

Competition Act (No 948/2011)

NB: Unofficial translation, legally binding only in Finnish and Swedish
Finnish Competition Authority / Ministry of Employment and the Economy

Chapter 1 General Provisions

Section 1

Purpose of Act

(1) The purpose of this Act is the protection of sound and effective economic competition from harmful restrictive practices.

(2) Upon application of this Act, special attention shall be paid to the protection of the operating conditions of the markets and the freedom of undertakings to operate so as to allow customers and consumers to benefit from competition.

Section 2

Limitations in scope of application

(1) This Act shall not be applied to agreements or arrangements which concern the labour market.

(2) Section 5 of this Act shall not be applied to arrangements by agricultural producers, associations of agricultural producers, sector-specific associations, and any associations formed by these sector-specific associations concerning the production or sales of agricultural products or the use of common storage, processing or refining facilities if the arrangement fulfils the substantive requirements established in accordance with Section 42 of the Treaty on the Functioning of the European Union, under which the rules on competition of Articles 101 and 102 of the said Treaty shall not apply.

Section 3

Application of rules on competition of the Treaty on the Functioning of the European Union

When a restraint on competition may affect trade between the EU Member States, the provisions of Articles 101 and 102 of the Treaty on the Functioning of the European Union shall also apply.

Section 4

Definitions

In the context of this Act,

(1) *an undertaking* shall mean a natural person, and one or more private or public legal persons, who engage in economic activity;

(2) *a dominant position* shall be deemed to be held by one or more undertakings or association of undertakings, who, either within the entire country or a given region, hold an exclusive right or other dominant position in a specified product market so as to significantly control the price level or terms of delivery of that product, or who, in some other corresponding manner, influence the competitive conditions on a given level of production or distribution.

Chapter 2

Prohibited Restraints on Competition

Section 5

Prohibited restraints on competition between undertakings

(1) All agreements between undertakings, decisions by associations of undertakings, and concerted practices by undertakings which have as their object the significant prevention, restriction or distortion of competition or which result in a significant prevention, restriction or distortion of competition shall be prohibited.

(2) In particular, agreements, decisions, or practices which:

1. directly or indirectly fix purchase or selling prices or any other trading conditions;
2. limit or control production, markets, technical development, or investment;
3. share markets or sources of supply;
4. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
5. make the conclusion of a contract subject to acceptance by the other party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such a contract

shall be prohibited.

Section 6

Exemption

The prohibition of Section 5 does not, however, apply to any agreement between undertakings, any decision by associations of undertakings, or any concerted practice by undertakings, or any category of agreements, decisions or concerted practices, which:

1. contributes to improving the production or distribution of goods or to promoting technical or economic progress;
2. allows consumers a fair share of the resulting benefit;
3. does not impose on the undertakings concerned restraints which are not indispensable to the attainment of these objectives; and
4. does not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Section 7

Abuse of dominant position

Any abuse by one or more undertakings or association of undertakings of a dominant position shall be prohibited. Abuse may, in particular, consist in:

1. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
2. limiting production, markets or technical development to the prejudice of consumers;
3. applying dissimilar conditions to equivalent transactions with trading partners, thereby placing them at a competitive disadvantage;
4. making the conclusion of a contract subject to acceptance by the other contract party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such a contract.

Chapter 3

Measures resulting from prohibited restraints on competition, sanctions and damages Measures on prohibited restraints on competition

Measures on prohibited restraints on competition

Section 8

Prohibition to implement a restraint on competition

If a condition which is included in an agreement, statute, decision, or other legal act or arrangement infringes Section 5 or 7, or Article 101 or 102 of the Treaty on the Functioning of the European Union, or an injunction, prohibition or an obligation issued by the Market Court or by the Finnish Competition Authority, or a temporary injunction or an obligation issued by the Finnish Competition Authority, such a condition shall not be applied or implemented, unless otherwise ordered by the Market Court.

Section 9

Order to terminate a restraint on competition and obligation to deliver a product

If a restraint on competition is prohibited under Section 5 or 7, or Article 101 or 102 of the Treaty on the Functioning of the European Union, the Finnish Competition Authority may:

1. order that the undertaking or association of undertakings terminate the conduct prohibited under Article 5 or 7, or Article 101 or 102 of the Treaty on the Functioning of the European Union; and
2. oblige that the undertaking deliver a product to another undertaking on similar conditions as offered by that undertaking to other undertakings in a similar position.

Section 10

Commitments

By its decision, the Finnish Competition Authority may require that the commitments submitted by undertakings or associations of undertakings involved in a suspected infringement shall be binding on them, if the commitments are such that the restrictive nature of the conduct can be eliminated. The Finnish Competition Authority may reinstate proceedings, if any fact on which the decision is based has significantly changed; if the undertakings concerned infringe their commitments; or if the decision has been based on insufficient, false or misleading information submitted by the parties.

