Competition Law in Finland: Overview

by Lotta Pohjanpalo and Ida Keränen, Waselius

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A Q&A guide to competition law in Finland.

The Q&A provides a high-level overview of the antitrust and competition law rules for restraints of trade and dominance, merger control and the legal approach to joint ventures.

The section on restraints of trade and dominance covers the regulatory framework applicable to horizontal and vertical restraints, monopolistic behaviour and abuses of dominance; the regulatory authorities; exemptions and exclusions; penalties; third-party claims; and appeals.

The section on merger control covers the relevant rules for acquisitions; notification requirements; the timelines and rules regarding publicity and confidentiality; the substantive test; remedies, penalties; third-party claims; and appeals.

Regulatory Framework

1. What is the competition law framework?

The *Finnish Competition Act (948/2011, as amended)* (Competition Act) sets out the legal framework for:

- Restrictions concerning vertical and horizontal agreements, decisions and concerted practices (section 5, Competition Act).
- Abuse of dominant market position (section 7, Competition Act).
- Other restrictions on competition, such as practices or structures applied in the economic operations of a public entity, in which the supply of goods or services distorts or prevents competition (Chapter 4a, Competition Act).

The Competition Act also provides the national merger control regime (Chapter 4, Competition Act). The provisions of Articles 101 and 102 of the *Treaty of the Functioning of the European Union* (TFEU) apply when a competition restriction may affect trade between the EU member states.

Additionally, the *Act on Competition Damages (1077/2016)* applies to damages resulting from an infringement of Articles 101 or 102 of the TFEU or sections 5 or 7 of the Competition Act.

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Breaches of the Competition Act are not subject to criminal sanctions, although supplying false information to an authority is an offence under the *Finnish Criminal Code (39/1889, as amended)*.

Regulatory Authority

2. Which authority or authorities regulate competition?

The *Finnish Competition and Consumer Authority* (FCCA) and the *Market Court* are the main authorities responsible for investigating competition restrictions as well as merger review under the Competition Act.

The FCCA is the competent authority responsible for investigating competition restrictions and their effects on its own initiative and on the basis of notifications and complaints from the public. The FCCA can use investigative powers, issue interlocutory injunctions and obligations, prohibit the application of a competition restriction as well as examine, approve, or conditionally approve notifications on concentrations, and make proposals to the Market Court as to the banning of a notified concentration. Further, the FCCA can make proposals to the Market Court as to the imposing of structural remedies for competition restrictions as well as competition infringement fines for the violation of certain procedural rules.

The Market Court acts as an appeal instance regarding certain decisions of the FCCA and makes decisions on proposal of the FCCA concerning prohibited competition restrictions, competition infringement fines and notified concentrations. As a rule, the decisions of the Market Court under the Competition Act can be appealed to the Supreme Administrative Court (SAC) without leave to appeal.

Restrictive Agreements and Practices

3. What is the basic legal framework governing restrictive agreements and practices?

The Competition Act contains provisions on agreements and practices that restrict competition. All agreements between undertakings, decisions by associations of undertakings, and concerted practices by undertakings, which have as their object or effect the significant prevention, restriction, or distortion of competition, are prohibited (section 5, Competition Act).

In particular, the Competition Act prohibits agreements, decisions and practices that:

- Directly or indirectly fix purchase or sale prices, or any other trading conditions.
- Limit or control production, markets, technical development, investment, share markets, or sources of supply.

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- Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.
- Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of such contracts.

This list is not exhaustive and other competition restrictions may be prohibited under section 5 of the Competition Act. The prohibition applies to both horizontal and vertical competition restrictions. The above prohibitions are subject to certain exemptions (see *Question 7*) and exclusions (see *Question 9*). Moreover, the Competition Act includes specific provisions regarding dominance in the Finnish daily consumer goods market (see *Question 5*).

