

Changes of Finnish Competition Law

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Following the adoption of Council Regulation 1/2003 and the abolition on EU level of the notification system to the EU Commission, the Finnish Parliament enacted a law concerning amendment of the Finnish Act on Competition Restrictions (the "Act") which entered into force on 1 May 2004. The changes involve the most significant amendment of Finnish competition legislation since the adoption of merger control in 1998. The most important changes concern the harmonisation of substantive national rules with the EU rules on horizontal cooperation and abuse of dominance, the abolition of the notification system for agreements, amendment of merger notification thresholds and introduction of a leniency system for undertakings that have violated competition law.

Harmonization of National Rules with EU Provisions

The amended Act authorises the Finnish Competition Authority (the "FCA"), the Market Court and the Supreme Administrative Court to apply EU competition law. According to the Act, Articles 81 and 82 of the EC Treaty are applied to competition restrictions which may affect trade between Member States. Consequently, even though national competition authorities may under Article 3 of Regulation 1/2003 to a certain extent also apply national law to agreements and practices which fall under the scope of application of Articles 81 or 82 EC, under the amended Act, only Articles 81 and 82 EC are applied to such practices which may affect trade between Member States.

The new substantive provisions of the Act concerning horizontal cooperation and abuse of a dominant position are identical to the provisions in Articles 81 and 82 EC.

Hence, the substantive assessment of competition restrictions is the same irrespective of whether the restrictions may affect trade between Member States. Also the grounds for statutory exemption under Finnish law are now identical to the exemption under Article 81(3) EC. In connection with the reform, the general provision in Section 9 of the Act concerning competition restrictions which have harmful effects on competition but are not considered as prohibited agreements, practices or abuses of a dominant position was repealed.

Under the amended Act, it is no longer possible to obtain exemption or negative clearance decisions from the FCA.

In line with the reform of EU competition law through Regulation 1/2003, companies have to assess themselves whether their agreements fall under the prohibition of the law and whether the agreements will satisfy the criteria for statutory exemption.

Also the provisions concerning the amount of fines have been harmonized with EU rules. Under the wording in effect before 1 May 2004, the fine could be between EUR 840 and EUR 673,000 or, if the circumstances warrant, up to 10% of an undertaking's annual turnover. The amended Act simply provides that the fine imposed may not exceed 10% of the turnover for the preceding year of each undertaking or association of undertakings participating in a competition restriction.

Change of Merger Control Thresholds

According to the amended Act, where the EC Merger Regulation does not apply, a concentration must be notified to the FCA if

- *the combined worldwide turnover of all parties to the concentration exceeds EUR 350 million; and*
- *the turnover accruing from Finland of each of at least two of the parties exceeds EUR 20 million.*

Turnover accruing from Finland means sales to customers located in Finland at the time of the sale. It is not required that the seller has any presence in Finland, but mere import to Finland is considered as turnover accruing from Finland.

The change of the notification thresholds has already resulted in a significant reduction in the number of merger notifications to the FCA. The thresholds in force before the amendment related to worldwide turnover of the parties, which lead to a considerable number of notifications to the FCA of transactions which presented no competition concerns in Finland. The change of the thresholds is welcomed inasmuch as it seeks to remedy the problem of unnecessary notifications.

In connection with the reform, the so-called two-year rule concerning acquired businesses in the same industry was repealed. Under that rule, the turnover of the target also included the turnover of companies active in the same industry in Finland which the buyer had acquired in the two years preceding the transaction. On the other hand, the rule concerning acquisitions between the same parties in the past two years remains in effect. According to that rule, in the case of successive acquisitions, the turnover of the target in a later transaction includes the aggregate turnover related to business operations which have been acquired from the same seller during the past two years.

There are no changes in respect of the filing deadline, which is one week from the conclusion of a binding agreement. In practice, the FCA has been relatively flexible with the filing deadline provided that the FCA is informed of the transaction within the filing deadline and there is no violation of the prohibition to close the transaction prior to clearance.

The amended merger control provisions are applied to transactions where the agreement has been concluded on or after 1 May 2004.

Leniency

The amended Act also includes provisions on leniency for participants in an agreement concerning price fixing, restriction of production or sales or sharing of markets, customers or sources of supply. In order to receive immunity from fines, it is required that the undertaking which has participated in a cartel

1. provides the FCA with information on the basis of which the FCA may take action in respect of the competition restriction;
2. provides the information before the FCA has obtained the information from other sources;
3. provides the FCA with all documents and information in its possession;
4. cooperates with the FCA during the whole investigation; and
5. has ended or, immediately after providing the information to the FCA, ends its involvement in the competition restriction.

Only the first party to provide information may receive automatic and complete immunity from fines. In addition, the Market Court may decide not to impose a fine or to reduce a fine if an undertaking has "significantly assisted the FCA in investigating the competition restriction". This immunity or reduction may be granted where an undertaking has not been the first to provide the FCA with information on a cartel. It may also be granted in the case of other competition restrictions than cartels, most notably abuses of a dominant position.

The new leniency provisions have triggered several new cartel investigations in Finland. For instance, on the first business day following the entry into force of the new leniency provisions, UPM-Kymmene Corporation, a Finnish forestry group, lodged with the FCA a leniency application concerning cooperation between competitors in the procurement of raw wood. On the basis of the information provided by UPM-Kymmene Corporation, the FCA regards it as evident that forestry companies have shared confidential information concerning raw wood procurement prices and discussed means to limit price competition in the raw wood procurement market. Shortly after receiving the application, the FCA launched surprise investigations in the premises of certain other major forestry companies with a view to establishing whether they had infringed competition rules.

If the FCA concludes that the undertakings have engaged in illegal cooperation, the FCA may make a proposal to the Market Court to levy a fine. The Market Court's decision to impose a fine may be appealed to the Supreme Administrative Court.

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