

**Template pursuant to Section 3 (a) of the
ICN Framework on Competition Agency Procedures**

Finnish Competition and Consumer Authority, Finland

The following template is submitted by the Finnish Competition and Consumer Authority, Finland pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The Finnish Competition and Consumer Authority, [FCCA](#) has the power to enforce the Finnish Competition Act and EU competition rules. The FCCA is an independent competition agency meaning that it decides cases without external instructions and its decisions are based only on competition assessment. Largely due to budgetary reasons, all governmental authorities in Finland have predetermined annual performance targets; for the FCCA they are set by the Ministry of Economic Affairs and Employment. The Ministry does not interfere in the decision-making of the FCCA in individual antitrust or merger cases.

For the purposes of this Template, the FCCA adopts the definitions in section (a) of the annex to the ICN CAP.

The Finnish competition law enforcement is based on administrative proceedings, as defined in the annex, with the exception that the FCCA is not empowered to impose sanctions or prohibit a merger notified to it. These measures are imposed by administrative courts, at first stage upon a proposal of the FCCA.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The Finnish competition law is applicable to all undertakings carrying out economic activity irrespective of the nationality, residence or the origin of the undertaking. Neither other laws, nor any of the FCCA's policies permit the FCCA to treat foreign undertakings from another jurisdiction less favourably than national (Finnish) undertakings when competition laws are applied. This principle of non-discrimination applies to substantive as well as to procedural parts of the competition jurisdiction.

The FCCA treats undertakings located in another country also in compliance with the non-discriminatory rules of the EU law and international treaties.

Finland is bound by Hague Convention on the Service Abroad of Judicial and Extrajudicial documents in Civil or Commercial matters. Between the Nordic countries, the Agreement between Finland, Denmark, Iceland, Norway and Sweden on Mutual Legal Assistance in Service of Documents and Production of Evidence is also applicable.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

In Finland, no law is valid unless it has been published in the Statutes of Finland. The Finnish Government maintains the [Finlex](#) online database which is up-to-date and whole-of-government website for the Finnish legislation and related documents.

All competition laws concerning antitrust, mergers as well as procedures that the FCCA applies in its investigations and other enforcement proceedings are [publicly available](#) (including [the Competition Act](#)). In non-merger matters, the FCCA applies either national or EU competition rules or in some cases both these rules simultaneously. When a competition restraint may affect trade between the EU Member States, the [Articles 101 and 102](#) of the Treaty on Functioning of the European Union (“TFEU”) are always applicable.

The FCCA is also under an obligation to apply the [Administrative Procedure Act](#) and the [Act on the Openness of Government Activities](#) (hereafter ‘Openness Act’) when

conducting merger/non-merger investigations or carrying out other enforcement proceedings. These laws oblige the FCCA to follow good administrative practices and to promote openness of its activities.

The FCCA has also published a number of guidelines relating to [leniency](#) procedure, the FCCA's [priorities](#) and [inspections](#) (dawn raids) and specific guidance on [mergers](#).

A [case database](#) offers the possibility to search for published decisions and case summaries relating to cartels, unilateral actions, mergers, public procurement and competition neutrality (cases are in Finnish but from some an English press release is available). The FCCA's [annual reports](#) provide a concise overview of facts and figures as well as the most important cases of each year.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

Mergers:

Those mergers and concentrations, which exceed the notification threshold based on the turnover of the merging parties, must be notified to the FCCA. It is forbidden to implement the transaction prior to obtaining clearance from the FCCA. Given the short timeframe of a merger control procedure, the parties normally contact the FCCA for the pre-notification discussions, well before the formal notification itself. Throughout the process, the merging parties have several opportunities to interact with the FCCA's merger task force and present their arguments.

Non-mergers:

As a general rule, and especially in terms of non-mergers, undertakings are almost at any stage of the investigations free to present relevant information or other facts directly to the FCCA.

The FCCA informs the undertaking under investigation of its position in the investigation and what it is suspected of. The undertaking has the right to receive this information as soon as it is possible, without jeopardising the investigation of the restraint. Upon request, the undertakings have also the right to receive information on the phase of the proceedings insofar as it cannot harm investigations in the matter (section 38, subsections 1-2 of the Competition Act).

