THE PUBLIC COMPETITION ENFORCEMENT REVIEW

Twelfth Edition

Editor
Aidan Synnott

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Aidan Synnott

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CONTENTS

PREFACE

In the reports from around the world collected in this volume, we continue to see international overlap among the issues and industries attracting government enforcement attention. This year, we read with particular interest the discussions of activity in many jurisdictions regarding digital platform competition issues.

We also continue to see the evolution and refinement of general approaches to competition law enforcement in several jurisdictions. For example, The International Competition Network, which is a group of national and multinational competition authorities, adopted a Framework on Competition Agency Procedures, and 62 agencies have signed on. Mexico adopted 'regulations related to client–attorney privilege protection in the context of antitrust investigations'. Japan has also introduced an 'attorney–client privilege [which] will apply to administrative investigation procedures against' cartels, and the discussion in that chapter of how this privilege will be applied will be of interest to many. The chapter from Belgium discusses that country's newly modified competition law, and in this edition we welcome to the *Review* a new chapter from Nigeria, which provides an informative overview of that country's new competition law. Before this law was enacted, our authors write, 'Nigeria had no comprehensive competition legislation that dealt with antitrust, abuse of dominant position and merger control issues'.

In the past year, antitrust compliance featured prominently on several enforcers' agendas. In 2019, the US Department of Justice (DOJ) notably focused on encouraging compliance efforts: the agency announced a new policy allowing, under certain conditions, companies to receive credit for antitrust compliance programmes when the DOJ considers criminal charges. Elsewhere, the Taiwan Fair Trade Commission has made efforts in the past year to assist Taiwanese business organisations in their antitrust compliance efforts. Poland implemented an online whistle-blower platform and Brazilian authorities issued a whistle-blower protection ordinance.

The policing of cartels remains a focus of competition agencies around the globe. The chapter from Greece notes an increase in cartel enforcement activity in 2019. Authorities there conducted their largest dawn raid yet, and they have also updated the manner in which they prioritise particular cases. The authors of that chapter note that 'it appears that the [Hellenic Competition Commission] has taken a turn toward more pre-emptive action against cartels, by emphasising dawn raids and *ex officio* investigations and by acting swiftly on complaints and news publications about price increases in specific sectors'. Portuguese authorities are reported to have imposed their largest fines to date. The contribution from Japan notes an aggregate level of penalties that is higher than in recent years, which, the authors note, is partly attributable 'to the record-breaking surcharge imposed in the asphalt cartel case' there.

That country is implementing a revised leniency programme. Meanwhile, the chapter from Mexico notes a decline in the number of leniency applications there.

As noted above, online platforms – and the 'digital economy' more generally – continue to be the subject of regulatory scrutiny, including in Brazil, France, India, Japan, Mexico, Poland and the United States. For example, both United States competition enforcement agencies are investigating large platforms, and the UK Competition and Markets Authority (CMA) has launched a market study of online platforms and digital advertising. Taiwan has also begun to prioritise this area. In addition to platform issues, there have been several other notable developments in the areas of restrictive agreements and dominance. Authorities in Canada concluded an inquiry into several pharmaceutical companies without taking action but 'confirmed that healthcare remains a top enforcement priority'. The United States authorities remained active in this area. In addition, Belgian authorities conducted a dawn raid in the pharmaceutical sector. Several jurisdictions took enforcement actions against resale price maintenance (RPM) practices: the UK's action involved guitars; an action in Poland involved online sales of printers and was the result of a whistle-blower complaint; and Japanese authorities took action against manufacturers of various baby products. China concluded four RPM matters.

Merger review and enforcement activity remains robust. The chapters that follow note activity in many sectors. The chapter from Argentina discusses the Antitrust Commission's new merger control guidelines and the chapters from France and India report on streamlined merger control procedures there.

