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## **Working Party No. 2 on Competition and Regulation**

### **Assessing the Impact of Competition Authorities' Activities – Note by Finland**

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### 1. Introduction

1. The Finnish Competition and Consumer Authority (FCCA) is a multi-mandate authority responsible for enforcing competition law, reviewing mergers, safeguarding consumer rights, monitoring public procurement and competition neutrality, and promoting market functioning more broadly.
2. While the FCCA has not yet adopted a systematic framework for assessing the expected impact of its activities, the Authority recognizes the growing importance of evidence-based accountability and is currently exploring options to initiate a more structured and regular approach to impact assessment. This interest extends across its full range of responsibilities, including competition enforcement, merger control, consumer protection, and advocacy functions.
3. This contribution outlines FCCA's current practices, experience, and planned next steps regarding impact assessment. It also provides an overview of Finland's recent ex-post evaluations, discusses challenges faced in implementing the OECD's 2014 guidance, and identifies areas where further support or methodological development may be helpful.

### 2. Current Use of Impact Assessment at the FCCA

#### 2.1. Existing Practice and Rationale

4. To date, the FCCA has not implemented a formal or recurring quantitative impact assessment model for its decisions. There are several reasons for this, including prioritization of resources toward enforcement and casework, the absence of a ready-made internal framework, and challenges in applying generalized assumptions across the diverse types of interventions conducted by the Authority.
5. Nevertheless, the FCCA has conducted a pilot ex-ante evaluation covering the years 2013–2015. The results of this internal report estimated the direct consumer benefits from selected competition and merger control cases to average approximately EUR 35.6 million annually. While the methodology followed the principles outlined in the OECD's 2014 Guide, it was not institutionalized or published due to the limited scope and confidentiality of input data.
6. In parallel, the FCCA has conducted merger retrospectives (ex-post evaluations) to understand actual market outcomes of merger cases. These studies have helped to highlight both the potential and the limits of predictive models and reinforced the Authority's interest in building more consistent impact assessment practices.

#### 2.2. Objectives and Future Plans

7. The FCCA is currently preparing to implement impact assessment more systematically. The intended scope will not be limited to traditional competition enforcement (e.g. mergers, cartels, abuse of dominance) but will also encompass consumer protection activities, advocacy and research conducted by the Authority's impact assessment unit, and oversight of procurement and competition neutrality in the public sector.

8. The primary goals of developing a structured assessment approach are to:
- Improve accountability and transparency of the Authority's work
  - Provide quantifiable evidence to support communications with government and stakeholders
  - Enable internal learning and prioritization
  - Contribute to the broader international dialogue on best practices in competition and regulatory impact evaluation.
9. The FCCA is currently evaluating how to build internal capacity, select appropriate methodologies, and ensure that assessments are relevant and robust across a range of case types. The OECD's 2014 Guide, and the possible revision thereof, offer a valuable starting point and reference for this work.

### 3. Experience with the OECD Impact Assessment Guide

10. Although the FCCA has not yet formally implemented the 2014 OECD Guide for assessing the expected impact of competition authorities' activities, the methodology and its underlying logic are well recognized within the FCCA. The Guide has served as a reference point in past internal work, and its principles informed the FCCA's 2013–2015 pilot impact assessment report.

11. This pilot adopted the basic structure outlined in the Guide: estimating consumer benefits based on anticipated price effects, affected turnover, and duration of impact. However, it remained limited in scope, covering only a small number of merger and antitrust cases, and did not evolve into a continuous or publicly reported assessment tool. The main reasons included confidentiality of data, lack of internal resources for systematic implementation, and the absence of a dedicated process for collecting relevant metrics at the time of case handling.

12. In more recent years, interest in the Guide has increased, particularly as the FCCA prepares to broaden its evaluation practices. While the FCCA has not yet applied the Guide in a full-scale institutionalized manner, it recognizes several aspects of the methodology as particularly valuable for future planning:

- Its **modular structure**, allowing the authority to select case types and apply simplified assumptions where needed
- Its emphasis on **conservative and transparent estimation**, which supports credibility in communication
- The option to rely on **default assumptions**, which is practical in the absence of detailed case data
- The encouragement of **sensitivity analysis**, providing robustness to impact ranges.

13. At the same time, the FCCA has identified some challenges in aligning the OECD Guide fully with its national context. These include:

- Difficulty in adapting certain **default assumptions** (e.g. price effects, duration) to small or unique markets
- Limitations in applying the framework beyond traditional competition enforcement, such as in **consumer protection** or **procurement oversight**

- A need for clearer guidance on incorporating **non-price effects** (e.g. quality, innovation, deterrence)
- The challenge of establishing **routines for data collection** at the time of decision-making.

14. **An additional issue that emerged during FCCA’s pilot assessment concerns the treatment of cases that undergo judicial review.** In some cases, the final legal outcome may change significantly from the original decision proposed by the authority. For example, one cartel case that was initiated based on a leniency application showed strong price effects with clear evidence of harm. However, the Market Court dismissed the case on the grounds of procedural expiration. If an impact assessment framework only includes final, upheld decisions, such a case would be excluded from the analysis, even though the cartel had effectively ended because of the leniency application and the FCCA’s action and the deterrent effect was real.