The Competition Act includes provisions aiming at securing neutral competitive conditions between public and private sector undertakings. According to these provisions, the FCCA will, primarily through negotiations, seek to eliminate a business practice or organisational structure if it is applied in the economic operations of a municipality, association of municipalities, state, or entity under their control, which in the supply of goods or services either:

- Distorts or is likely to distort the conditions of sound and effective competition.
- Prevents or is likely to prevent the creation or development of sound and effective economic competition.
- Contradicts the requirement of market-based pricing as stipulated by section 128 of the *Local Government Act (410/2015)* or section 133 of the *Act on Wellbeing Services Counties (611/2021)*.

The FCCA can also prohibit the municipality, association of municipalities, the wellbeing services county, association of wellbeing services counties, or the state from using the business practice or organisational structure, or impose conditions on the continuance of the practice or operations that ensure neutral competitive conditions on the market. If the performance of an obligation is prescribed by law, operations cannot be ordered to be ceased completely.

Breaches of the Competition Act are not subject to criminal sanctions, although supplying false information to an authority may be (see *Question 10*).

Monopolies and Abuses of Dominance

4. Are there specific rules that apply to monopolistic or dominant companies?

Section 7 of the Competition Act corresponds to Article 102 of the TFEU and provides that abuse by one or more undertakings (or by an association of undertakings) of a dominant position is prohibited.

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5. How is dominance/monopoly power determined?

A dominant market position is deemed to be held by one or more undertaking(s) (or an association of undertakings) that hold an exclusive right or similar dominant position in a specified product market within the entire country, or given region, so as to:

- Significantly control a product's price level or the terms of its delivery.
- In some other corresponding manner influence the competitive conditions on a given level of production or distribution.

An undertaking or an association of undertakings with a minimum of 30% market share in the Finnish daily consumer goods retail trade will be deemed to occupy a dominant position in the Finnish daily consumer goods market. This includes both the retail and procurement markets.

6. Are there any recognised categories of behavior that may constitute abusive conduct?

An abuse can consist of:

- Imposing, directly or indirectly, unfair purchase or sale prices or other unfair trading conditions.
- Limiting production, markets, or technical development to the prejudice of consumers.
- Applying dissimilar conditions to equivalent transactions with other trading partners, thereby placing them at a competitive disadvantage.
- Making the conclusion of contracts subject to the other parties accepting obligations that, by their nature or according to commercial usage, have no connection with the subject of those contracts.

This list is not exhaustive, and other restrictive practices can qualify as an abuse of a dominant market position.

Exemptions and Exclusions

7. Are there any exemptions from the competition laws? If so, what are the criteria for individual exemption or block exemptions?

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Under the Competition Act, individual exemptions are available for agreements, decisions, or concerted practices that:

- Contribute to improving the production or distribution of goods, or to promoting technical or economic progress.
- Allow consumers a fair share of the resulting benefit.
- Do not impose on the undertakings concerned any restrictions that are not indispensable to attaining these objectives.
- Do not allow the undertakings concerned the possibility of eliminating competition in relation to a substantial part of the market of the products in question (section 6, Competition Act).

All of these requirements must be met for the exemption to apply. The FCCA does not issue formal individual exemptions, and has not issued any block exemptions.

In relation to horizontal and vertical agreements, the FCCA uses the block exemptions and guidelines issued by the European Commission as a source of interpretation.

The FCCA's powers to eliminate the harmful business practice or organisational structure of a municipality, association of municipalities, wellbeing services county, association of wellbeing services counties, state, or entity under their control will not apply if either of the following apply:

- The practice or structure immediately follows from legislation.
- Its application would prevent the performance of a major obligation related to citizens' welfare, security, or other such common interest.

(Chapter 4a, Competition Act.)

8. Is it possible to obtain guidance from the authority as to whether an agreement or practice is likely to restrict competition?

It is possible to receive informal guidance from the FCCA on a non-binding basis.