Once again this year, the chapter from the United Kingdom is particularly informative. In addition to describing a busy year of merger and conduct enforcement activity for the CMA, the chapter discusses the effect of Brexit on the competition enforcement regime there, including the transition period and how competition law may factor into the negotiation of a trade agreement between the UK and the EU. Our contributors discuss the future of the CMA and potential consequences of various possible future scenarios. We will continue to watch with interest to see how competition enforcement in the United Kingdom evolves in the year to come.

Aidan Synnott
Paul, Weiss, Rifkind, Wharton & Garrison LLP
New York
March 2020

Chapter 8

FINLAND

Mikko Huimala, Helena Lamminen and Meri Vanhanen[1]

I OVERVIEW

i Prioritisation and resource allocation of enforcement authorities

In competition matters, the primary public enforcement authority in Finland is the Finnish Competition and Consumer Authority (FCCA). The FCCA cannot impose administrative fines, but must make a fine proposal to the Market Court. The judgments of the Market Court can be appealed to the Supreme Administrative Court (SAC).

Finnish competition enforcement underwent some changes in the past year. The Competition Act[2] entered into force on 1 November 2011, replacing the former Act on Competition Restrictions.[3] A new amendment process began in 2015, and in May 2018, a Government Bill on amendments to the Competition Act[4] was presented to Parliament. Parliament passed the Government Bill, and the amendments to the Competition Act entered into force on 17 June 2019.[5] The key amendments concerned the calculation of deadlines in merger control, inspections carried out by the FCCA, FCCA's right to obtain information and the exchange of information between authorities. In addition to the above, the competition neutrality provisions of the Competition Act are supplemented with an accounting separation obligation concerning municipalities, joint municipal authorities, the state and any entities under their control that engage in economic activities in a competitive situation. The accounting separation obligation entered into force on 1 January 2020.

ii Enforcement agenda

The FCCA's new Director General Kirsi Leivo began her term in September 2018. The new Director General has publicly emphasised the importance of fighting cartels and the need for more severe sanctions.

The FCCA has announced that its objectives for the years 2017–2020 include continuing to focus on the detection of hardcore cartels. The FCCA will also emphasise effective merger control with the intention of preventing the emergence of harmful concentrations in advance. Furthermore, the FCCA will continue to implement its supervisory powers concerning public sector entities with regard to competitive neutrality issues. In addition, the FCCA

1 Mikko Huimala is a partner, Helena Lamminen a senior associate and Meri Vanhanen an associate at Hannes Snellman Attorneys Ltd. The original article was written by Tapani Manninen, a former senior advisor at Hannes Snellman.

2 948/2011.

3 480/1992 (annulled).

4 Government Bill 68/2018.

5 721/2019.

announced its aim to ensure an efficient start to the new task of supervising the legality of public procurement, which was assigned to it as of the beginning of 2017.[6] Consequently, the FCCA opened an investigation in 86 public procurement matters in 2017 and in 101 matters in 2018. Statistics for 2019 have not been published as at the time of writing.

II CARTELS

Finland has had a leniency programme in place since 1 May 2004. The programme was updated in the Competition Act, which entered into force in November 2011, and is now laid out in Sections 14 to 17 of the Competition Act. The leniency programme is very similar to the European Competition Network model leniency programme. In 2016, the revised leniency guidelines issued in 2011[7] were replaced with new guidelines[8] that take account of the new Antitrust Damages Act.

The FCCA received its first leniency case only minutes after the entry into force of the programme in 2004.[9] However, after a spectacular start, there have been only a few leniency applications, which has clearly been a disappointment to the FCCA.[10] The relatively small number of leniency cases is reflected in the number of the FCCA's penalty payment proposals to the Market Court in cartel cases. In 2014, 2015, 2016, 2018 and 2019 the FCCA only brought one cartel case before the Market Court each year, while in 2013 and 2017 no cases were brought before the Market Court by the FCCA.

i Significant cases

FCCA's penalty payment proposal to driving schools

On 21 November 2019, the FCCA submitted a proposal to the Market Court to impose a fine of around €300,000 in total on Uusimaa Driving School Association (the Association) and eight driving schools. According to FCCA, the Association and six driving schools on the Association's board encouraged driving schools to raise their prices. The alleged infringement began in April 2014 and continued until October 2015. In addition, three driving schools allegedly infringed competition rules by agreeing on price increases from the beginning of 2013 to the autumn of 2014. The case is currently pending before the Market Court.