15. FCCA therefore encourages the OECD to consider expanding the guidance to address how such cases should be treated. This could include distinguishing between:

- Procedural vs. substantive grounds for dismissal
- The timing of actual competitive impact (e.g. cartel cessation following leniency, regardless of later court decision)
- And the use of separate reporting categories for actions initiated by the CA that did not lead to final sanctions but nevertheless affected market outcomes.

16. Such additions would help ensure that impact assessments reflect real-world influence and not only formal legal outcomes, particularly in jurisdictions where judicial review timelines may extend over several years.

#### 4. Existing Experience with Ex-Post Evaluations in Finland

17. While the FCCA has not yet conducted regular ex-ante impact assessments, it has accumulated valuable experience through selected ex-post evaluations. These studies have primarily focused on merger control, offering empirical insight into the actual market effects of past enforcement decisions. They also help illustrate the potential value of institutionalized impact assessment.

##### 4.1. Merger Retrospective Study (2025)

18. In 2025, the FCCA published a retrospective study analyzing five mergers that were subject to in-depth Phase II review and approved during 2017–2018. The study employed a difference-in-differences methodology, comparing price developments in affected markets with suitable control groups. The findings were heterogeneous:

- **Two mergers in the healthcare sector** (Terveystalo/Diacor and Oral/Med Group) resulted in **statistically significant price increases**, primarily due to the harmonization of prices in the acquired clinics to match those of the acquirer
- **Two other mergers** (grocery retail and motor vehicle industry) showed **no significant price effects**
- **One merger** (in the construction sector) led to **lower post-merger prices**.

19. Across all five mergers, the unweighted average price effect was close to zero. The study also found that:

- Post-merger **entry** helped mitigate or reverse price increases
- In one case, **elimination of double marginalization** (Yamaha/Konekesko) led to a price reduction of 6–7%
- In another, **efficiency gains** from improved procurement and logistics were passed on to consumers (SOK/Herkku), with estimated pass-through rates of 60–80%.

20. The study concluded that merger control in these cases was largely effective and justified, though **price effects varied considerably** and could not always be accurately predicted ex ante.

## 4.2. Comparison with Ex-Ante Decisions

21. All five cases included in the study had undergone a Phase II review. Of these, **three were approved unconditionally** and **two with conditions** (divestments or behavioral remedies). A comparison of ex-post outcomes with the authority's original assessments reveals a mixed picture:

- In the **Terveystalo/Diacor** merger, the authority expected continued competition due to anticipated market entry by rivals. However, the entry did not materialize, and prices increased significantly. This suggests that ex-ante expectations regarding market dynamics may be vulnerable to strategic or unforeseen changes in competitor behavior.
- In the **Oral/Med Group** merger, divestments were required in specific municipalities (Imatra, Pieksämäki, Hyvinkää, and Porvoo), and no statistically significant price increases were observed in these local markets post-merger. However, in other overlap municipalities without divestments, statistically significant price increases were recorded, suggesting that the remedies were effective locally but did not prevent broader market-wide effects.
- In contrast, both the **SOK/Herkku** and **Yamaha/Konekesko** mergers delivered tangible consumer benefits through efficiency gains that had been considered during the review process. These cases demonstrate that well-founded efficiency arguments can lead to favorable outcomes.
- The **YIT/Lemminkäinen** case is particularly notable: although the authority predicted no adverse effects and did not refer to market entry as a justification, significant post-merger entry occurred, and prices decreased. This outcome exceeded expectations, underscoring the uncertainty involved in merger forecasting.

22. These findings underscore the importance of incorporating **scenario thinking, sensitivity analysis, and robust monitoring mechanisms** into ex-ante impact assessment frameworks.

## 4.3. Institutional Lessons

23. The ex-post analysis has contributed to internal learning within the FCCA and supports the development of future impact assessments in several ways:

- It demonstrated the **importance of competitive dynamics**, such as entry or buyer power, in shaping outcomes

- It highlighted the need to consider **merger-specific features**, such as pricing models, pre-merger asymmetries, and remedy effectiveness
  - It illustrated how **different market settings require tailored approaches**, even for similar types of transactions.
24. The study has also helped the Authority better understand which **indicators and data sources** would be valuable to collect proactively at the time of the decision—facilitating both ex-ante estimates and later evaluation.

#### 4.4. Reflections on Scope and Limitations

25. While informative, the merger retrospective had certain limitations:
- It covered only **half of all Phase II mergers** approved in the relevant period, due to data availability
  - It could not systematically assess **non-price effects**, such as changes in quality or innovation
  - In some sectors, data was only available for **specific segments** (e.g. road construction in the YIT/Lemminkäinen merger).
26. Nevertheless, the exercise has strengthened internal support for integrating both ex-ante and ex-post evaluation into regular policy practice and for exploring **how retrospective findings can calibrate impact assumptions** used in future assessments.