Section 11

Withdrawal of a block exemption

In accordance with Article 29(2) of Council Regulation (EC) No 1/2003 on the implementation of the rules of competition laid down in Articles 81 and 82 of the Treaty, the Finnish Competition Authority may withdraw from an agreement, a decision by an association of undertakings, or a concerted practice the benefit of a Block Exemption within Finland, when it finds that an agreement, decision by an association of undertakings, or concerted practice to which the exemption Regulation applies has effects which are incompatible with Article 101(3) of the Treaty on the Functioning of the European Union within Finland or a part thereof, which has all the characteristics of a distinct geographic market.

Sanctions

Section 12

Penalty payment imposed for a restraint on competition

(1) A penalty payment shall be imposed on an undertaking or association of undertakings that infringe the provisions of Articles 5 or 7, or Article 101 or 102 of the Treaty on the Functioning of the European Union, unless the conduct shall be deemed to be minor or the imposition of the penalty payment otherwise unjustified in respect to safeguarding competition.

(2) The penalty payment may also be imposed on an undertaking or an association of undertakings to whom the business activity involved in the infringement has been transferred as a result of a concentration or other corporate transaction.

(3) The penalty payment shall be imposed by the Market Court upon the proposal of the Finnish Competition Authority. The payment shall be ordered to be paid to the State.

Section 13

Amount of penalty payment imposed for a restraint on competition

The amount of the penalty payment shall be based on an overall assessment, and in determining it, attention shall be paid to the nature and extent, the degree of gravity, and the duration of the infringement. The penalty payment shall not exceed 10 per cent of the turnover of an undertaking or association of undertakings concerned during the year in which the undertaking or association of undertakings were last involved in the infringement.

Section 14

Immunity from penalty payment in cartel cases

(1) A penalty payment shall not be imposed on an undertaking in the case of a secret restraint on competition between competitors, referred to in Section 5 or Article 101 of the Treaty on the Functioning of the European Union, whereby purchase or selling prices or other trading conditions are fixed; production or sales is limited; or markets, customers or sources of supply are shared, if an undertaking involved in such a restraint on competition:

1. produces information or evidence, on the grounds of which the Finnish Competition Authority may conduct an inspection referred to in Section 35 or 36; or
2. following an inspection referred to in Section 35 or 36, delivers information or evidence, on the grounds of which the Finnish Competition Authority can establish that Section 5 or Article 101 of the Treaty on the Functioning of the European Union has been violated.

(2) In the instances referred to in Section 14(1) above, it is a further condition of immunity that the undertaking has provided the information and evidence referred to in (1)(1) and (1)(2) prior to the Finnish Competition Authority obtaining it from some other source.

(3) An undertaking who has pressurized another undertaking to participate in a cartel cannot obtain immunity.

Section 15

Reduction of penalty payment in cartel cases

(1) The penalty payment imposed on an undertaking that participated in a restraint on competition other than the undertaking referred to in Section 14(1) that obtained immunity under Section 14, shall be reduced if the undertaking submits information and evidence to the Finnish Competition Authority that is significant for establishing a restraint on competition or its entire extent or nature, and prior to the

Finnish Competition Authority receiving the information from some other source. The penalty payment shall be reduced in the following way:

1. 30–50 per cent if the undertaking is the first one to submit the information;
2. 20–30 per cent if the undertaking is the second one to submit the information;
3. 20 per cent at most in any other situations than the ones referred to in Section 15(1)(1) and 15(1)(2).

2) An undertaking that has received conditional immunity from fines referred to in 17(2) cannot obtain a reduction referred to in Section 15(1) in a case involving the same restraint on competition.

Section 16

Conditions for immunity from fines and the reduction of fines in cartel cases

(1) Immunity from penalty payment referred to in Section 14 or reduction of penalty payment referred to in Section 15 above is further conditional upon the undertaking:

1. immediately ceasing participation in the restraint on competition once it has delivered to the Finnish Competition Authority the application referred to in Section 17(1);
2. cooperating with the Finnish Competition Authority during the entire investigation of the restraint on competition;
3. not destroying the evidence covered by the application prior to or following the submission of the application referred to in Section 17(1); and
4. keeping confidential the content of the application referred to in Section 17(1) and the fact of having made an application or considering making an application.

(2) Notwithstanding Section 16(1)(1), the undertaking may, under the direction of the Finnish Competition Authority, continue participation in the infringement to the extent it is necessary to secure the success of the inspections referred to in Sections 35 and 36.