SAC increased the peqnalty payments in the Coach Company cartel

On 25 January 2016, the FCCA submitted a proposal to the Market Court to impose a fine of €38 million on seven coach companies, the Finnish Bus and Coach Association and Oy Matkahuolto Ab (Matkahuolto), a service and marketing company that promotes bus and coach services in Finland. The FCCA also ordered Matkahuolto to cease all anticompetitive measures to foreclose competing coach companies from the market

6 One of the most important aspects of this new task is the supervision of significant errors and omissions, such as illegal direct awards of contract.

7 Immunity from and reduction of fines in cartel cases: Guidelines on the application of the Competition Act, 2/2011.

8 Guidelines on immunity from and reduction of penalty payments in cartel cases: Guidelines on the application of the Competition Act (2016).

9 The application was made in the *Raw Wood Procurement* infringement case.

10 According to Government Bill 88/2010 (p. 23), there had been approximately 10 leniency applications by June 2010.

On 14 December 2017, the Market Court found the coach companies, the Finnish Bus and Coach Association and Matkahuolto guilty of restricting competition. However, the Market Court found that lobbying work, discussions and negotiations related thereto as well as measures concerning opposing the issuing of route licences did not constitute a prohibited restriction of competition. As a result, the fines imposed by the Market Court were significantly lower than those proposed by the FCCA, amounting to a total of €1.1 million. The decision of the Market Court was appealed to the SAC. On 20 August 2019 the SAC stated that the competition infringement was used to systematically impede and delay the opening of the bus market to competition and imposed penalty payments amounting to a total of €8.9 million, providing a substantial increase in the fines set by the Market Court.

ii Trends, developments and strategies

As discussed above, the fight against cartels continues to be one of the FCCA's main priorities. The detection of cartels has been boosted by increasing cooperation between the competition authorities and the contracting entities responsible for public procurement. The FCCA has announced that it will bring all detected cartel infringements before the Market Court.[11] Corresponding to EU rules, the fines may equal 10 per cent of the undertaking's turnover at the most.[12] The FCCA's new Director General has publicly emphasised the need for a higher level of fines than what has been imposed by the courts in practice, arguing that higher fines would have a stronger deterrent effect, and welcomed the idea of criminalising cartel conduct in Finland.

In reviewing Finnish competition law during the past few years, it is clear that private enforcement has been a particularly active segment. In the *Asphalt* cartel case, the Helsinki District Court dismissed the damages claim of the Finnish state in its entirety, but awarded damages to a number of municipalities. While the claims of the state and of several municipalities were settled by the parties after the judgment of the Court of Appeal, a number of applications for leave to appeal were filed to the Supreme Court. The Supreme Court dismissed the majority of the applications, and granted limited leaves to appeal to one respondent and one claimant in September 2017. Some applications for leave to appeal were left in abeyance until final decisions are given in the matters in which leave to appeal was granted. The Supreme Court subsequently granted one respondent further leave to appeal in August 2018 and November 2018.

In December 2017, the Supreme Court made a reference for a preliminary ruling to the European Court of Justice regarding the question of economic succession in determining the parties liable for damages. In its preliminary ruling on March 2019, the ECJ ruled that Article 101 TFEU must be interpreted as meaning that where the infringing economic unit had been dissolved, a company acquiring the commercial activities of the dissolved company and continuing those activities may be held liable for the damage caused by the infringement. In addition, the ECJ stated that the concept of 'undertaking' cannot have two different dimensions when considering penalty payments and damages.[13] In October 2019, the Supreme Court applied the principle of economic continuity accordingly as set

11 FCCA press release, 20 February 2012.

12 The highest cartel fines in Finland to date were imposed in the *Asphalt* case in 2009 (totalling €82.6 million). For example, the fines in the *Raw Wood Procurement* infringement case in 2009 amounted to €51 million in total.

