been prepared for the roundtable discussion in the OECD Competition Committee. The OECD background note for the discussion states that the roundtable could benefit, for instance, from cases and issues relating to the role of trade associations in the context of information exchange. The OECD note also indicates that the roundtable is interested in the types of evidence that have been important in establishing unlawful information exchanges in practice.

2. Information exchange can take various forms and can occur in different contexts and, for instance, between actual or potential competitors or between non-competitors. Naturally, the content of the information exchange also varies, and thus the impact of it on competition is different; in some cases, the exchange may even be beneficial for competition, and in some cases, it can distort competition. There is also variation in where and how information is exchanged. Even when the information is exchanged between competitors, this can take place directly between them or indirectly, for example, by or through a third party or an organisation, such as a trade association the competitors are all party to. Different variations across information exchange mechanisms, as above, play a role when competition rules are applied to that conduct.

3. Finland is an EU Member State, and EU competition rules are also applicable in the country, in addition to the national competition rules. However, in practice, there are no substantive differences between the two, given that national rules are interpreted in accordance with EU competition law. As a result, for instance in competition distortions involving trade associations, the jurisprudence of the EU courts plays a decisive role when the case is reviewed by the national competition authority or the national courts.

4. The Supreme Administrative Court in Finland has, for its part, also confirmed that under the Finnish competition legislation – covering the EU and national competition rules - the main principle is that each undertaking determines independently its economic conduct in markets. In this respect, the Court has also referred to case law of EU Courts, according to which a recommendation of a trade association, with the aim to coordinate market conduct of its members in accordance with the recommendation, has been found to breach competition rules.¹

5. This contribution deals with experiences from the Finnish jurisprudence, where information exchange (a) has been found to be in breach of the competition rules and (b) has taken place in connection with the activities of a trade association. Many of the cases presented below consist particularly of recommendations published by a trade association to its members, which the Supreme Administrative Court eventually found violating the Competition Act. In general, the link between such recommendations and unlawful information exchange is that - before the recommendations come out - information exchange may have taken place within the trade association on factors (e.g. future pricing, refusal to deal) not permitted under the competition rules.

6. The cases presented below have been chosen on the basis that the unlawful conduct of the trade association has been affirmed by the highest court in the country, which hears cases falling under the competition rules (Supreme Administrative Court of Finland). Hence, all the cases are legally binding and have procedurally gone through all the national

¹ Referring, e.g., to the judgement of EU Court of Justice in *Verband der Sachversicherer v EU Commission* on 27 January 1987, paragraph 32, ECLI identifier: ECLI:EU:C:1987:34

court levels. Given that the previous roundtable discussion of the OECD Competition Committee on information exchange was held in 2010, the trade association cases presented here are from the period after that. It should be noted that, in number of the following cases, the members of the trade association were also found to have violated competition rules in addition to the trade association. However, the focus of this contribution is on those parts of the cases where the trade association itself has been found to have violated the competition rules.

1. Association of the Finnish Hairdressing Entrepreneurs (2013)

7. The Supreme Administrative Court ordered the trade association to pay a penalty payment of EUR 15,000. The matter was partly influenced by the changes relating to the value added tax, to which the trade association reacted with new information and guidance to its members. It published news bulletins to members and issued press releases that included recommendations to increase barber and hairdressing prices by an annually determined percentage. In practice, it exchanged information between its member on how the members should act when the value added tax was lowered. The Supreme Administrative Court found these actions to be an infringement of the Competition Act by noting that it was not necessary to demonstrate market effects of the association's actions in order to declare them unlawful. However, the Court stressed that, in terms of assessing the amount of the penalty payment for unlawful price recommendations, it should be taken into account how significant the conduct eventually was in the markets and in the industry, and what the true effects of the conduct of the association were.