9. Is any conduct excluded from the scope of the competition laws?

Exclusions

Some specific fields of activity remain outside the scope of the Competition Act, including:

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- Agreements or arrangements relating to the labour market.
- Certain agreements, decisions and practices concerning the primary production of agricultural goods.

In addition, for section 5 of the Competition Act to apply, the relevant competition restriction must significantly prevent, restrict, or distort competition (see *Question 3*). The FCCA follows the European Commission's Notice on agreements of minor importance (De Minimis Notice) (OJ 2014 C291/01). Accordingly, the following are not generally considered to be significant:

- Agreements between actual or potential competitors that have a combined market share that does not exceed 10% on any affected relevant market.
- Agreements between undertakings that operate on different levels of production or distribution where no undertaking's market share on any affected relevant market exceeds 15%.

However, hard-core restrictions aimed at restricting competition ("by object" restrictions) are prohibited regardless of the size of a party's market share, for example:

- Price-fixing.
- Market-sharing.
- Resale price maintenance.
- Absolute territorial protection.

There are no express exemptions under the Competition Act from the prohibition of abuse of a dominant market position. In individual cases, various objective justifications can be invoked. Whether or not this is successful depends entirely on the circumstances of the case; an example of a justification would be a dominant company's refusal to supply on the basis of the customer's insolvency.

Statutes of Limitation

Competition infringement fines cannot be imposed if the FCCA has not made a proposal on fines to the Market Court within the later of five years from the occurrence or termination of the competition infringement. Any investigative measure taken by the FCCA results in a new five-year limitation period starting to run. However, competition infringement fines cannot be imposed on an undertaking if the FCCA has not made any proposal in relation to this to the Market Court within ten years from the occurrence or termination of the competition infringement.

Penalties

10. What penalties or sanctions are available for breaching the competition laws?

Orders

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The FCCA can make orders (obligations, injunctions, and prohibitions) including that:

- The infringing party terminate the conduct that breaches the Competition Act.
- A party deliver a product to another undertaking under certain conditions.
- Certain commitments are binding on the parties.
- Undertakings submit certain documents and information.

The FCCA may also propose to the Market Court that structural remedies be imposed on the infringing party in order to end a competition restriction. Such structural remedies include, for example, the obligation for an undertaking to divest a business unit or a stake in a competitor's share capital.

The FCCA can attach conditional fines to these orders, which the Market Court can make final (see below, *Fines and Monetary Remedies*).

The Market Court can also authorise inspections, if the FCCA needs to carry out an inspection in other than business premises.

Fines and Monetary Remedies

The Market Court can impose administrative competition infringement fines of up to 10% of the undertaking's total annual global turnover from the preceding year of the FCCA's proposal to the Market Court or the Market Court's decision. The Competition Act includes specific provisions on the calculation of the infringement fine. In fixing the amount of the fine, the aggravating and mitigating circumstances set out in the Competition Act are taken into account. Such aggravating factors include, for example, continuance or recurrence of the infringement and pressuring other undertakings to take part in the infringement. The mitigating factors include, for example, ending the infringement immediately when the FCCA has intervened in the matter (not applicable to cartels) and the infringing party having an insignificant part in the infringement. Also, in specific cases, the solvency of the infringing party may be taken into account.

Where the infringement relates to the activities of the members of the industry association, the FCCA will take into account the combined turnover of the industry association and the members of the association that operate in the markets affected by the association's infringement. If the industry association is unable to pay the fine, the association must primarily collect contributions to cover the fine from its members. After a prescribed period of time, the FCCA may propose to the Market Court the collection of the fine directly from any of the undertakings who were members of the decision-making bodies of the association at the time of making the decision of the competition infringement. Subsequently, after a prescribed period of time, the FCCA may propose to the Market Court that any unpaid part of the fine be collected from any of the members of the association, which were active on the market on which the infringement occurred.

The FCCA may also impose infringement fines for violations of certain procedural rules of the Competition Act, such as refusing to grant access to the undertaking's premises in connection with a dawn raid or submitting false, inadequate or misleading information to the FCCA, upon its request, to investigate a restraint on competition. The fine may not exceed 1% of an undertaking's total annual global turnover.