13 Case C-724/17.

forth by the ECJ, concluding that the economic successors of cartel companies are liable for the damage caused by acquired companies involved in the cartel. The Supreme Court repealed the judgement and referred the case back to the Court of Appeal for evaluation of other prerequisites for liability and the amount of damages.[14] Further, significant damages cases concerning an infringement involving the procurement of raw wood came to an end in January 2019, when the Supreme Court dismissed an application for leave to appeal by one of the claimants.

In June 2019, the SAC made a reference for a preliminary ruling to the ECJ in the power line cartel case. The Market Court had dismissed the FCCA's penalty payment proposal in March 2016 on the grounds that it had been submitted after the five-year time limit. In order to decide whether the proposal had been made in a timely manner, the SAC shall first determine the duration of the cartel in a situation where a cartel participant has entered into a construction contract as agreed in the cartel with a player outside the cartel. The ECJ shall now decide the point in time when the infringement can be considered to have ended. The case is currently pending before the ECJ and the SAC.

iii Outlook

It seems clear that the FCCA will continue to focus on the investigation of hardcore cartels. Under the prioritising rule of Section 32 of the Competition Act, the FCCA does not need to conduct an in-depth investigation if an infringement is deemed unlikely at the outset or, irrespective of the infringement's likelihood, if competition is considered effective on the whole.

III ANTITRUST: RESTRICTIVE AGREEMENTS AND DOMINANCE

Sections 5 and 7 of the Competition Act set out the prohibited restraints on competition and abuse of dominant positions respectively. The sections have been harmonised with Articles 101 and 102 TFEU.

The FCCA has made only a handful of penalty payment proposals to the Market Court in dominance cases. In most of the few cases brought to the Market Court, the level of fines has been modest. Typical Section 7 investigations of the FCCA have lasted a long time and have ended with the FCCA closing the case without further measures. The experiences have been equally frustrating to both the targeted undertaking and the complainant.

However, the FCCA has made one significant fine proposal in a dominance case to the Market Court in recent years. In December 2012, the FCCA proposed that the Market Court impose a fine of €70 million on Valio. The Market Court rendered its decision in the case in summer 2014. The decision of the Market Court became final when the SAC dismissed Valio's appeal in December 2016. Arla lodged a damages claim of €58 million against Valio before the Helsinki District Court, but the parties settled the matter in September 2018. Other claims were also lodged but only two of them were not settled between the parties. In June 2019, the Helsinki District Court awarded damages to two milk producers' cooperatives, Maitomaa and Maitokolmio. However, the damages awarded (totalling €8 million) were

14 2019:90.

substantially lower than the ones claimed (totalling €27 million) as the cooperatives failed to fulfil their burden of proof regarding the amount of suffered damage. The judgments are final.

In 2019, the FCCA concluded five investigations regarding suspected restraints on competition. In one of the cases, it was question of horizontal cooperation with the purpose to exclude a competitor from the market. The FCCA ordered the undertakings involved to terminate the implementation of the agreement and enforced its order with a periodic penalty payment. The remaining four cases regarded suspected abuse of dominance with the conclusion that the FCCA did not find sufficient evidence of anticompetitive behaviour.

i Significant cases

Restraints on competition

FCCA ordered to terminate anticompetitive behaviour

In 2019, the FCCA held that the Finnish ice hockey league and 15 league teams had agreed to not hire any players from the team Jokerit during the season, infringing competition law as the league teams are mutually competing undertakings required to make their own independent decisions. The purpose of the practise was to exclude the competitor from the market by limiting production and using a collective boycott, starting in January 2014 and continuing up until the FCCA's decision. The FCCA's order to terminate the implementation of the agreement was enforced with a periodic penalty payment of €75,000 for each party involved in continuing the infringement.