8. The Supreme Administrative Court reduced the penalty payment to 15,000 euros from the original penalty payment of 33,000 euros imposed by the first instance court in competition matters (Market Court of Finland). The key reason was that no sufficient evidence was presented on what ultimately the actual effects were of the unlawful conduct, which benefits were accruing to the industry overall and whether the members had actually complied with the information to increase prices the way the association guided them. In addition, the court noted that the handling of the matter had lasted around six years in all instances in total, which further contributed to the reduction of the penalty payment.²

2. Finnish Association of the Service Entrepreneurs for Household Appliances (2013)

9. The association represented companies which offered repair services for various household appliances. The case was linked to a warranty clause where the household appliances retailer gave a customer a guarantee that the device will be repaired if it fails to work during the warranty period. If that would happen, the device would be repaired by a specific company specialised in repair services for household appliances. The retailer would then reimburse this service company for the warranty repair. However, the competition authority in Finland became aware that the association has started to exchange information on the price level these warranty repairs should cost the retailer, i.e., on the amount of compensation the retailer should reimburse the repair service company.

10. The case ended with the Supreme Administrative Court, which verified, based on the evidence before it, that the association discussed and shared information on what the reimbursement should be in warranty repairs from the retailer to the repair service

² Supreme Administrative Court of Finland (dnro 277/2/10) delivered on 14 June 2013 (available only in Finnish).

company. The association exchanged information about the price level that should be followed by the members of the association. The association even had direct negotiations on terms of trade with the retailers and urged its members to act in accordance with the pricing policy recommended by the association. A common understanding was reached on the price level at which the members of the association should carry out warranty repairs. As a result, the association did infringe the competition rules according to which each company should choose their pricing policy individually. In terms of evidence, the court took note, e.g., of the written minutes and memos of the meetings of the association, where the warranty repair pricing policy was discussed or agreed. The court concluded that the evidence formed a coherent overall picture of the unlawful activity. The association also had regional sections where unlawful information exchange vis-à-vis future pricing policy also took place.³

3. Finnish Association of Bakeries (2019)

11. The Supreme Administrative Court imposed a penalty of EUR 30,000 on the association, which was double the penalty imposed by the previous court instance. The Supreme Administrative Court confirmed that the nationwide trade association issued price recommendations with the aim that bakeries would increase their prices due to the increasing costs they have to meet. According to the court, the association exceeded a policy that could be understood as a normal communication of a trade association to its members on pricing and cost issues, and particularly on the future cost developments.

12. Certain bakery companies, which were members of the association, had urged the association to act to remedy the fact that the bakery industry in Finland was unable to reach the general European level of profitability, and hence the association should express its concern on the matter. The unlawful recommendations were conveyed through editorials in the newsletter of the association in which the managing director of the association expressed his views on the need for price increases. The court also noted that, at the annual meeting of the trade association, the chairman of the association made an estimation that the pressure for price increases was 5–10 per cent.

13. According to the Supreme Administrative Court, the communication policy of the association was intentional in terms of the need to raise prices. Furthermore, the court concluded that, given the nature of the conduct, there was no need to demonstrate the effects of the conduct in markets in order to declare the conduct unlawful under the Competition Act.

14. After the conduct was found unlawful, the court assessed whether the conduct merited the imposition of a financial penalty. The court held that the conduct itself was not minor and taking into account the overall nature, duration and geographical scope of it, a penalty was to be imposed. However, there were also mitigating factors when setting the appropriate penalty fee, e.g., the number and frequency of the price recommendations were low, and the measures of the association did not directly oblige its members to implement the recommendations.⁴

³ Supreme Administrative Court of Finland (KHO:2013:8) delivered on 22 January 2013, ECLI-identifier: ECLI:FI:KHO:2013:8 (available only in Finnish).

⁴ Supreme Administrative Court of Finland (KHO 3713/2019) delivered on 20 August 2019, ECLI-identifier: ECLI:FI:KHO:2019:T3713 (available only in Finnish).

4. Finnish Bus Companies Association (2019)

15. As presented in many cases in this contribution, individual members of the association - in addition to the trade association – can also violate competition rules in the one and same unlawful arrangement.