Based on an enforceable decision, the Legal Register Centre will send a demand for payment to any undertaking that has not paid the competition infringement fine. If the fine is not paid by the date given in the demand for payment, the Legal Register Centre will refer the case to enforced collection.

Personal Liability

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Personal liability cannot attach to individual directors or managers based on the Competition Act. Individuals who submit false evidence to an authority can, however, incur criminal liability under the Finnish Criminal Code (39/1889, as amended).

Immunity/Leniency

In cartel cases, a leniency applicant can obtain full immunity or a reduction of fines if the applicant meets the requirements for full immunity or reduction of fines. In other cases, the FCCA can propose to the Market Court that reduced fines be imposed on a leniency applicant, or decide not to propose any fine for the leniency applicant, if the applicant has significantly assisted the FCCA in the investigation of a competition restriction.

Impact on Agreements

Any condition of an agreement that breaches the Competition Act or an order of the FCCA or the Market Court must not be applied or implemented. However, the entire agreement itself is not declared void, provided that the prohibited restriction is capable of being severed from the agreement without:

- Rendering the agreement as a whole unenforceable.
- Significantly changing the meaning of the agreement.
- Significantly altering the balance of the respective parties' rights under the agreement.

Third Party Damages Claims

11. Can third parties claim damages for losses suffered as a result of a prohibited restrictive agreement or abuse of dominance? Are collective/class actions possible?

Follow-on/Standalone Actions

Third parties who have suffered damage from an undertaking's intentional or negligent breach of the Competition Act or Article 101 or Article 102 of the TFEU can claim damages from that undertaking. Damages should generally provide compensation for the following:

- Expenses.
- Price difference.
- Lost profits.
- Other direct or indirect economic damage resulting from the competition restriction.

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A claim for damages must be brought within five years from the date on which the party that suffered damage became aware, or should have become aware, of the infringement, of the damage and of the undertaking liable for the damage. Measures taken by the FCCA to investigate the infringement interrupt the limitation period until one year has passed from the final decision in the matter. However, the right to compensation is not deemed expired if the action for damages is initiated within ten years from the occurrence or termination of the competition infringement or, within one year from the final decision in the matter. Both stand-alone and follow-on actions can be brought in Finland.

Procedures or Rules

If not subject to arbitration, claims for damages are brought, in the first instance, in the ordinary district courts in respect of both follow-on and stand-alone actions. For details of the applicable limitation periods for bringing an action, see above, *Third Party Damages Claims*.

The FCCA's, Market Court's, and SAC's infringement decisions that have gained legal force constitute the basis for the decision on damages and must be taken into account on the court's own initiative.

Decisions on competition law infringements in other EU member states must be taken into account as part of the evidence in the matter.

Class/Collective Actions

Class actions are only possible in matters falling within the competence of the Consumer Ombudsman. To date, no class actions have been brought in Finland.

Appeals

12. Is there a right of appeal against any decision of the authority? Are rights of appeal available to third parties, or only to the parties to the agreement or practice?

Rights of Appeal and Procedure

FCCA decisions can be appealed to the Market Court and the Market Court's decisions can be appealed to the SAC. The appeal must be filed within 30 days from receiving the decision.

The following decisions of the FCCA are not subject to separate rights of appeal, but can be appealed by a party who has the right to appeal the FCCA's decision in the main issue:

- The decision to conduct inspections in business premises.
- The decision whether an undertaking qualifies for immunity or a reduction of fines in cartel cases.
- The following decisions of the Market Court cannot be appealed to the SAC:

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- The decision to authorise inspections.
- The decision regarding FCCA's imposition of temporary obligations.

Third Party Rights of Appeal

The FCCA's and Market Court's decisions can be appealed by the subject of the decision and by other persons whose rights, obligations or interests are directly affected by the decision.

