



## FINLAND

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#### 1. Relevant legislation

Mergers and acquisitions are subject to merger control under the provisions set out in Chapter 4 of the Finnish Competition Act (948/2011, as amended) (the Competition Act).

#### 2. Authority

The Finnish Competition and Consumer Authority (the FCCA).

The FCCA's website: <https://www.kkv.fi/en/>

#### 3. Types of transactions caught

The merger control provisions set out in the Competition Act apply to all concentrations that meet the turnover criteria (see section *Thresholds* below).

A concentration is defined as:

- the acquisition of control of an undertaking,
- 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.

#### 4. Thresholds

A concentration is subject to control where:

- the combined worldwide turnover of the parties to the concentration exceeds EUR 350 million; and
- the turnover generated in Finland of each of at least two parties to the concentration exceeds EUR 20 million.

Where the acquisition of a business or a part of a business comprises two or more transactions, the turnover of the business being acquired is considered to include the turnovers of any businesses or functions acquired from the same undertaking or foundation or from undertakings belonging to the same group of undertakings within a period of two years prior to the acquisition.

NB: The FCCA has made an initiative to lower the thresholds and the Government will possibly introduce a bill on this matter in Autumn 2022.

#### 5. Exceptions

The merger control provisions do not apply to internal arrangements within a group of companies. In addition, the merger control provisions do not apply if the concentration falls

within the scope of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

## 6. Notifying party(-ies)

The following parties have an obligation to notify:

- the acquirer of control,
- the acquirer of the whole or part of a business operation,
- the merging parties,
- the founders of a full-function joint venture.

## 7. Submission deadline

The notification must be submitted to the FCCA after entering into a binding acquisition agreement, acquiring control of an undertaking or announcing a public bid, and before the implementation of the concentration.

## 8. Filing fee

There is no filing fee.

## 9. Proceedings timetable

The FCCA must immediately examine a notification received. During an initial investigation period of 23 business days, 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, or
- decide that further proceedings are required.

If the FCCA does not decide to start further proceedings within the above-mentioned time limit (and makes no other decision), the concentration is deemed approved. Usually, the FCCA issues a written decision before the end of the initial investigation period of 23 business days.

If the FCCA decides to start further proceedings (Phase 2) it must, within 69 business days, either:

- clear the concentration unconditionally or conditionally, or
- request 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 business days with a maximum of 46 business 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 business days of the FCCA's request. The Market Court may:

- approve the concentration conditionally or unconditionally,
- prohibit the concentration or order the concentration to be dissolved, or

- refer the concentration back to the FCCA.

If the Market Court makes no decision, it is deemed to have approved the concentration.

The FCCA's decisions can be generally appealed to the Market Court within 30 calendar days from receiving the decision. The following decisions are, however, not subject to appeal:

- decisions determining whether further proceedings (Phase II) are required.
- decisions to conduct inspections at the undertaking's premises.
- interim injunctions or temporary obligations.

In addition, decisions on extending processing time limits may not be appealed separately but only in connection with the appeal against the principal decision (the actual merger control issue). Moreover, the FCCA's decision ordering conditions, proposed by the notifying parties, may not be appealed.

The Market Court's decisions can (subject to certain exceptions) be appealed to the Supreme Administrative Court of Finland (*in Finnish: korkein hallinto-oikeus*) within 30 calendar days from receiving the decision.

## 10. Availability of pre-notification/informal consultation

The notifying party is entitled to receive information and guidance from the FCCA in relation to a contemplated concentration before submitting the notification.

Pre-notification negotiations with the FCCA are advisable, as they usually help in completing the notification and contribute to the prompt processing of the notification by the FCCA.

## 11. Test for clearance/prohibition

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.

## 12. Conditional clearance - remedies

The FCCA and the Market Court can impose both behavioural and structural remedies. 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 business days (Phase I) and the further investigation period of 69 business 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.

## 13. Stand-still obligation

The parties cannot generally implement the concentration before its approval.

The obligation to suspend does not prevent, in certain cases, the implementation of a public bid or the redemption of shares. The parties can also apply to the FCCA to allow them to take actions to implement the concentration.

If the FCCA has proposed the prohibition of a concentration, the obligation to suspend lapses within 23 business days from the proposal, unless the Market Court orders otherwise.

#### **14. Failure to notify/obtain clearance**

An undertaking that fails to comply with the obligation to notify can receive an administrative fine of up to 10% of its total annual turnover. The Market Court imposes the fine on the proposal of the FCCA.

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 on the concentration.