(3) By way of derogation from Section 16(1)(4), the undertaking may submit the information concerning the application to the European Commission or the competition authority of another country, if this is necessary for the investigation of a restraint on competition.

Section 17

Procedure for immunity from fines and the reduction of fines in cartel cases

(1) Immunity from fines referred to in Section 14 and reduction of fines referred to in Section 15 above shall be applied from the Finnish Competition Authority. The Finnish Competition Authority may fix a time-limit during which the applicant shall submit to the Finnish Competition Authority the information and evidence referred to in Section 14.

(2) The Finnish Competition Authority grants the undertaking conditional immunity from fines after the undertaking has submitted to the Finnish Competition Authority the information and evidence referred to in Section 14. The Finnish Competition Authority shall not take a position on any other applications referred to in Section 14 prior to deciding whether it shall grant conditional immunity to the undertaking who has been the first one to submit an application. If the undertaking has lodged or is about to lodge an application in the same case referred to in Section 14(1)(1) to the European Commission or another competent authority of the European Union in order to obtain immunity from fines, conditional immunity may be granted on the basis of a shortened application.

(3) At the end of the procedure, the Finnish Competition Authority shall issue a written decision on whether the undertaking fulfils all the criteria set out in Sections 14 or 15 and 16.

(4) The information and evidence submitted to the Finnish Competition Authority for obtaining immunity referred to in Section 14 or reduction referred to in Section 15 cannot be used for any other purpose than the order to terminate a restraint on competition or the order to deliver a product referred to in Section 9, the commitment decision referred to in Section 10, the withdrawal of a Block Exemption

referred to in Section 11, or the review of a penalty payment proposal at the Finnish Competition Authority, the Market Court or the Supreme Administrative Court.

Section 18

Reduction of fines in other than cartel cases

(1) In the case of a competition restraint other than those referred to in Section 14(1), the Finnish Competition Authority may propose that a lower penalty payment be imposed on an undertaking or association of undertakings than would be the case otherwise, or refrain from making a penalty payment proposal, if the undertaking or association of undertakings has significantly assisted the Finnish Competition Authority in the investigation of a restraint on competition.

(2) In cases referred to in Section 18(1), the Market Court may impose a lower penalty payment than would otherwise be the case, or not impose a penalty payment.

Section 19

Limitation period of penalty payment

(1) The penalty payment shall not be imposed for a violation of the provisions of Sections 5, 7, 25 or 27, or Articles 101 or 102 of the Treaty on the Functioning of the European Union, unless the proposal to the Market Court has been made within five years of the date of the violation, or in the case of a continuous infringement, within five years of the date on which the violation ended. Measures of the Finnish Competition Authority to investigate the infringement shall reset the limitation period.

(2) The penalty payment shall not be imposed, however, if the proposal to the Market Court has not been made within ten years of the date of the violation, or in the case of a continuous infringement, within ten years of the date on which the violation ended.

Section 20

Damages

(1) An undertaking or association of undertakings who, either intentionally or negligently, violates the prohibition prescribed in Section 5 or 7, or Article 101 or 102 of the Treaty on the Functioning of the European Union, is obliged to compensate the damage caused by the restraint on competition.

(2) What is provided in Chapter 2, Section 1(2) and Chapter 6 of the Tort Liability Act (412/1974) shall also apply to damages.

(3) The right to compensation shall expire if the action for damages has not been instituted within ten years of the date on which the violation occurred, or in the case of a continuous infringement, within ten years of the date on which the violation ended. If the damages claim is based on a restraint on competition which the Finnish Competition Authority has by its decision found to violate the prohibition referred to in 20(1), or on which it has made a proposal to the Market Court for the imposition of a penalty payment, the right for damages shall not be considered to expire until one year has passed from the date that the decision in the matter becomes valid.

Chapter 4

Control of concentrations

Section 21

Definition of a concentration

(1) In the context of this Act, a concentration shall mean

1. the acquisition of control referred to in Chapter 1, Section 5, of the Companies Act (1336/1997) or an acquisition of a corresponding actual control (*control*);
2. the acquisition of the entire business operations or a part thereof of a an undertaking;
3. a merger;
4. the creation of a joint venture which shall perform on a lasting basis all the functions of an autonomous economic unit.

(2) The provisions on the control of concentrations shall not apply to internal arrangements within a group of companies referred to in Section 21(1).

(3) A party to a concentration shall mean the acquirer of control; the acquirer of business operations or a part thereof referred to in paragraph 21(1)(2); the object of control; the business operation or a part thereof referred to in paragraph 21(1)(2); an entity or foundation party to a merger referred to in paragraph 21(1)(3) and the founder of a joint venture referred to in paragraph 21(1)(4).