Merger Control

13. What merger control rules apply to mergers and acquisitions in your jurisdiction?

Mergers and acquisitions are subject to merger control under the provisions set out in Chapter 4 of the Competition Act.

A merger that is defined as a concentration and exceeds the relevant turnover thresholds must be notified to the FCCA. The FCCA provides a first instance review of the concentration. It can clear the concentration (either unconditionally or conditionally) or ask the Market Court to prohibit it.

14. What are the relevant jurisdictional triggering events?

The provisions of Chapter 4 of the Competition Act apply to all concentrations that meet the turnover criteria. A concentration is defined as:

- The acquisition of control of an undertaking (on a *de jure* or de facto basis (see below)).
- The acquisition of the whole or part of the business operations of an undertaking.
- A merger.
- The setting up of a full-function joint venture.

The concept of a "concentration" under the Competition Act is largely in line with the definition of a concentration under the European Commission's Consolidated Jurisdictional Notice under the EU merger control regime (which can accordingly be used for guidance).

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"Control" means the possibility of exercising decisive influence over the actions and competitive behaviour of another undertaking. Control is not tied to any specific legal form. Therefore, a concentration can involve the acquisition of control as defined in the *Finnish Accounting Act (1336/1997, as amended)* or corresponding actual control.

In the Accounting Act, an undertaking is considered to have control over another undertaking in any of the following cases:

- Where the undertaking has a majority of voting rights conferred by all shares of the undertaking and the majority is based on ownership, membership, the undertaking's articles of association, partnership agreement, or under any other similar rules or agreements.
- Where the undertaking has the right to appoint or remove the majority of the members of the board of directors (board) or other governing body, or a majority of the individuals who appoint the members of the governing body.
- Where the undertaking has actual control over the undertaking in some other way.

Control can also be acquired on a de facto basis by other means to those set out in the Accounting Act (for example, even a relatively small shareholding may qualify as control if an undertaking has numerous shareholders or if shareholders regularly fail to attend annual meetings).

The acquisition of the business operations of an undertaking refers to the acquisition of control over business assets in a manner that causes a structural change on the market (for example, the acquisition of a production facility without customer base, know-how, or personnel is usually not considered as a concentration). However, if the acquisition of these assets allows the acquirer to run the business, and if turnover can be attributed to the assets, such acquisition would usually qualify as a concentration. Where the transfer of assets includes personnel, the acquisition is, as a rule, considered a concentration.

The provisions on the control of concentrations do not, however, apply to intra-group arrangements.

The Competition Act includes limitation period provisions in respect of mergers (see *Question 16*).

For details of the latest jurisdictional thresholds, see *Merger Control Quick Compare Chart: Finland*.

To compare jurisdictions, see the *Merger Control Quick Compare Chart*.

Notification

15. What are the notification requirements for mergers? Are they mandatory or voluntary?

The following parties have an obligation to notify:

- The acquirer of control.
- The acquirer of the whole or part of a business operation.

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- The merging parties.
- The founders of a full-function joint venture.

When several parties are obliged to notify, they can do either of the following:

- Submit a joint notification.
- Authorise one party to submit the notification.

However, all parties that must notify are responsible for the notification's accuracy and timely delivery.

The notification must be submitted to the FCCA. The notification must be submitted, in writing, in Finnish or in Swedish. The FCCA generally accepts appendices to the notification that are in English.

The notification must comply with the requirements of the Decree by the State Council on the Obligation to Notify a Concentration (1012/2011, as amended in 2022) and include information on (among other matters):

- The parties to the transaction.
- The transaction and its impact on competition.
- Affected markets.
- Important customers.
- Suppliers and competitors.

The FCCA can grant waivers over the extent of information to be submitted in the notification if:

- The effects of the concentration on competition are clearly minor.
- The requested information is unnecessary to assess the concentration.

It is advisable for the notifying party to submit a draft notification or other written description of the concentration in connection with the preliminary discussions with the FCCA.