SAC increased penalty payments on the Finnish Bakery Federation

On 20 August 2019 the SAC imposed a penalty payment of €30,000 on the Finnish Bakery Federation increasing the fine imposed by the Market Court. The SAC confirmed that the pricing recommendations issued by the trade association in question constituted a serious competition infringement lasting over three years. The Market Court had imposed a €15,000 penalty payment for prohibited price recommendations between 2007 and 2011 when the FCCA had proposed a penalty payment amounting to €40,000.

Abuse of dominance

In 2019, the FCCA closed four investigations regarding suspected abuse of dominance concluding that there was not sufficient evidence of anticompetitive behaviour. In one of the cases, the company involved changed its suspected market behaviour during the investigations.

In the banking sector, it was suspected that OP was abusing its dominant position by tying the non-life insurance services provided by the OP Group and the retail bank services provided by individual cooperative banks together through the OP bonus scheme.

In the railway freight transport market, it was suspected that VR Group was abusing its dominant position by imposing significantly higher prices on certain logistics services companies than it did on end clients buying logistics services. According to the FCCA's decision, FCCA did not find sufficient evidence of anticompetitive behaviour and, secondly, VR changed its pricing during the investigation, and thus the FCCA came to a conclusion that there was no reason to continue investigations.

Also, the FCCA initiated an investigation regarding a refusal to deliver spare parts for reverse vending machines, but the case was not investigated further as competition in the relevant market was considered functional as a whole. In addition, an activity regarding a ticketing and payment system in bus services was investigated but closed as the FCCA found that there was no evidence of anticompetitive behaviour.

ii Outlook

As noted above, the Competition Act contains a provision on prioritisation of the FCCA's activities. Even before the entry into force of the prioritisation provision in Section 32 of the Competition Act, the FCCA closed a majority of its dominance investigations without further measures noting, inter alia, that its role is not to solve individual contractual disputes between parties but to ensure the functioning of the market and healthy competition.[15] Section 32 codifies the practice and grants the FCCA a right to remove cases that have only a minor impact on the economy more quickly.

The FCCA has applied the prioritisation provision regularly, and is expected to continue to do so in the future. As a result of the provision, the FCCA is able to focus on the more serious restraints on competition. This has had a positive effect on the processing times as well, as these have tended to be long. The FCCA has internally set a target that no case would be under investigation for longer than three years.[16]

IV SECTORAL COMPETITION: MARKET INVESTIGATIONS AND REGULATED INDUSTRIES

Chapter 4a of the Competition Act entrusts the FCCA with a supervisory task to enhance competitive neutrality between public and private businesses. Pursuant to the Chapter, the FCCA has the power to intervene in the business activities of the municipalities, the joint municipal authorities and the state, as well as the entities over which they have control if the public sector entity is distorting the conditions for competition or preventing the establishment or development of competition on the market.

In May 2017, the FCCA published guidelines on market-based pricing to help public sector entities to assess the competitive neutrality of their own activities.[17] The guidelines describe the principles and measures of the FCCA in the supervision of pricing. According to the guidelines, the supervision consists of assessing both the setting of prices and the economic activity of the public sector entities.

So far, the FCCA has published 13 decisions concerning competitive neutrality, five of which were published in 2019.

i Significant cases

In November 2019, the FCCA rendered a decision concerning the city of Kuopio. The FCCA had investigated the activities of the city in the fields of municipal engineering, food services, residential care, equipment maintenance and property and logistics services. The

15 See, for instance, decisions of the FCCA in *Liikennevakuutuskeskus* of 20 December 2012, record No. 130/14.00.00/2011, *Fonecta Oy* of 1 October 2012, record No. 452/14.00.00/2011, and *Alko* Oy, Stella Wines Oy of 19 March 2012, record No. 764/14.00.00/2011.