Along with the Competition Act, the FCCA also applies the Administrative Procedure Act during investigations to ensure fair and transparent proceedings. The FCCA has the duty to ensure that an investigation is sufficiently and appropriately examined, by focusing on the information and evidence relevant for a decision to be made on the matter. A sufficient time limit - in view of the nature of the investigation - will be set for the undertakings for supplementing the information and for submitting an explanation and presenting evidence (sections 31 and 33.1 of the Administrative Procedure Act).

e) *Timing of Investigations and Enforcement Proceedings*

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

Mergers:

The time periods of merger investigations and proceedings are accurately regulated by law (section 26 of the Competition Act). If the FCCA does not take a decision about commencing further proceedings within 23 working days from the receipt of the notification, the concentration shall be considered approved. The time period shall not begin if the notification is significantly incomplete.

In case the FCCA does not attach conditions or make a proposal to prohibit the concentration within 69 working days - from taking the decision to initiate further proceedings - the concentration shall be considered approved. The Market Court may suspend the deadline for 46 working days at the most.

Non-mergers:

The FCCA systematically monitors the duration of the non-merger cases under investigation, and the authority has an obligation to prioritise its tasks. By the law itself, the FCCA is required to process and deal with the matter without undue delay. Upon the request of a party, the authority shall inform the party about the estimated date of issue of a decision and respond to queries about the progress of consideration (section 23 of the Administrative Procedure Act).

Limitation period:

In Finland, any penalty payments (fines) for a violation of the Competition Act or EU competition rules shall be imposed by the Market Court upon the proposal of the FCCA (section 12.3 of the Competition Act). Fines shall not be imposed unless the FCCA's proposal to the Market Court has been made within five years of the date of the violation, or in the case of continuous infringement, within five years of the date on which the violation ended.

Normally, measures of the FCCA to investigate the infringement reset the limitation period. However, in any event, the penalty payment shall not be imposed 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 19 of the Competition Act).

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

The FCCA protects all confidential information obtained or used during investigations or enforcement proceedings from unlawful disclosure.

Protection of confidential information is confirmed by legislation. The Openness Act ensures, unless specifically provided otherwise, the protection of confidential information obtained or used during investigations or enforcement proceedings. At the same time, the Openness Act provides parties to a proceeding with access to the evidence necessary to prepare an adequate legal defence. Parties in a matter may have the right of access to the document which is not in the public domain, if the document may influence or may have influenced the consideration of the matter in question (sections 11 and 24.2 of the Openness Act). On balance, the Act aims to ensure a fair and effective treatment of confidential documents in accordance with the interests of the undertakings concerned and the public.

However, even parties' rights of access can be limited especially in non-merger cases before the 'statement-of-objections' phase of the investigations, for instance on the basis that access to documents and other information would jeopardise the investigation of the suspected competition restraint (section 38 of the Competition Act).

In Finland, a public official that unlawfully discloses a business or trade secret, or makes a use of such document for his or her own benefit, shall be sentenced for a breach of official secrecy to a fine or to imprisonment (chapter 40, section 5 of the [Criminal Code of Finland](#)).

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

FCCA's officials' objectivity, independency and impartiality is ensured primarily by the strict rules of the Administrative Procedure Act and by other national legislation such as State Civil Servants Act. The former obliges the FCCA to treat equally those to whom it is 'providing services in administrative matters' and that the FCCA shall exercise its competence only for purposes that are acceptable under the law. The acts of an authority need to be impartial and proportionate to the objectives sought. The Act protects expectations that are 'legitimate under the legal order' (section 6 of the Administrative Procedure Act).

This Act also deals with the disqualification of public officials (e.g. FCCA officials). In order to ensure the independency, impartiality and transparency, the FCCA's officials are forbidden to participate in the consideration of a matter or be present during such consideration if they are disqualified (sections 27-30 of the Administrative Procedure Act). The FCCA is also obliged to organise its tasks so as to ensure the independence and impartiality of its supervisory duties (section 4 of the [Act on the FCCA](#)).