Section 22

Scope of application

(1) The provisions on the control of concentrations shall apply to a concentration where the combined turnover of the parties to the concentration exceeds 350 million euros and the turnover of at least two of the parties resulting from Finland exceeds 20 million euros for both.

(2) In the context of this Act, what is provided on turnover shall apply to:

1. the total amount of the income items, excepting extraordinary income, of the credit institutions, investment firms and other financial institutions to which the provisions of Chapter 9 of the Act on Credit Institutions (121/2007) are applicable and in accordance with which the relevant profit and loss account has been drawn up; and
2. the gross premium written of insurance and pension institutions or, in the context of pension foundations, premium written.

(3) The provisions on the control of concentrations shall not apply if the concentration falls within the scope of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, unless the Commission refers the concentration to the Finnish Competition Authority under Article 4(4) or Article 9 of the Regulation cited.

Section 23

Notification of a concentration

(1) A concentration referred to in Section 22 above shall be notified to the Finnish Competition Authority following the conclusion of the agreement, acquisition of control, or the announcement of a public bid referred to in Chapter 6, Section 3, of the Securities Market Act (495/1989) but prior to the implementation of the transaction. A concentration may also be notified to the Finnish Competition Authority as soon as the parties demonstrate with sufficient certainty their intention to conclude a concentration.

(2) A concentration, to which the provisions of Chapters 3 or 10 of the Employee Pension Insurance Companies Act (354/1997); Chapter 11 of the Act on Pension Fund Act (1774/1995); Chapter 12 of the Insurance Fund Act (1250/1987); Chapter 11 of the Pension Foundation Act (1774/1995) or Chapter 12 of the Insurance Fund Act (1164/1992) apply, shall be notified to the Finnish Competition Authority after the parties to the concentration have been informed of the approval of the Financial Supervisory Authority, or of the Financial Supervisory Authority not opposing the concentration. A notification is not necessary if the Financial Supervisory Authority, in accordance with the Acts cited in the present paragraph, has requested a statement from the Finnish Competition Authority about the concentration, and the Finnish Competition Authority has found in its statement that no impediment for the approval of the concentration exists.

(3) Those obliged to notify are the acquirer of control; the acquirer of business operations or a part thereof; the entities or foundations party to a merger; and the founders of a joint venture.

(4) Further provisions on the obligation to notify referred to in 23(1) shall be issued by a government decree.

(5) On the powers of investigation of the Finnish Competition Authority while it deals with matters relating to control of concentrations shall be provided in Sections 33, 35, 37, 38 and 46.

Section 24

Calculation of turnover

(1) The turnover of the acquirer of control; the acquirer of business operations or a part thereof referred to in 21(1)(2); the acquiring entity or foundation in an absorption merger; the merging entity or foundation in a combination merger and the founder of a joint venture shall contain

1. the turnover of an entity or a foundation exercising control therein;
2. the turnover of an entity or a foundation wherein it exercises control;
3. the turnover of an entity or a foundation wherein an entity or foundation referred to in (1) exercises control; and
4. the turnover of an entity or a foundation wherein control is exercised by the same natural person as in the entity or foundation referred to in the introductory paragraph.

(2) The turnover of the object of the acquisition shall mean

1. the turnover of the entity or foundation wherein control is acquired;
2. the turnover related to the business operations or a part thereof referred to in paragraph 21(1)(2); or
3. the turnover of a merging entity or foundation in an absorption merger.

(3) The turnover of the object of the acquisition shall also contain the turnover of the entity or foundation where the entity or foundation referred to in Section 24(2)(1) or 24(2)(3) exercises control.

(4) Where business operations are acquired through two or more successive transactions, the turnover of the object of the acquisition shall mean the combined turnover related to the business operations acquired from the same entity or foundation or a party in such relation to them as referred to in 24(1) during two years preceding the acquisition of the entity or foundation or a party in such relation to them as referred to in 24(1), irrespective of whether or not the parts acquired are legal persons.

(5) Further provisions on the calculation of turnover shall be issued by a government decree.

Section 25

Prohibiting a concentration and imposing conditions

(1) The Market Court may, upon the proposal of the Finnish Competition Authority, prohibit or order a concentration to be dissolved, or attach conditions on the implementation of a concentration, if the concentration may significantly impede effective competition in the Finnish markets or a substantial part thereof, in particular as a result of the creation or strengthening of a dominant position.

