

An aerial, high-angle photograph of a city street at night. The scene is dominated by a large, multi-story brick building with a prominent curved facade and a dark, rounded tower-like structure on its roof. To the right, a modern glass-walled building with a curved, cylindrical design is visible, showing interior lights. The street below is illuminated by streetlights, with white crosswalks and a curved road. The overall color palette is a mix of warm brick tones and cool blue/teal night lighting.

Global merger control: Finland

The year 2022 has been business as usual for the Finnish Competition and Consumer authority (the "FCCA"). A number of changes to the FCCA's rules and procedures have taken effect as of the beginning of 2023 and these will continue to shape the FCCA's practice for the remainder of 2023 and beyond.

Finland

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Key developments & impact on merging parties

Perhaps the most notable of the recent changes is the new merger filing thresholds that took effect as of 1 January 2023. A transaction is now notifiable in Finland where: (i) the parties' combined turnover in Finland exceeds EUR 100 million; and (ii) the turnover of each of at least two parties in Finland exceeds EUR 10 million. Under the old thresholds, a transaction was notifiable where (i) the parties' combined global turnover exceeded EUR 350 million; and (ii) the turnover of each of at least two parties in Finland exceeded EUR 20 million. Thus, the Finnish filing requirement is now only tied to the parties' turnover in Finland (as opposed to global turnover) and the individual turnover threshold is lower than it used to be, thus capturing more of the smaller transactions that escaped scrutiny under the old thresholds and industry sectors that according to the FCCA were previously entirely outside the scope of merger control review.

The changes are expected to lead to an additional 30-40 transactions being notified to the FCCA every year, meaning that the number of filings to the FCCA would double over time. The FCCA has been given additional resources to deal with the increased work load. In addition, the FCCA is streamlining the notification process and review of cases that clearly do not trigger any competition concerns, allowing staff to focus on potentially problematic transactions.

In addition to the new filing thresholds, the FCCA has also issued a new filing form and related instructions. The new filing form mostly codifies the FCCA's current practice with respect to information requirements. One relevant change in the FCCA process is that the authority no longer conducts a market consultation in cases that are not likely to raise competition concerns. Instead, the FCCA has started publishing summaries of ongoing

cases on its website, thereby giving interested parties the opportunity to submit comments to the FCCA.

In the context of revising the thresholds, the FCCA had also proposed that it should have the power to review transactions that fall below the filing thresholds. However, this proposal was abandoned and the FCCA's only means of challenging transactions that fall below the filing thresholds therefore remains through a request to the EU Commission via Article 22 EUMR. The discussion on expanding the FCCA's powers will likely continue in the future: As part of the legislative process, the Parliament's Commerce Committee emphasised that the effects of revised thresholds should be monitored closely and noted that it should also be assessed whether the FCCA should be given the powers to review below the threshold transactions.

The statutory review period in Finland is 92 business days, split into 23 days for Phase I and 69 days for Phase II. The Market Court can extend the Phase II review period by up to another 46 business days. Pre-notification is voluntary in theory, but in practice parties are required to engage in pre-notification discussions with the authority, even in straightforward cases. Generally, it is advisable for parties to have transparent and early communication with the FCCA in all cases, as case handlers are usually allocated on a first-come first-served basis, and the authority normally requires approximately five business days to review draft notifications in simple deals.

Straightforward cases are cleared relatively swiftly by the FCCA.

Investigations in more complex matters are significantly longer, and can take up to a year when taking into account the often lengthy pre-notification discussions between the authority and the parties, extensions to the review period granted by the Market Court (up to 46 days) and other

potential delays caused by e.g., an incomplete notification or the FCCA 'stopping-the-clock' while waiting for essential input from the parties. The FCCA's past practice has shown that it will not hesitate to make use of the available tools where necessary to extend the otherwise strict procedural timeframe. However, there were no declaration of incompleteness or 'stop-the-clocks' in 2022 or 2023 to date. Moreover, each of the four Phase II cases where the FCCA adopted a decision in 2022 were decided without any extension by the market court and the review process was therefore within the standard timeframe of 92 business days excluding pre-notification. In *Helen Oy / LämpöYkkönen Oy*, the FCCA applied for and was granted an extension by the Market Court, but the FCCA ultimately did not adopt a decision in that case.