It is mandatory to notify concentrations that meet the turnover criteria of the Competition Act (see *Question 14*), except for those that fall within the exclusive jurisdiction of *Regulation (EC) 139/2004 on the control of concentrations between undertakings*.

Procedure and Timetable

16. What are the procedures and timetable?

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Pre-Notification Process

Prior to the FCCA's official investigation, it is advisable to contact the FCCA as soon as possible to start the pre-notification discussions. Pre-notification negotiations are, as a rule, based on the draft notification. The duration of the pre-notification process varies depending on the circumstances of each case.

Phase I

When the notification on concentration is filed with the FCCA, it must immediately examine the notification received. During an initial investigation period of 23 working days (Phase I), which starts to run from the submission of a complete notification (a substantially incomplete notification does not trigger the investigation period), the FCCA may:

- Decide that the concentration does not fall within the scope of the Competition Act.
- Clear the concentration unconditionally or conditionally.
- Decide that further proceedings are required.

The FCCA is authorised to stop the time running at any stage of the investigation as set out below, which extends the relevant investigation period accordingly.

If the FCCA does not decide to start further proceedings within the above time limit, it is deemed to have approved the concentration. Usually, the FCCA issues a written decision before the end of Phase I.

Phase II

If the FCCA decides to start further proceedings it must, within 69 working days (Phase II), either:

- Clear the concentration unconditionally or conditionally.
- Ask the Market Court to prohibit the concentration (which the FCCA cannot do).

If the FCCA makes no decision it is deemed to have approved the concentration. The Market Court can extend the period of 69 working days with a maximum of 46 working days. Furthermore, where information requested by the FCCA has not been submitted in time or the information provided is inadequate, the FCCA may decide to extend the above processing time limits with any amount of days corresponding to the delay in submitting the adequate information.

If the FCCA asks the Market Court to prohibit the concentration, the Market Court must issue its decision within 69 working days of the FCCA's request. The Market Court can decide to:

- Approve the concentration conditionally or unconditionally.
- Prohibit the concentration or order the concentration to be dissolved.
- Refer the concentration back to the FCCA.

The FCCA's prohibition to implement a concentration expires, unless the Market Court orders otherwise within 23 working days from the FCCA's proposal. If the Market Court makes no decision, it is deemed to have approved the concentration.

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For an overview of the notification process, see *Finland Merger Notifications Flowchart.*

Publicity and Confidentiality

17. How much information is made publicly available concerning merger inquiries? Is any information made automatically confidential and is confidentiality available on request?

Publicity

The general principle under Finnish administrative law is publicity. Therefore, unless there are statutory grounds for keeping the information confidential, the information is publicly available. The FCCA decides whether to release information to third parties or keep it confidential in accordance with the *Act on the Openness of Government Activities (621/1999, as amended)*. The rules in the *Act on the Publicity of Administrative Court Proceedings (381/2007, as amended)* determine how much of the procedure in the Market Court is publicly available. The parties involved have more extensive rights to access information than third parties: as a rule, they have access to all documents that may influence the determination of the matter concerned, except for business secrets.

Pre-notification negotiations with the FCCA are generally conducted on a confidential basis. Once the notification is made, information on the parties to the concentration and the notification date is published on the FCCA's website. The FCCA also undertakes market testing and gives the parties' main competitors, suppliers, and customers an opportunity to comment on the concentration. As of June 2023, the FCCA began publishing an open request for statements of each notified merger on its website for the purposes of hearing the market participants. The FCCA can also contact market participants directly. In addition, interested parties often request a public version of the notification submitted to the FCCA.

The FCCA's final decision is published on its website, except for business secrets or other confidential information that it excludes from the public version. Public versions of the Market Court's decisions are generally published on the Market Court's website and in a publicly available database (*www.finlex.fi*).

Automatic Confidentiality

The FCCA and the Market Court keep a document confidential if there are statutory grounds for doing so (for example, it falls within a category of business secrets).