(2) In addition to what is provided under Section 25(1), the Market Court may, upon the proposal of the Finnish Competition Authority, also prohibit a concentration in the electricity market as a result of which the combined share of the transmission operations of the parties to the concentration and the entities or facilities in such a relation to them as described in Section 24(1)–(3) of the amount of electricity transmitted at 400 V in the transmission grid exceeds 25 per cent on a national level.

(3) If the impediment of competition referred to in section 25(1) or the harmful effects of the concentration referred to in Section 25(2) may be avoided by attaching conditions on the implementation of

the concentration, instead of making a proposal, the Finnish Competition Authority shall negotiate and order such conditions to be followed. The Finnish Competition Authority cannot impose conditions on a concentration that are not approved by the notifier of the concentration.

Section 26

Time limits for proceedings

(1) The Finnish Competition Authority shall immediately examine a concentration notification. During the initial phase, the Finnish Competition Authority shall decide whether further investigations are required. If the Finnish Competition Authority shall not take a decision about commencing further proceedings within one month from the receipt of the notification, the concentration shall be considered approved. The time period shall not begin if the notification is significantly incomplete.

(2) If the Finnish Competition Authority does not attach conditions or make a proposal to prohibit the concentration within three months from taking the decision to initiate further proceedings, the concentration shall be considered approved. The Market Court may suspend the deadline by at most two months.

(3) If the parties to the concentration, or the entities and foundations in such a relation to them as described in Section 24(1)–(3), do not submit the information requested by the Finnish Competition Authority under Section 33 within the set time limit, or submit the information significantly incomplete or misleading, the time limits for proceedings referred to in Section 26(1) and 26(2) shall be extended. They shall be extended by the same number of days than the submission of the information is delayed by from the date originally set for their submission. The Finnish Competition Authority shall issue a decision on the extension of the time limit.

Section 27

Implementation of a concentration

(1) The parties to the concentration shall not take measures to implement the concentration, unless otherwise prescribed in the present Act, or so ordered after an appraisal of the issue, prior to a final decision without conditions, or with conditions attached, or other approval in the relevant concentration case.

(2) What is provided in section 27(1), shall not prevent the implementation of a public bid referred to in Chapter 6, Section 1, of the Securities Market Act or the use of a mandatory bid referred to in Chapter 6, Section 10(1) of the Act cited, or the use of a redemption obligation or a right of redemption referred to in Chapter 18, Section 1(1), of the Finnish Companies Act (624/2006).

(3) What is provided in section 27(1) does not prevent the granting of a permission to implement a merger. The implementation of a merger shall not be registered, however, prior to a final decision without conditions, or with conditions attached, or other approval in the relevant concentration case.

4) What is provided in section 27(3) also applies to the transfer of business operations referred to in the Act on Commercial Banks and Other Joint-Stock Credit Institutions (1501/2001), the Act on Co-operative Banks and Other Cooperative Credit Institutions (1504/2001) and the Savings Bank Act (1502/2001).

Section 28

Imposition of penalty payment in control of concentrations

A penalty payment prescribed in Section 12 shall be imposed on an undertaking who implements a concentration in breach of Sections 25 or 27, unless the conduct is to be deemed minor or the imposing of a fine otherwise unjustified with respect to safeguarding competition.

Section 29

Concentration at Market Court

(1) Where the Finnish Competition Authority has proposed prohibiting a concentration, the Market Court shall issue its decision within three months from the making of the proposal. Otherwise the concentration shall be considered approved.

(2) The prohibition to implement a concentration shall expire, unless the Market Court orders otherwise within one month from the making of the proposal. The Market Court may impose conditions on the implementation.

Section 30

Amendment of a concentration decision

(1) Upon application, the Finnish Competition Authority may lift a condition attached to the implementation of a concentration or mitigate it, due to a significant change in market conditions or another substantial cause.

(2) Notwithstanding a prior decision, the Market Court may, upon the proposal of the Finnish Competition Authority, prohibit or order a concentration to be dissolved, or attach conditions on its implementation, if the parties concerned have supplied false or misleading information which has had a substantial effect on the decision, or if the transaction has been implemented in breach of Sections 25 or 27. A further requirement is that the parties to the concentration shall be informed of the proposal by the Finnish Competition Authority to reopen the case no later than one year from the final decision becoming effective, or from the implementation of the concentration.

Chapter 5

Procedural provisions

Section 31

Infringement proceedings at the Finnish Competition Authority

The Finnish Competition Authority shall investigate restraints on competition and the effects thereof. It shall initiate the necessary proceedings to eliminate the restraint on competition or the harmful effects thereof if it finds that an undertaking or association of undertakings restraints competition in a manner referred to in Section 5 or 7, or Article 101 or 102 of the Treaty on the Functioning of the European Union, and if the initiation of proceedings is necessary to safeguard effective competition in the market.