16. In August 2019, the Supreme Administrative Court issued a judgment in a case in which information on the future market behaviour of bus companies had been exchanged in the structures and bodies of the association. The court confirmed that several bus companies had agreed on unlawful practices, which violated anti-cartel provisions of the competition rules. These arrangements were also put in place as part of the activities of the association the individual bus companies were members of. Although the court imposed a penalty payment to each of the bus companies separately, the trade association was also found to have breached the competition rules. The main unlawful conduct was related to the market-sharing agreement between the bus companies, in which the trade association played a role as well. The aim was to prevent or make it more difficult for new competitors to enter the sector when competition was about to be opened up. The unlawful strategy sought to prevent or hinder the entry of new competitors by excluding competing route license services from timetable, ticket sales and parcel services. The trade association was also found to have participated in this serious, extensive and systematic infringement of competition rules. Among others, the managing director of the association actively participated in key meetings concerning the planning, implementation and enforcement of the unlawful arrangement. The Supreme Administrative Court imposed a penalty payment of 100,000 euros on the association.⁵

5. Association of Southern Finland Driving Schools (2021)

17. This case differs from the other trade association cases in the sense that the Supreme Administrative Court ordered a regional trade association to pay a penalty of EUR 10,000. The association had organised courses for its members to improve their skills, for instance in terms of the relationship between cost accounting and profitability and economic thinking on the whole. An external consultant was the lecturer and director of the course sessions.

18. During the preparatory phase of the course, the chairman of the association expressed to the course lecturer his concern about the declining profitability of the sector and also that the undertakings of the sector were not knowledgeable about how to utilise the upcoming driving license reform as an opportunity to raise prices. In terms of the content of the course itself, the lecturer discussed the effects of price increases on margins and how a higher price charged could be justified to customers. The lecturer also presented a profitability calculation if the fees charged from customers were increased, for example from EUR 1,500 to EUR 1,800.

19. The Supreme Administrative Court found that the events during the course as a whole demonstrated a conduct which is prohibited under the Competition Act. The court held that one of the purposes of the course was to influence the pricing of the participating driving school entrepreneurs and to ensure that they would significantly raise their prices in connection with the driving license reform. In reaching this conclusion, the court drew attention to several factors: (a) the course had been based on decisions of the board of the

⁵ Supreme Administrative Court of Finland (KHO:2019:98) delivered on 20 August 2019, ECLI-identifier: ECLI:FI:KHO:2019:98 (available only in Finnish).

association, (b) the sessions were organised by the association and (c) the chairman of the board had been aware that a price increase calculation will be presented during the course, but the chairman still did not intervene in the content of the course in this regard. As a result, the Supreme Administrative Court came to the conclusion that the association had the intention to coordinate the pricing conduct of driving school entrepreneurs in the region, and that this conduct constituted a price recommendation contrary to the Competition Act.⁶

6. Finnish Association of Real Estate Management (2025)

20. This case concerned a competition law infringement in the real estate management sector, and the Supreme Administrative Court ordered the trade association of the sector to pay a penalty payment of EUR 73,000. In the sector, a new regulation was in the pipeline to come into force, under which the real estate management companies were to be assigned new tasks. Within the association, it was agreed that customers would be charged separately for the provision of these new services. Hence, the association did not follow the content of the competition rules according to which each undertaking should make all pricing decisions independently and separately from competitors.

21. The Supreme Administrative Court concluded that the trade association had issued a recommendation to raise the prices in the sector as a response to the new tasks set by the regulation. The court argued that the association had been active in preparing and in proposing prices to be increased to a profitable level from the perspective of the association.

22. During the court proceedings, the association argued that its conduct did not have any anti-competitive objectives, and its measures did not have any harmful effects on markets. The Supreme Administrative Court rejected this argument, holding that the conduct of the property management companies and the association had constituted a systematic restriction of competition by object. According to the court, the communication had aimed to influence prices across the entire property management industry, and the infringement was serious in nature and constituted a deliberate breach of the law. The court further noted that the infringement was nationwide, relatively significant in its economic scope, and related to quite substantial economic activity.⁷

⁶ Supreme Administrative Court of Finland delivered on 30 August 2021, ECLI-identifier: ECLI:FI:KHO:2021:H2893 (available only in Finnish).

⁷ Supreme Administrative Court of Finland delivered on 26 June 2025, ECLI-identifier: ECLI:FI:KHO:2025:T1486 (available only in Finnish).