The FCCA also routinely requests transaction related documents as part of its review. However, contrary to the trend in the EU, where increasingly extensive requests for internal documents have become the norm in complex transactions, the FCCA in general does not require extensive production of internal documents. The FCCA considers internal documents as a reliable way of gauging the parties' intentions, but in most cases does not base its analysis on such evidence.

Nevertheless, transaction-related materials remain potentially disclosable to the FCCA, so companies looking at potential transactions should take a prudent approach to document creation and management, both in terms of information memoranda and other market-facing materials, but also with respect to internal communications.

Where there are potential substantive issues, the FCCA's merger control procedure continues to be data-driven and the findings based on a sophisticated and meticulous

economic analysis. In 2022, the FCCA conducted a detailed market definition assessment (including a critical loss analysis) in the context of a merger concerning frozen bakery products (*Lantmännen ek för / Sponmill Oy*) and employed economic modelling in a healthcare merger (*Pihlajalinna Terveys Oy / Pohjola Sairaala Oy*).

Where the FCCA finds that a transaction would significantly impede effective competition, it cannot itself issue a prohibition decision, but it will issue a prohibition proposal – essentially a decision outlining the reasons for a prohibition – and request the Market Court to prohibit the transaction. It has been a couple of years since the FCCA has proposed the prohibition of a transaction. The latest prohibition proposal dates back to 2020, when the FCCA proposed the prohibition of a proposed merger between healthcare firms *Mehiläinen* and *Pihlajalinna* (*Mehiläinen Yhtiöt Oy/ Pihlajalinna Oy*). The transaction was later abandoned by the parties, so the Market Court did not rule on the prohibition proposal. This followed the FCCA's 2019 prohibition proposal in *Kesko Oy/ Heimon Tukku Oy*, which led to the Market Court's first ever prohibition ruling in 2020 concerning the proposed transaction in the daily consumer goods wholesale sector.

Despite the lack of prohibition proposals, not all transactions have been waved through by the FCCA in 2022-2023 to date. Two transactions were abandoned by the parties following FCCA's indication of competition concerns (*Enersense International Oy / Voimatel Oy* and *Helen Oy / LämpöYkkönen Oy* – although the latter was later implemented by the parties in a different form so that it fell below the FCCA filing thresholds), and two decisions were subject to remedies (*Mehiläinen Oy / Fysios Holding Oy* and *BEWI ASA / Jackon Holding AS*).

The FCCA continues to be focused on the effectiveness of remedies and encourages parties to engage in timely and careful remedy design where appropriate. The FCCA has clearly communicated its preference for structural remedies in cases with horizontal concerns, and has systematically rejected behavioural commitments in such cases. In principle, behavioural commitments may be accepted as the primary remedy only in vertical or conglomerate cases.

The FCCA continues to recognise the importance of the remedy buyer in ensuring the effectiveness of remedies. In 2021, the FCCA announced that finding suitable remedy purchasers post-closing has turned out to be challenging in various cases. This follows, in particular, from the fact that horizontal mergers often raise concerns in concentrated markets where the number of potential remedy takers may be small. To address this practical concern and to shift the risk of remedy implementation on the merging parties, the FCCA has started imposing upfront buyer conditions. In practice, this means that the parties are not allowed to complete the main transaction after clearance until they have entered into a binding divestiture agreement with the remedy purchaser and the FCCA has approved the purchaser.

In the 2021 merger between Finnish alcoholic beverage company *Altia Oy* and its Norwegian counterpart *Arcus ASA*, the FCCA imposed an upfront buyer condition for the first time, and parties can now expect that any remedies before the FCCA will likely be subject to an upfront buyer condition. Indeed, since the *Altia Oy/ Arcus ASA* decision, all cases approved subject to divestments have included an upfront buyer condition.