Section 32

Prioritisation

(1) The Finnish Competition Authority shall prioritise its tasks.

(2) The Finnish Competition Authority shall not investigate a case if

1. it cannot be deemed likely that there exists an infringement prohibited by Sections 5 or 7, or Articles 101 or 102 of the Treaty on the Functioning of the European Union;
2. competition in the relevant market may be considered functional as a whole, irrespective of the suspected infringement;
3. the complaint in the matter is manifestly unjustified.

(3) The decision to not to investigate shall be taken without delay.

Section 33

Obligation to submit information by the undertaking

(1) An undertaking or association of undertakings shall be obliged, at the request of the Finnish Competition Authority, to provide the Authority with all the information and documents needed for the investigation of the content, purpose and impact of a restraint on competition and for clarifying the competitive conditions, and to assess a concentration referred to in Chapter 4.

(2) An undertaking or association of undertakings shall, at the request of the Finnish Competition Authority, also provide the Authority with the necessary information and documents to enable it to determine whether the undertaking or association of undertakings holds a dominant position.

(3) The information and documents referred to above shall be provided to a Regional State Administrative Agency when it investigates restraints on competition or competitive conditions.

(4) The information shall, whenever requested, be delivered in writing.

Section 34

Invitation to appear

If it is necessary for the gathering of the information needed relating to the object of investigation, the Finnish Competition Authority has the right to invite a representative of an undertaking or association of undertakings, or a person who may for a justified reason be suspected of having acted in the implementation of a restraint on competition, to appear before it. The Finnish Competition Authority may record the responses. The invitation to appear is laid down in the Administrative Procedure Act (434/2003).

Section 35

Inspections on the business premises of an undertaking

(1) An authorised official of the Finnish Competition Authority and a Regional State Administrative Agency are empowered to conduct an inspection in the business premises, storage facilities, land, and means of transport controlled by the undertaking in order to supervise compliance with this Act and any subsequent rules issued under it, and to assess the concentrations referred to in Chapter 4. The Finnish Competition Authority shall be obliged, at the request of the European Commission, to conduct an inspection as prescribed in the European Union legal acts.

(2) The Finnish Competition Authority shall assist the Commission in conducting inspections as prescribed in the European Union legal acts.

Section 36

Inspections of other premises

(1) In order to supervise compliance with this Act and any subsequent rules issued under it, an authorised official of the Finnish Competition Authority and a Regional State Administrative Agency are also empowered to conduct an inspection in premises other than the ones referred to in Section 35 if a reasonable suspicion exists that bookkeeping or other documents relating to the business and the object of investigation may be held there, if these may have relevance in proving a serious violation of Sections 5 or 7, or Articles 101 or 102 of the Treaty on the Functioning of the European Union.

(2) The European Commission may, in accordance with Article 21 of Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, order that an inspection be conducted in premises other than the ones referred to in Section 35.

(3) The Finnish Competition Authority shall seek an advance permission from the Market Court to conduct an inspection referred to in 36(1) and an inspection by the European Commission referred to in Section 36(2). The Market Court may prohibit an inspection if it would be arbitrary or excessive. In examining whether the inspection is arbitrary or excessive, the Market Court shall in particular pay attention to the gravity of the suspected infringement, the importance of the evidence sought, the involvement of the undertaking concerned, and the reasonable likelihood that business books and records relating to the object of the inspection are kept in the premises for which the authorisation is requested.

Section 37

Inspection procedure

(1) The undertaking or association of undertakings shall, for the purpose of an inspection, allow an official of the Finnish Competition Authority, a Regional State Administrative Agency or the European Commission, or persons empowered by them, to enter any business premises, storage facilities, land, and means of transport in their possession. The official conducting an inspection is empowered to examine the business correspondence, bookkeeping, computer files, other documents, and data of an undertaking or association of undertakings which may be relevant for ensuring compliance with the present Act and with any subsequent rules issued under it, and to take copies of the documents under investigation.

(2) The official conducting an inspection is empowered to request from all representatives of an undertaking, or association of undertakings, or members of the staff, explanations of the facts and documents relating to the object and purpose of the inspection, and to make a record of the replies obtained. The official conducting an inspection is also empowered to seal business premises and business correspondence, documents, and data for the period and to the extent necessary for the inspection.

(3) When conducting an inspection on premises other than those referred to in Section 35, an official of the Finnish Competition Authority, a Regional State Administrative Agency, or the European Commission has the powers provided in 37(1) but not the powers referred to in 37(2).

(4) Section 40 of the Police Act (493/1995) lays down the obligation of the police to provide official assistance.