16 FCCA strategy paper for 2015–2018, p. 3.

17 The FCCA's Guidelines on Market-Based Pricing, 2017.

investigation revealed that the activities of Kuntatekniikkaliikelaitos Mestar, a municipal engineering undertaking belonging to the municipality, and Itä-Suomen Huoltopalvelut Liikelaitoskuntayhtymä Servica, a business-based joint municipal authority under Kuopio's authority, violated the principle of competition neutrality. Due to the structure of these operators, they enjoyed unjustified competitive advantages, such as tax benefits, when providing services to customers other than the city of Kuopio. After discussions with the FCCA, the municipality decided to incorporate both business units. Servica's activities were transferred to a limited liability company in January 2019, and Mestar will be incorporated in January 2021.

ii Outlook

The FCCA has announced that it will focus on developing the identification and surveillance of industries suffering from weak competition, and intervene with activities maintaining and enhancing passive competition and anticompetitive coordination within sectors where competition is weak. In October 2017, the FCCA announced that it is investigating certain companies operating in the social welfare and healthcare market. The inspections were carried out in August 2017 with the purpose of determining whether said companies had impeded competition when they participated in tender processes. In addition, in March 2017, the FCCA announced investigations regarding possible anticompetitive measures in the property management market. Both investigations are still ongoing. More recently, in June 2019, the FCCA announced that it is investigating possible anticompetitive conduct in the taxi market.

V STATE AID

There are no national rules on state aid, and the applicable rules are those laid down in Articles 107 to 109 TFEU. However, there are procedural rules concerning, inter alia, the recovery of unlawful state aid and the European Commission's inspection powers, the duty to notify state aid to the Commission and certain exemptions from this duty (e.g., the *de minimis* rule and the general block exemption regulation).

Furthermore, the Act on the Openness and Obligation to Provide Information on Economic Activities Concerning Certain Undertakings that applies to companies carrying out services of general economic interest facilitates the Commission's ability to monitor competition and state aid rules in Finland.[18]

The contact point for the Commission in state aid matters is the Ministry of Economic Affairs and Employment. The FCCA does not have a role concerning state aid.

i Significant cases

Illegal state aid awarded to Helsingin Bussiliikenne Oy

In June 2019, the European Commission concluded its investigations concerning alleged illegal state aid to Finnish bus transport company Helsingin Bussiliikenne Oy (HelB) and found that HelB had received €54.2 million of incompatible state aid from Finland. The

18 See the Act on the Application of Certain State Aid Provisions of the European Union (300/2001), Government Decree on the Notification Procedures concerning State Aid to the Commission (89/2011) and the Act on the Openness and Obligation to Provide Information on Economic Activities Concerning Certain Undertakings (19/2003).

European Commission opened its in-depth investigation in 2016 after receiving a complaint alleging that the conditions of loans granted to HelB by the Finnish authorities were not on market terms.

The investigation confirmed that private market creditors would not have granted the loans under the same terms and conditions (for instance, very low interest rates), notably considering the financial difficulties HelB was facing at the time when the loans were granted. Subsequently, the European Commission considered the loans to constitute state aid in breach of EU rules, and Finland was ordered to recover the aid from HelB. During the investigation, the assets and business operations of HelB were sold to one of its competitors. According to the Commission, as the new owner became the economic successor of HelB, it also became responsible for repaying the incompatible state aid.

ii Trends, developments and strategies

In general, practices concerning the application of EU state aid rules are gradually being formed, and national courts are increasingly applying state aid rules. For instance, the SAC has in recent years annulled several administrative court decisions partly due to the courts omitting to consider the applicability of the state aid rules, or to follow the relevant procedures in their decision-making. The cases concerned, inter alia, district heating, the sale of land and guarantees.[19]

iii Outlook

In June 2017, the Finnish Media Federation, an advocacy organisation for the Finnish media industry and printing companies, lodged a complaint to the European Commission claiming that the public funding of Yleisradio Oy's (Yle) textual journalistic online content constitutes prohibited state aid. Yle is a national media company owned mostly by the state, and its operations are funded primarily through the Public Broadcasting Tax. According to the Finnish Media Federation, the provision of textual journalism online is not to be considered broadcasting under the Amsterdam Protocol and the Communication on public service broadcasting.[20] Instead, the services in question should be evaluated under the EU services of general economic interest doctrine. The Finnish Media Federation argued that since a private supply of said services already existed in the Finnish market, there was no need to qualify textual journalistic online content as a service of general economic interest. In addition, the production of Yle's wide textual journalistic online content leads to a disproportionate distortion of competition. The Commission's investigation is currently pending.