In January 2022, the FCCA issued a conditional clearance in a transaction in the healthcare sector between one of the largest national healthcare service providers, Mehiläinen Oy, and Fysios Holding Oy, a therapy services provider. In this case, for the first time in the FCCA's history, the authority required a fix-it-first remedy. This means that the parties identified a purchaser for the divestment business and entered into an agreement with the purchaser during the FCCA's investigation, i.e., before the authority cleared the main transaction.

The FCCA has indicated that it is willing to consider fix-it-first remedies in the future in cases where the competition concerns arising from the transaction are obvious or where the entire overlap in the parties' operations is removed with the remedy. According to the authority, the key requirements for a fix-it-first solution are that the parties are committed to an efficient process and that there is enough time for the authority to complete the review of the remedy deal. While a fix-it-first remedy is thus also a possibility in Finland, they are expected to be appropriate only in limited cases whereas upfront buyer conditions are expected to remain the norm.

Recent cases

Year 2022 in numbers

As in previous years, in 2022 the vast majority of transactions (34 out of 38) were cleared in Phase I without remedies. There were no Phase I decisions with remedies. The FCCA adopted four Phase II decisions, of which 2 were cleared unconditionally (Pihlajalinna Terveys Oy / Pohjola Sairaala Oy and Lantmännen ek för / Sponmill Oy) and two were cleared subject to remedies (Mehiläinen Oy / Fysios Holding Oy and BEWI ASA / Jackon Holding AS). There were no proposals for a prohibition in 2022. In one Phase II case (Helen

Oy / LämpöYkkönen Oy), the parties amended the transaction so that it fell out of the FCCA's jurisdiction and the FCCA's review was discontinued without a decision.

In 2023 so far (until the end of March), 13 transactions have been cleared in Phase I without remedies. There have been no Phase I cases with remedies, no Phase II decisions, and no prohibition proposals. In one case (Enersense International Oyj / Voimatel Oy) the parties withdrew the filing.

Transactions approved subject to remedies

In 2022, the FCCA cleared two mergers subject to remedies. In Mehiläinen Oy / Fysios Holding Oy, a merger between one of the largest national healthcare service providers, Mehiläinen, and Fysios, a therapy services provider, the FCCA identified competition concerns in the market for physiotherapy services for self-paying customers in the city of Vaasa. The transaction was cleared by the FCCA subject to a partial divestiture of Fysios' physiotherapy business in Vaasa.

In the other 2022 case decided subject to remedies (BEWI ASA / Jackon Holding AS), the FCCA investigated the proposed acquisition by BEWI ASA, a Norwegian-based industrial group active in packaging, components and insulation solutions, of rival industrial group Jackon Holding AS. Both parties mainly sold products based on EPS, XPS and EPP materials. The FCCA found that the transaction would have had negative effects on competition in the EPS insulation market in Finland, which was already highly concentrated and prone to coordination. In 2021, the FCCA had investigated a cartel in the EPS insulation market and fined the cartel participants – which included Jackon Holding AS's Finnish subsidiary (Jackon Finland Oy) – over EUR 4

million. According to the FCCA, the reduction in the number of market players as a result of the transaction would have further facilitated tacit coordination in the market. The parties proposed to divest BEWI group's Finnish EPS business to a third party, thereby effectively removing the overlap resulting from the transaction.

Unconditional clearances after a Phase II review

Recent decisions show that a prohibition decision or a conditional clearance is not always the outcome of a Phase II review by the FCCA.

