

# MERGER CONTROL SURVEY 2014



Guest edited by Nicole Kar

**Linklaters**

# Finland


[www.krogerus.com](http://www.krogerus.com)

Katri Joenpolvi and Leena Lindberg, Krogerus

## Section 1: REGULATORY FRAMEWORK

### 1.1 What is the applicable legislation and who enforces it?

Merger control rules are included in chapter 4 of the Competition Act (948/2011). The Finnish Competition and Consumer Authority (FCCA) enforces the legislation and has sole jurisdiction to assess mergers where relevant thresholds set in the Competition Act are met. The Market Court may prohibit the concentration on the proposal of the FCCA.

### 1.2 What types of transaction are caught?

The definition of concentration covers an acquisition of control, acquisition of a business merger, and creation of a joint venture performing all the functions of an autonomous economic unit on a lasting basis.

The definition of concentration is in line with that employed in the EU Merger Regulation (139/2004) and is applied in a similar fashion, although the FCCA retains some case-specific discretion. Some differences to the EU Merger Regulation also exist (such as no specific exemption for warehousing structures).

Internal arrangements within a group of companies that do not amount to a change of control do not have to be notified.

## Section 2: FILING

### 2.1 What are the thresholds for notification?



A concentration must be notified where the aggregate worldwide turnover of the parties exceeds €350 million (\$473 million) and the turnover of each of at least two of the parties accrued from Finland exceeds €20 million for both. The turnovers are based on the last confirmed financial statements.

A review of the functionality of existing merger control rules, especially the turnover thresholds, shall be carried out during 2014.

### 2.2 How clear are the requirements? Please also note whether filing is mandatory or voluntary



Filing is mandatory if the turnover thresholds are exceeded.

Special rules on calculating the turnover of investment companies, credit institutions and other financial institutions exist.

### 2.3 Does the merger regime extend to transactions taking place outside your jurisdiction and if so to what extent does there need to be local effect?



The Competition Act does not treat foreign-to-foreign transactions differently. If the turnover thresholds are met, the transaction needs to be notified. The turnover threshold requirement of at least two parties acquiring turnover more than €20 million from Finland eliminates the need to notify most transactions with no connection to Finland. However, the establishment of a joint venture to foreign countries by two or more parties whose turnover accrued from Finland exceeds the thresholds requires notification in Finland.

### 2.4 How onerous are the filing requirements?



The notification must include the information specified in the Decree by the State Council on the scope of the obligation to notify a concentration (1012/2011), which in most cases need to be fairly detailed. However, the FCCA may grant exemptions to the information required, or a short-form notification may be used. In addition, less onerous obligations for submitting information are available where certain market share thresholds are not exceeded.

### 2.5 On whom does the burden to file fall, and are there filing fees?

The party acquiring control of the business must notify the transaction. Entities participating in a merger and the undertakings founding a joint venture are jointly obliged to notify.

There are no filing fees.

## Section 3: PENALTIES

### 3.1 At what level does your authority have jurisdiction to review and impose penalties for failure to notify deals?



On a proposal by the FCCA, the Market Court may impose fines of up to 10% of the infringing party's turnover where the party has failed to notify the concentration. However, the FCCA has never made such a proposal.

## Section 4: CLEARANCE

### 4.1 How advanced is the test for clearance?



The substantive test applied is the significant impediment to effective competition (SIEC) test, which replaced the old dominance test in November 2011. As the preparatory works of the Competition Act state that the case law of European courts and the Guidelines of the European Commission may be used as sources for interpretation, the substantive assessment of mergers in Finland can be considered well-established.

### 4.2 What level of opportunity exists for the decision to be appealed?



A notifying party cannot appeal a conditional approval decision.

If the FCCA makes a proposal to the Market Court to prohibit the concentration, the parties are asked to submit their written statement to the court. Market Court decisions may be further appealed to the Supreme Administrative Court.

Third parties have the right to appeal a decision approving the concentration only if their rights, obligations or interests are directly affected as specified in the Administrative Judicial Procedure Act (586/1996). However, third parties in a merger control case have never been considered to be in such a position. As the Market Court can prohibit a concentration only based on a proposal by the FCCA, an appealing third party cannot have a concentration prohibited.



#### Katri Joenpolvi

Partner, Krogerus

Helsinki, Finland

T:+358 (0)29 000 6257

M:+358 (0)50 543 6636

F:+358 (0)29 000 6201

E: katri.joenpolvi@krogerus.com

W: www.krogerus.com

#### About the author

Katri Joenpolvi has extensive experience in challenging competition law assignments. Joenpolvi advises clients in complex merger cases, private enforcement and European law litigation. During her career she has handled and coordinated numerous domestic and international merger control assessments and filings, including demanding Phase II investigations and remedy negotiations. Additionally, she is responsible for creating antitrust compliance programmes, assisting clients in regulatory matters and advising on EU law. Prior to joining Krogerus, Joenpolvi worked for the Finnish Competition Authority, where she acted as a deputy director for the last two years of her tenure. She has led the firm's competition and regulatory practice since 2003. She is ranked by *Chambers Europe*, which states she "rises to the pinnacle of Finnish competition law" and "is recognised by clients for her 'remarkable' work in the field".



#### Leena Lindberg

Partner, Krogerus

Helsinki, Finland

T:+358 (0)29 000 6371

M:+358 (0)50 511 1937

F:+358 (0)29 000 6201

E: leena.lindberg@krogerus.com

W: www.krogerus.com

#### About the author

Leena Lindberg advises clients on competition law assignments. Prior to joining Krogerus, Lindberg worked with the Finnish Competition Authority (FCA) for 14 years, where she also served as a member of the board of directors. She was in charge of the FCA's merger task force and participated in the drafting of EU merger and antitrust regulations. She has represented the authority in many merger, antitrust and cartel cases in the Market Court and the Supreme Administrative Court. Her other international experience includes working for the European Commission's Directorate General for Competition. Since joining Krogerus, she has handled and coordinated numerous domestic and international merger control assessments and filings. Lindberg is ranked by *Chambers Europe*, according to which, "clients assert that she has the view from both sides, and can explain the thinking behind certain authority actions clearly".