A FCCA official can be found to be guilty of abuse of public office or aggravated abuse of public office if he/she, in order to obtain benefit for himself or herself or for another or in order to cause detriment or loss to another, violates his/her official duties (Criminal Code, chapter 40, sections 7-8).

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in*

accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.

- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

Finnish competition rules distinguish two procedures which may follow in the case of violations of antitrust rules: (i) a procedure declaring that a certain behaviour has been illegal; and (ii) a procedure declaring a penalty payment based on the violation. The FCCA has powers to declare violation of competition rules, but as for penalties (fines) the authority can only make proposals to the Market Court as described above.

Before that, the FCCA allows undertakings under investigation multiple opportunities to meet with the representatives of the FCCA to explain their views, present evidence and engage with the FCCA on substantive and procedural issues.

The undertaking has the right to be heard prior to the FCCA making a proposal for a penalty payment, or a decision stating a violation of national or EU competition rules. The FCCA shall inform the undertaking in writing of the claims and justifications relating to the issues which have arisen during the investigation, and fix a reasonable time limit within which the undertaking may present its comments to the authority either orally or in writing (section 34 of the Administrative Procedure Act and section 38 of the Competition Act).

The Finnish system includes also a possibility for commitments offered by undertakings. The FCCA can order that the commitments submitted by 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. A commitment decision adopted by the FCCA may be appealed to the Market Court (sections 10 and 44 of the Competition Act).

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or*

rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.

The services of an attorney or a counsel may be used in all administrative matters and, by implication, also in matters that fall within the competence of the FCCA. However, if an attorney or a counsel is unsuitable for his or her task, the FCCA may prohibit him or her from representing the client in the matter before that authority. The client shall be notified of the prohibition and provided with an opportunity to use another attorney or counsel (section 12 of the Administrative Procedure Act).

An undertaking shall not have an obligation to deliver to the FCCA any documents which contain confidential correspondence between an outside legal adviser and the undertaking. This right to confidentiality does not apply to advice given by an in-house lawyer employed by the undertaking. The provision on the principle of legal professional privilege is interpreted in accordance with the established EU case law.

In terms of the right against self-incrimination, when an undertaking responds to the questions raised by the FCCA, the undertaking is not under an obligation to admit that it has violated national or EU competition rules (section 38.3 of the Competition Act).

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

Decisions taken by the FCCA shall be issued in writing, the reasons for the decision included. The written decision shall indicate clearly the date when it was made, the parties whom it directly concerns and contact details of the person from whom a party may request further information on the decision, if necessary. The appeal introductions must be included within the decision, and they shall explain the requirements concerning the appeal procedure. If the decision is not appealable, the decision shall specify the provision under which an appeal is not possible (sections 43-48 of the Administrative Procedure Act).

As to the publicly available final decisions, the FCCA is required to publish decisions and matters otherwise decided under the chapter 2 of the Openness Act. Confidential information, however, is protected as explained earlier in the confidentiality part (f) of this template.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The appeals procedure is prescribed in section 44 of the Competition Act. Any person to whom an administrative decision is addressed or whose right, obligation or interest is directly affected by the decision may appeal against an administrative decision. As a rule, a decision adopted by the FCCA (on the basis of the Competition Act) may be appealed to the Market Court, and a decision adopted by the Market Court under the Competition Act may be appealed to the Supreme Administrative Court.

However, in the following situations, the undertakings/parties do not have the right to appeal the FCCA decision:

- (a) decision to conduct an inspection in the business premises (section 35.1 of the Competition Act)
- (b) decision to issue an interlocutory injunction (section 45 of the Competition Act)
- (c) decision to grant an immunity from penalty payment (section 17.3 of the Competition Act)
- (d) decision to prolong a particular merger examination from the initial phase to 'further proceedings' (section 26.1 of the Competition Act)
- (e) decision to extend the time limits of a particular merger proceeding due to incomplete or misleading information (section 26.3 of the Competition Act)
- (f) a decision in merger investigations where the authority orders the remedies/commitments – which have been voluntarily put forward by the notifying entity - to be followed (section 44.1 of the Competition Act)