VI MERGER REVIEW

The provisions on merger control were revised in the 2011 reform of the Competition Act with the purpose of bringing them further into line with EU rules. Most notably, the dominance test applied under the old rules was replaced by the significant impediment of

19 See, for instance, judgments of the Supreme Administrative Court of 1 July 2019, record No. 3086; 16 February 2018, record No. 673; 13 May 2015, record No. 1234; 23 January 2014, record No. 148; 30 November 2012, record No. 3326; 9 February 2012, record No. 192; 27.

20 Protocol on the system of public broadcasting in the Member States (OJ C 340, 10 November 1997) and Communication from the Commission on the application of State aid rules to public service broadcasting (OJ C 257, 27 October 2009).

effective competition test, which was introduced to enable the FCCA to shift the focus of its review more towards the competitive effects of mergers. A new amendment process began in 2015, as a result of which the calculation of deadlines in merger control changed and merger control timelines are now calculated in working days instead of months. The amendments entered into force on 17 June 2019.

Under the merger control provisions, a concentration shall be notified to the FCCA if the combined aggregate worldwide turnover of the parties exceeds €350 million; and the aggregate turnover of each of at least two of the parties accrued from Finland exceeds €20 million.

The rules concerning the calculation of the turnover correspond to a large extent with the provisions of the EU Merger Regulation.

Once a concentration has been notified to the FCCA, it has 23 working days to investigate and either clear the concentration (possibly with conditions) or to initiate a Phase II investigation. If a Phase II investigation is opened, the FCCA has an additional 69 working days (the Market Court may extend the deadline by a maximum of 46 working days) to approve the concentration with or without conditions, or to request the Market Court to prohibit it. If the FCCA requests such a prohibition, the Market Court must make its decision either to clear the concentration with or without conditions or prohibit it within three months.

The majority of notified concentrations are cleared in Phase I. In 2019, the FCCA issued approximately 33 merger decisions, and Phase II investigations were initiated in only three cases.

i Significant cases

FCCA conditional approval in MB Funds/A-Katsastus

In October 2019, the FCCA conditionally approved the acquisition of A-Katsastus Group (A-Katsastus) by MB Equity Fund V Ky (MB Funds). MB Funds is a private equity investment firm, the portfolio of which includes Protacon, a company that developed the Muster vehicle inspection software. A-Katsastus is a major operator in the vehicle inspection market.

The FCCA launched Phase II investigations in July 2019, based on the view that the acquisition may harm competition in the vehicle inspection market. The concentration, part of which A-Katsastus would become, possesses the Muster software that is widely used by vehicle inspection companies as the only alternative. As a result of the acquisition, A-Katsastus could also receive sensitive information on its competitors using the software, resulting in an impediment of effective competition.

However, the FCCA approved the acquisition subject to conditions. In order to eliminate the competition concerns, MB Funds and Protacon committed to offering the Muster software to the current and new customers with the current terms for 24 months from the FCCA's decision.

FCCA conditional approval in Caverion/Maintpartner

In November 2019, the FCCA conditionally approved the acquisition of Maintpartner Group Oy (Maintpartner) by Caverion Industria Oy (Caverion). Caverion specialises in technical solutions for buildings and industrial operators, including technical maintenance services for industrial facilities. Maintpartner provides operation and maintenance services for companies operating in various industrial sectors.

The FCCA started Phase II investigations in June 2019. The deadline was later extended by the Market Court. According to the FCCA, the acquisition may substantially decrease competition in the total outsourcing of industrial maintenance services, noting that the market is already concentrated, the market shares of the parties are high, and the parties have competed for the same customers prior to the acquisition.