(5) The European Commission, the Finnish Competition Authority, and the Regional State Administrative Agencies may use other persons empowered by them to assist in the inspections.

Section 38

Right of defence of an undertaking

(1) The Finnish Competition Authority shall inform the undertaking under investigation of its position in the investigation and of what it is suspected of. The undertaking has the right to receive the information as soon as it is possible without jeopardising the investigation of the restraint on competition.

(2) Upon request, the undertaking under investigation has the right to receive information, orally or in another appropriate manner, on the documents concerning the investigation and the phase of the proceedings insofar as it cannot harm investigations in the matter, unless otherwise provided in the Act on the Openness of Government Activities (621/1999) or European Union laws.

(3) The Finnish Competition Authority can only use the information obtained on the basis of Sections 33–36 for the purpose for which it has been gathered, unless the Finnish Competition Authority has started new investigation. An undertaking shall not have an obligation to deliver to the Finnish Competition Authority documents which contain confidential correspondence between an outside legal consultant and the client. When an undertaking responds to the questions raised by the Finnish Competition Authority, it is not under an obligation to submit that it has violated Sections 5 or 7, or Articles 101 or 102 on the Treaty on the Functioning of the European Union.

(4) The undertaking has the right to be heard prior to the Finnish Competition Authority making a proposal for a penalty payment, or a decision stating a violation of Sections 5 or 7, or Articles 101 or 102

on the Treaty on the Functioning of the European Union. The Finnish Competition Authority shall inform the an undertaking in writing of the claims and justifications relating to the issues which have arisen during the investigation. The Finnish Competition Authority shall fix a reasonable time-limit within which the an undertaking may present its comments to the Finnish Competition Authority either orally or in writing.

Section 39

Submitting a confidential document to the Finnish Communications Regulatory Authority

Notwithstanding what is provided in the Act on the Openness of Government Activities, the Finnish Competition Authority has the right to submit to the Finnish Communications Regulatory Authority a confidential document, as defined by Section 24 of the Act cited, obtained or drafted by it in the process of carrying out the duties assigned to it in this Act, if this is necessary in order for the Regulatory Authority to attend to its duties.

Section 40

Submitting a confidential document to the competition authority of another state

The submitting of a confidential document in the possession of the Finnish Competition Authority to a foreign competition authority is laid down in Section 30 of the Act on the Openness of Government Activities.

Section 41

Duties of the Regional State Administrative Agencies

The Regional State Administrative Agencies shall investigate competitive conditions and restraints on competition, and by mandate of the Finnish Competition Authority, take other measures to promote competition within their region.

Section 42

Infringement proceedings at the Market Court

(1) A competition infringement issue shall be brought before the Market Court by the proposal referred to in Section 2(3), 25(1), 26(2) or 30(2), an appeal referred to in Section 44(1), or an application referred to in Section 36(3) or Section 45(2). The proposal, the appeal, and the application shall be made in writing.

(2) After the proposal or appeal has arrived before the Market Court, the Chief Judge or a Market Court Judge shall conduct preliminary proceedings before the final proceedings to enable a prompt decision to be made. Preliminary proceedings are not necessary if the matter shall be dismissed as inadmissible or dismissed at once as unfounded.

(3) During preliminary proceedings, an undertaking or association of undertakings concerned shall be granted an opportunity to respond to the proposal either orally or in writing. An undertaking which is the object of the restraint may also be heard. Preliminary proceedings may be closed even if the party concerned has not submitted the requested reply on the proposal.

(4) The Market Court may decide on the granting of the permission referred to in Section 36(3) without hearing the undertaking or association of an undertakings concerned.

Section 43

Obligation to attend the hearing by the Market Court and to present documents

(1) The Market Court may oblige a party concerned to arrive before it and to produce its business correspondence, bookkeeping, minutes, and other documents shedding light on the competition restraint.

(2) The Administrative Judicial Procedure Act (586/1996) and the Market Court Act (1527/2001) are otherwise applied to the proceedings and investigations in the matter. There are separate provisions on the publicity of hearings and records.

Chapter 6

Miscellaneous Provisions

Section 44

Right of appeal

(1) A decision adopted by the Finnish Competition Authority on the basis of this Act may be appealed to the Market Court as prescribed by the Administrative Judicial Procedure Act. A decision adopted by the Finnish Competition Authority under Sections 26(1) or 45(1), and a decision taken by the Finnish Competition Authority to conduct an inspection referred to in Article 35, shall not be appealed. A decision adopted by the Finnish Competition Authority under Sections 17(3) or 26(3) shall not be separately appealed. A notifier of a concentration shall not appeal a decision adopted by the Finnish Competition Authority under Section 25, by which the commitments proposed by the notifier have been ordered to be followed. A decision adopted by the Finnish Competition Authority under Sections 9–11 or 33 shall be followed, notwithstanding an appeal, unless the Market Court rules otherwise.