Confidentiality on Request

Throughout the procedure, the parties can, and in practice almost invariably do, request that the FCCA or the Market Court keep certain information confidential. Usually, the FCCA and the Market Court agree to keep business secrets or other competitively sensitive information confidential.

Substantive Test

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18. What is the substantive test?

The relevant test is the significant impediment of effective competition (SIEC) test. This means that a concentration may be prohibited if it significantly impedes effective competition in the Finnish market, or a substantial part of the Finnish market, particularly as a result of the creation or strengthening of a dominant market position.

An in-depth Phase II investigation will be initiated if the initial Phase I investigation indicates that a concentration may have anti-competitive effects. The opening of in-depth Phase II investigation does not imply that a concentration will be prohibited under the SIEC test, but most concentrations are cleared conditionally as a result of Phase II investigations.

Merger Remedies

19. What are the types of remedies that can be required as conditions of merger clearance?

The FCCA and the Market Court can impose both behavioural and structural remedies, although structural remedies are generally preferred. To be accepted, the proposed remedies must be capable of removing the identified competition concerns.

The parties can offer, and the FCCA can accept, remedies both during the initial investigation period of 23 working days (Phase I) and the further investigation period of 69 working days (Phase II). There are no statutory deadlines for proposing remedies, but the parties should propose them early enough to enable the FCCA to consider the proposed remedies in its determination of the matter. In cases that lead to competition concerns, it is generally advisable to start negotiating remedies with the FCCA as early as possible. The parties can start discussing remedies with the FCCA in pre-notification negotiations. The FCCA can only impose remedies that are accepted by the notifying parties. Compliance with the remedies is usually monitored by an independent expert appointed by the notifying party or parties and approved by the FCCA, to which the expert reports.

The Market Court can impose also conditions that have not been proposed by the notifying parties.

Penalties

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20. What are the penalties for failing to comply with the merger control rules?

Failure to Notify Correctly

An undertaking that fails to comply with the obligation to notify can receive an administrative fine of up to 10% of its total annual global turnover. The Market Court imposes this fine on the proposal of the FCCA. A fine is not imposed in either of the following circumstances:

- The failure is considered to be minor.
- A fine is otherwise unjustified to safeguard competition. This can be the case if the notification obligation is subject to interpretation (for example, if it is unclear whether the transaction qualifies as a concentration under the Competition Act).

If the parties submit incorrect or misleading information that has had a material effect on the decision, the Market Court may, on the proposal of the FCCA:

- Prohibit the concentration.
- Order the concentration to be dissolved.
- Impose conditions.

The FCCA must submit its proposal to the parties within one year from the date when the decision became final or when the concentration was implemented.

Implementation Before Approval or After Prohibition (Gun-Jumping)

An undertaking that implements a concentration in breach of the Competition Act can receive an administrative fine of up to 10% of its total annual global turnover. The Market Court imposes this fine on the proposal of the FCCA. A fine is not imposed if the failure is minor or it is otherwise unjustified (see above, *Failure to Notify Correctly*).

The Market Court can also, based on the FCCA's proposal, do either of the following:

- Order the dissolution of a concentration that has been implemented in breach of the Competition Act.
- Attach conditions to its implementation.

Failure to Observe

The FCCA's decisions can be made subject to a conditional administrative fine. The size of the fine is determined on the basis of:

- The extent and nature of the obligation concerned.
- The financial standing of the party concerned.

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- Other relevant factors.

(Act on Conditional Fines (1113/1990, as amended.))

If the party that receives the decision fails to comply with it, the Market Court can impose the fine. Failure to observe conditions attached to a clearance decision may also lead to the Market Court ordering the dissolution of the concentration.

The fines imposed on undertakings are administrative in nature. Criminal fines can be imposed under the Criminal Code on individuals who submit false evidence to an authority.