In the context of the acquisition by Pihlajalinna, the third largest private healthcare provider in Finland, of Pohjola Sairaala, the hospital business of the insurance and financial services conglomerate OP Financial Group (Pihlajalinna Terveys Oy / Pohjola Sairaala Oy), the FCCA assessed the effects of the transaction especially for insurance customers. Based on an economic model designed to assess the relative bargaining positions of insurance companies vis-à-vis healthcare providers, the FCCA identified pro-competitive effects to insurance customers, as the capacity of Pohjola Sairaala, which previously provided services mainly internally to Pohjola Insurance, will be made more widely available also to other insurance companies. This pro-competitive effect was considered to outweigh the potential disadvantages for insurance companies resulting from strengthened bargaining position of Pihlajalinna. The transaction was cleared without remedies after a Phase II review.

Similarly, Lantmännen ek för / Sponmill Oy also went into Phase II but was ultimately cleared without remedies. This case concerned the acquisition of the parent company of Myllyn Paras Finland Oy, a Finnish manufacturer of frozen bakery products and grain mill products, by

Lantmännen, a Swedish agricultural cooperative and owner of several major food brands. The FCCA opened a Phase II investigation based on its preliminary view that the parties' combined market shares would become significant in certain segments of frozen bakery products. The FCCA's analysis focused on product market definition with a thorough investigation of both demand- and supply-side substitutability. The FCCA found that consumers considered different bakery products (such as Danish pastries, buns and doughnuts) as substitutable, so the relevant product markets were not limited to narrow product groups and the parties' combined market shares on the broader markets remained moderate. This case shows that the FCCA remains meticulous in its approach to market definition, and parties are advised to engage with the FCCA on this topic from the outset of the filing process.

Withdrawals of mergers

Between 2022 and 2023 to date, two mergers have been withdrawn during the FCCA's review. In 2022, the FCCA conducted for the first time a thorough review of conglomerate effects resulting from a transaction

in Helen/LämpöYkkönen. The case concerned a joint venture between an energy company owned by the city of Helsinki, Helen, and LämpöYkkönen that specialises in heat pumps. Helen has a monopoly in the production and sale of district heating in Helsinki, and its cooperation is required for installing heat pumps alongside district heating. The concern raised by market players and the FCCA was that post-transaction, Helen would have the ability and incentive to favour its joint venture over competing heat pump providers. Helen did not want to offer remedies to address the identified competition concerns on interoperability and subsequently restructured the transaction so that it fell below the Finnish merger filing thresholds and escaped the FCCA's scrutiny.

In the beginning of 2023, the FCCA secured a de facto merger block in Enersense/Voimatel where the parties withdrew their merger during the authority's in-depth Phase II investigation. In its investigation, the FCCA identified competition concerns in the provision of telecommunications infrastructure services, especially regarding the construction and maintenance of fixed and mobile networks in Finland. The FCCA's bidding analysis and

other evidence showed that the transaction would have led to a highly concentrated market. The merging parties argued that their customers have countervailing buyer power offsetting the potential anticompetitive effects resulting from the transaction. However, these claims were not substantiated in the course of the investigation.

Recent changes in priorities

As described above, a number of changes to the FCCA's rules and procedures have taken effect from the beginning of 2023 and the lower filing thresholds are expected to bring in filings in sectors that have so far been largely outside the scope of merger control.

Otherwise, there have been no noticeable changes in merger enforcement priorities in the past year in Finland.

The FCCA remains a robust enforcer toward any merger that could potentially lead to competition concerns either nationally or locally and across all industries, as evidenced by the variety of sectors subject to in-depth investigation in recent years.

Recent studies and guidelines

The new merger filing thresholds were accompanied by a new merger filing form. The FCCA has also published guidance on completing the new filing form and updated guidance on the merger control process at the FCCA.

The FCCA has indicated that it will publish new guidance on remedies during 2023.

Looking ahead

No significant changes to Finnish merger control rules are expected in the near future.

Statistics¹

Year	Deals approved unconditionally	Deals approved subject to conditions	Blocked deals	Abandoned deals
2023 (until end of March 2023)	13	0	0	1
2022	36	2	0	1 ²

¹ Based on the date of the decision

² Transaction was abandoned but later implemented by the parties in a different form