### 5. Policy Implications: Challenges and Recommendations

27. As the FCCA prepares to adopt more systematic impact assessment practices, several practical and methodological challenges have been identified. These experiences may also be relevant to the ongoing OECD discussions on updating the 2014 Guide and ensuring that methodologies remain applicable to a wide range of institutional settings.

#### 5.1. Data Collection and Evaluation

28. One of the most consistent challenges is access to reliable and detailed data—both at the time of decision-making and for later evaluation. In many cases, granular price, cost, or quantity data are not systematically collected during investigations, particularly in cartel or abuse of dominance cases. This limits the ability to generate robust ex-ante estimates without relying on high-level assumptions. In ex-post evaluations, the situation is similar: in some sectors, such as healthcare or retail, transaction-level data are available and allow for rigorous analysis, while in others—such as bidding markets or services with heterogeneous offerings—meaningful comparison groups and consistent metrics may be lacking. Future OECD guidance could therefore offer practical advice on what types of information should be systematically collected during investigations (e.g. price data, turnover, entry and exit dynamics) to enable better ex-ante estimates and ex-post evaluations. Clearer recommendations on this point would help authorities design processes that serve both immediate and retrospective purposes.

#### 5.2. Calibration of Default Assumptions

29. The 2014 OECD Guide proposes default assumptions for variables such as affected turnover, price effects, and impact duration. While these offer a pragmatic solution in the

absence of case-specific data, the FCCA has found them difficult to apply credibly in small or specialized markets, or in cases with high uncertainty. Ex-post evaluation findings in Finland reinforce this concern: the five mergers studied showed post-merger price effects ranging from +16% to –9%, highlighting substantial variation even within similar case types. This suggests that uniform assumptions may oversimplify important market differences. The FCCA therefore supports continued use of simplified assumptions but encourages OECD to provide guidance on how to calibrate or adjust these assumptions using local retrospective evidence, and to recommend the use of context-specific ranges rather than single point estimates where appropriate.

### **5.3. Capturing Non-Price Outcomes**

30. In many sectors—such as healthcare, public procurement, and digital services—key consumer welfare impacts arise through non-price dimensions like quality, innovation, service variety, or access speed. However, these effects are harder to quantify and are often underrepresented in formal impact assessments. While price effects are more straightforward to measure, a comprehensive evaluation framework should also capture broader consumer outcomes. The FCCA therefore supports expanding OECD guidance to include practical suggestions for identifying, assessing, and communicating non-price impacts. This could involve qualitative assessments, structured expert judgment, or proxy indicators such as service variety or responsiveness.

### **5.4. Accounting for Legal Uncertainty**

31. An important challenge in impact assessment is how to treat cases that are later overturned in court—particularly when the authority’s intervention has already affected market outcomes. In some cases, decisions are dismissed for procedural reasons such as statutory limitation, even though the conduct ended due to enforcement action (e.g., leniency-triggered cartel cases). If only final court-confirmed decisions are included in assessments, meaningful impacts may be overlooked. The FCCA therefore encourages the OECD to provide guidance on how to reflect such cases, for example by: – distinguishing between procedural and substantive grounds for dismissal – recognizing the timing of actual market impact – using separate reporting categories for materially effective but legally unresolved actions.

### **5.5. Broadening Impact Assessment to New Areas**

32. Many competition authorities—including the FCCA—have responsibilities that extend beyond traditional enforcement, covering areas such as consumer protection, public procurement oversight, advocacy, and market studies. These activities can play a major role in improving market outcomes, often accounting for major part of institutional effort. However, standard impact assessment approaches, focused on mergers or antitrust cases, do not easily apply to these broader functions. The FCCA encourages the OECD to expand its guidance to include methodologies or examples suited to non-enforcement contexts—such as consumer redress mechanisms, regulatory dialogue, or long-term market advocacy. Flexible formats and illustrative templates would support consistent and credible evaluation in these domains.

### **5.6. Communicating Impact Effectively**

33. Demonstrating public value is a central purpose of impact assessment. While quantifying consumer benefits—such as estimated price reductions—is useful and

intuitive, such figures must be interpreted with care. Calculated consumer surplus does not imply a net gain in national income; rather, it reflects changes in spending allocation that may improve welfare without increasing total output. The FCCA sees value in OECD offering complementary guidance on communication practices, including how to convey impact estimates credibly and avoid overstatement. This could support agencies in aligning impact narratives with broader economic and policy understanding.

## 6. Conclusion

34. The FCCA is currently in the planning phase of developing more structured approaches to impact assessment across its areas of activity. While preliminary experiences through internal assessments and merger retrospectives provide useful insights, a systematic framework has not yet been institutionalized.

35. The FCCA welcomes updated OECD guidance that would help address the practical challenges outlined in this contribution — including the collection of relevant data, the treatment of non-price effects, the handling of legal uncertainties, and the communication of results. Clearer methodological advice would be especially valuable as the Authority considers its next steps.

36. By participating in this roundtable, the FCCA aims to share its early reflections and to learn from the collective experience of the international competition community. Building credible and transparent impact assessment practices remains an important long-term goal, and external guidance plays a key role in informing this development.