Appeals

21.Is there a right of appeal against the regulator's decision and what is the applicable procedure? Are rights of appeal available to third parties or only the parties to the decision?

Rights of Appeal

As a rule, most decisions by the FCCA under the Competition Act can be appealed to the Market Court within 30 days from receiving the decision. However, the following FCCA decisions are not subject to appeal:

- The decision to start further investigations (Phase II investigation) of a concentration.
- The decision of ordering conditions proposed by the notifying parties.
- Decisions on extending processing time limits are not subject to separate appeal but may be appealed by a party who has the right to appeal the FCCA's decisions in the main issue (that is, the actual merger control decisions).

The FCCA's decisions can (subject to some exceptions) be appealed to the Market Court by both:

- The party that the decision addresses.
- Other persons whose rights, obligations, or interests are directly affected by the decision.

Procedure

The decisions of the FCCA or the Market Court must be appealed to the Market Court or to the SAC within 30 days of receiving the decision. Appeal processing times vary significantly from case to case.

Third Party Rights of Appeal

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According to the decisions of the Market Court and the SAC, the FCCA's clearance decisions do not usually directly affect third parties' rights, obligations or interests. Therefore, third parties are not usually found eligible to appeal the FCCA's decisions in merger control cases.

22. Has the regulatory authority issued guidelines or policy on its approach in analysing mergers in a specific industry?

The FCCA has issued a collection of general guidelines regarding the notification and investigation of mergers but no guidelines targeted at specific industries. The decisional practice of the FCCA and the competent courts can be used as guidance in this respect.

Joint Ventures

23. How are joint ventures analysed under competition law?

The creation of a joint venture that takes permanent control over all of the functions of an autonomous economic entity constitutes a concentration within the meaning of the Competition Act. A joint venture is subject to the merger control provisions if both:

- It is intended to operate on a lasting or permanent basis.
- It has sufficient resources to operate independently of its founding members.

Joint ventures that do not have control over all of the functions of an autonomous economic entity are not notifiable, and the potential restraints on competition related to such arrangements are assessed under sections 5 to 7 of the Competition Act. However, the merger control provisions may apply to these joint ventures when they acquire business assets from third parties. Moreover, the dissolution of these joint ventures can create an obligation to notify.

Contributor Profiles

Lotta Pohjanpalo

Waselius

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Phone: +358 9 6689 5253 / +358 9 6689 520
lotta.pohjanpalo@waselius.fi
www.waselius.fi

Professional qualifications. Finland, Solicitor, 2000

Areas of practice. EU and competition law.

Non-professional qualifications. LLM Eur, King's College, University of London, 2005

Recent transactions

- Numerous domestic, multi-jurisdictional and EU merger control analyses and filings predominantly in cross-border transactions.
- Regularly acts as counsel in proceedings before the FCCA, the Market Court and the SAC.
- Acts as competition counsel for a number of multinational undertakings predominantly in the consumer products, energy, financial, life science and technology sectors.

Ida Keränen

Waselius
Phone: +358 9 6689 5255 / +358 9 6689 520
ida.keranen@waselius.fi
www.waselius.fi

Professional qualifications. University of Turku, LLM, 2019; trained on the Bench, 2023

Areas of practice. EU and competition law; dispute resolution.

Recent transactions.

- Assisting in domestic, multi-jurisdictional and EU merger control analyses and filings predominantly in cross-border transactions.
- Acting as counsel in proceedings before the FCCA and the Market Court as well as in arbitration and general courts.

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RESOURCE HISTORY

Law stated date updated following periodic maintenance.

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This document has been reviewed by the author as part of periodic maintenance to ensure it reflects the current law and market practice on 1 February 2025.

Competition Global Guide (Merged).
Consolidated Q&A comprising information taken from the old Merger Control and Restraints of Trade and Dominance Q&As. Initially published in the Autumn/Fall of 2023. The Q&A has been reviewed by the author ensure it reflects the current law and market practice on 1 September 2023

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