Even so, the FCCA approved the acquisition subject to conditions. In order to address the competition concerns, Caverion committed to selling some of its industrial maintenance service total outsourcing customerships to its competitors.

FCCA proposal for prohibition in Kesko/Heinon Tukku

In November 2019, the FCCA proposed the Market Court to prohibit the merger between Kesko Oyj (Kesko) and Heinon Tukku Oy (Heinon Tukku). Both companies operate in the wholesale trade of daily consumer goods and provide services for foodservice customers, such as restaurants, hotels, and catering businesses.

The FCCA opened Phase II investigations in June 2019, the deadline for which was later extended twice by the Market Court. According to the FCCA's view, the acquisition would lead to a dominant position with a market share of up to 60–70 per cent, which would impede the effective competition. The FCCA held that the remedies submitted by Kesko were inadequate to address the competition concerns related to the acquisition and proposed the Market Court for prohibition. Kesko has contested the FCCA's views.

In February 2020, the merger was prohibited by the Market Court. The prohibition decision is the first ever to be adopted in Finland. Currently, it is still unknown whether the parties will appeal against the decision to the SAC.

ii Trends, developments and strategies

The FCCA has itself noted that the need for reform of the Finnish merger control provisions should be investigated, including an assessment of whether the current turnover thresholds are still appropriate.[21]

iii Outlook

There has been a significant change in the length of review periods in merger control. Among other things, in 2017 and 2018 the FCCA requested the Market Court to extend the deadline of Phase II investigations in four cases. Before then, the practice had been highly exceptional. In 2019, extension to deadline was requested in two cases.

No major developments are expected to take place in Finnish merger control in the immediate future. The FCCA anticipates that there will be problematic transactions likely to have serious effects on competition.[22]

21 FCCA press release, 5 October 2018.

22 FCCA strategy paper for 2018–2021, p. 1.

VII CONCLUSIONS

In reviewing Finnish competition law during the past few years, it is clear that private enforcement has been a particularly active segment. In addition to private enforcement, 2019 was a year for the preliminary rulings and for the merger control. Contrary to the busy merger year, including 33 decisions, the FCCA brought only one cartel case before the Market Court as it has done in previous years as well. The SAC increased fines issued by the Market Court in two cases.

Appendix 1

ABOUT THE AUTHORS

MIKKO HUIMALA

Hannes Snellman Attorneys Ltd

Mikko Huimala is a partner in Hannes Snellman's competition and procurement group. He advises Finnish and international companies on all aspects of competition law, including merger control, compliance, proceedings before the competition authorities and courts, and state aid.

Prior to joining private practice in 2006, Mikko gained several years of experience of investigating cartel and other competition law infringement cases in the national competition authority and the networks of competition authorities.

Mikko has a postgraduate diploma in competition law economics from King's College London. He has co-authored an in-depth textbook on EU and Finnish competition law (2012) and published several articles on competition law. Mikko is the former president, current board member of the Finnish Competition Law Association. He is ranked in *Chambers Europe* and *Best Lawyers* for his work in the field of EU and competition law.

HELENA LAMMINEN

Hannes Snellman Attorneys Ltd

Helena Lamminen is a senior associate in the competition and procurement group of Hannes Snellman's Helsinki office. She advises Finnish and international clients in the field of competition law, specialising in competition litigation, regulatory matters and competition law infringement investigations.

MERI VANHANEN

Hannes Snellman Attorneys Ltd

Meri Vanhanen is an associate in the competition and procurement group of Hannes Snellman's Helsinki office. She graduated from the University of Helsinki in 2019 and advises domestic and international clients in the field of competition law.

HANNES SNELLMAN ATTORNEYS LTD

Eteläesplanadi 20
PO Box 333
00130 Helsinki
Finland
Tel: +358 9 228 841
Fax: +358 9 177 393
mikko.huimala@hannessnellman.com
helena.lamminen@hannessnellman.com
meri.vanhanen@hannessnellman.com
www.hannessnellman.com

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