(2) A decision adopted by the Market Court under the present Act may be appealed to the Supreme Administrative Court as prescribed by the Administrative Judicial Procedure Act. A decision taken by the Market Court under Section 26(2), or a decision on the extension of the time limit referred to in Section 45(2), or the granting of an authorisation for an inspection referred to in Section 26(3) shall not be appealed. The decision of the Market Court shall be followed, notwithstanding an appeal, unless the Supreme Administrative Court rules otherwise.

(3) A decision on official assistance under Section 37(4) shall not be appealed.

(4) A penalty payment shall be implemented without a judgement or a decision in compliance with what is prescribed in the Act on the Recovery of Taxes and Charges through Execution (706/2007).

Section 45

Interim measures

(1) If the application or implementation of a restraint on competition shall be prevented at once, the Finnish Competition Authority may issue an interlocutory injunction to that effect. The Finnish Competition Authority may also temporarily oblige an undertaking to deliver products to another undertaking under similar conditions as offered by that undertaking to other undertakings.

(2) The Finnish Competition Authority shall make a decision on the principal issue or a proposal under Section 12(3) to the Market Court within 60 days of issuing an interlocutory injunction. Upon the application by the Authority within that period, the Market Court may extend the time limit. If the Finnish Competition Authority fails to make a decision on the principal issue, or fails to make a proposal within the time limit, the injunction or obligation will expire.

(3) Prior to issuing an interlocutory injunction or an obligation, the Finnish Competition Authority shall grant the undertaking or association of undertakings an opportunity to be heard, unless the urgency of the matter or some other special reason demands otherwise.

Section 46

Periodic penalty payment

(1) The Finnish Competition Authority may impose a periodic penalty payment to enforce the condition set, or the order, prohibition, or obligation issued on the basis of this Act. The Market Court shall order a periodic penalty payment to be paid.

(2) The Market Court may impose a periodic penalty payment to enforce an order, condition, prohibition, or obligation as referred to in this Act. The Market Court shall order a periodic penalty payment to be paid.

(3) The Act on Conditional Fines (1113/1990) provides on the imposition and ruling of a conditional fine.

(4) The periodic penalty payment cannot be imposed on a natural person to fulfil the obligation set to enforce the obligation to deliver information provided in Section 34 of this Act.

Section 47

Implementation of a penalty payment

(1) The Legal Register Centre shall take care of the implementation of the decision on a penalty payment referred to in Section 12.

(2) The Legal Register Centre shall be informed of the decision by the Market Court to impose a penalty payment.

(3) If the Supreme Administrative Court amends the decision of the Market Court so as to cancel the penalty payment, or to change the amount thereof, the Supreme Administrative Court shall inform the Legal Register Centre of its decision.

(4) The Supreme Administrative Court shall also inform the Legal Register Centre of the decision to impose a penalty payment as a first instance.

(5) The Legal Register Centre shall return the penalty payment without a separate application if the decision on it has been annulled, or if the amount of the payment has been changed.

Section 48

Punishment for false evidence

A punishment for providing an authority with false evidence is prescribed by Chapter 16, Section 8, of the Penal Code.

Section 49

Hearing of Finnish Competition Authority

(1) When reviewing a competition infringement case, the court shall give the Finnish Competition Authority the opportunity of being heard.

(2) When reviewing a damages claim referred to in Section 20(1), the court may request a statement from the Finnish Competition Authority.

Section 50

Entry into force

(1) This Act enters into force on 1 November 2011.

(2) This Act shall repeal the Act on Restraints of Competition (480/1992). If references are made elsewhere in legislation to the Act on Restraints on Competition, the provisions of this Act shall be applied in place of the Act on Restraints on Competition.

(3) The provisions that are effective when this Act enters into force shall be applied to competition law violations and concentrations carried out prior to the entry into force of this Act. That which is provided in Sections 14–18 on the immunity from penalty payment and the reduction of penalty payment, and that which is provided in Sections 32–38 on prioritisation and inadmissibility, the obligation to deliver information by the undertaking, the summons to be heard, inspections, and the right of defence by an undertaking shall apply to the proceedings in the case, however.

(4) Notwithstanding what is provided in Section 50(3), when this Act enters into force, the pending cases at the Market Court and the Supreme Administrative Court shall be closed observing the rules that were effective when this Act entered into force.

(5) Measures necessary for the implementation of this Act may be undertaken prior to the entry into force of this Act.

Translator: Jaana Aho

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