

# Cartel Regulation

In 45 jurisdictions worldwide

*Contributing editor*  
**A Neil Campbell**



2015

GETTING THE  
DEAL THROUGH 

GETTING THE  
DEAL THROUGH 

# Cartel Regulation 2015

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# Finland

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## Legislation and institutions

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### 1 Relevant legislation

#### What is the relevant legislation?

The relevant legislation is set out in the Finnish Competition Act (948/2011) (the Competition Act). The Competition Act contains a prohibition against anti-competitive agreements and concerted practices, a prohibition against abuse of dominant position as well as provisions on merger control.

The current Competition Act entered into force on 1 November 2011 following a substantial review of the old law. The material provisions of the Competition Act are fully harmonised with articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

Related legislation includes provisions on the functions and powers of the authorities, such as the Act on the Finnish Competition and Consumer Authority (661/2012), the Decree on the Finnish Competition and Consumer Authority (728/2012) and the Market Court Act (99/2013).

The Finnish Competition and Consumer Authority (FCCA) has also issued a set of guidelines relating to the application of the Competition Act, including guidelines on leniency and on penalty payments.

### 2 Relevant institutions

#### Which authority investigates cartel matters? Is there a separate prosecution authority? Are cartel matters adjudicated or determined by the enforcement agency, a separate tribunal or the courts?

The main institutions involved in cartel matters are: (i) the FCCA, which is responsible for investigating competition restrictions; (ii) the Market Court, which may, for example, impose fines on undertakings upon the FCCA's proposal; and (iii) the Supreme Administrative Court (SAC), to which the decisions of the Market Court can be appealed.

The FCCA is an administrative authority that operates under the Ministry of Employment and the Economy. It was established at the beginning of 2013 by joining the operations of the Competition Authority and the Consumer Agency. The FCCA is headed by a Director General and it has five units dealing with competition matters. A new unit responsible for investigating cartels, the Cartels Unit, was set up in June 2012. The Cartels Unit specialises in hard-core cartels, handles all leniency applications, and is responsible for developing the FCCA's investigatory activities. Unlike, for example, the European Commission, the FCCA does not itself have the authority to impose fines on undertakings for competition infringements but shall make a penalty payment proposal to the Market Court.

The Market Court is a special court for market law, competition law, public procurement and civil IPR cases in Finland. It has a dual role in competition restriction matters. On the one hand, it is the first instance ruling on the FCCA's penalty payment proposals, and on the other hand, it is the first instance of appeal for decisions made by the FCCA.

The SAC is the ultimate appellate body in competition cases. The SAC is the second and final instance of appeal for the FCCA's decisions and the first instance of appeal for the Market Court's decisions imposing fines.

In addition to the three main institutions, the regional state administrative agencies have powers to investigate competition infringements in cooperation with the FCCA. In practice, however, it is almost exclusively

the FCCA that bears responsibility for the investigation of suspected cartels.

### 3 Changes

#### Have there been any recent changes, or proposals for change, to the regime?

The most recent overall review of Finnish competition law was conducted with the new Competition Act entering into force on 1 November 2011. The new Competition Act brought Finnish competition law even more into line with that of the EU and introduced some changes to, for example, the provisions concerning penalty payments. There have since been a few amendments to the Act, but these have not affected cartel matters.

It was set out in the Finnish Government Programme of June 2011 that the government should investigate the possibility of extending personal criminal liability to cartels. In that respect, the Ministry of Employment and the Economy and the FCCA commissioned several expert studies on the subject that were presented in May 2014. However, the criminalisation of cartels depends on political decision-making and does not seem likely in the near future.

### 4 Substantive law

#### What is the substantive law on cartels in the jurisdiction?

The prohibition against anti-competitive agreements and concerted practices, section 5 of the Competition Act, corresponds to article 101(1) TFEU with the exception that it does not require that trade between the EU member states is affected. It prohibits all agreements and concerted practices between undertakings or associations of undertakings, which have as their object or effect the prevention, restriction or distortion of competition. Section 5 contains a list of practices which are in particular prohibited:

- directly or indirectly fixing purchase or selling prices or any other trading conditions;
- limiting or controlling production, markets, technical development or investment;
- sharing markets or sources of supply;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

As the list is not exhaustive, the FCCA and the courts have also found other practices, such as collective boycotts and exchange of sensitive information, to be in violation of section 5 of the Competition Act.

Competition restrictions prohibited by section 5 may be covered by the legal exemption in section 6 of the Competition Act, the criteria of which are similar to those of article 101(3) TFEU. In practice, however, hard-core restrictions are unlikely to qualify for an exemption.

If a competition restriction affects trade between member states, the FCCA and the Finnish courts apply article 101 TFEU directly.

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## Application of the law and jurisdictional reach

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### 5 Industry-specific provisions

**Are there any industry-specific infringements? Are there any industry-specific defences or antitrust exemptions? Is there a defence or exemption for government-sanctioned activity or regulated conduct?**

The Competition Act is a general act that, as a main rule, covers all economic activities. However, by virtue of section 2 of the Competition Act, certain sectors are partly excluded from its scope of application: the Act is not applicable to agreements or arrangements concerning the labour market or to arrangements by the agricultural sector if such arrangement fulfils the substantive requirements established in accordance with article 42 TFEU. There are no specific rules governing cartel behaviour in specific industries.

### 6 Application of the law

**Does the law apply to individuals or corporations or both?**

The Competition Act applies to economic activity carried out by business undertakings. According to section 4 of the Competition Act, the term business undertaking comprises natural persons as well as private or public legal persons engaged in economic activity.

### 7 Extraterritoriality

**Does the regime extend to conduct that takes place outside the jurisdiction? If so, on what jurisdictional basis?**

The Competition Act is not applicable to competition restrictions outside Finland unless such restrictions are directed against Finnish customers. The Finnish government may nonetheless prescribe by decree that the Act is extended to cover a competition restriction outside Finland if this is required by an agreement made with a foreign state, or if it is in the interests of Finland's foreign trade.

## Investigations

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### 8 Steps in an investigation

**What are the typical steps in an investigation?**

If the FCCA suspects that an undertaking or an association of undertakings is engaged in conduct contrary to the Competition Act or EU competition law, it shall initiate the necessary proceedings to eliminate such conduct. Investigations into suspected competition restrictions can be commenced by the FCCA either on its own initiative, or following a complaint or a leniency application. Investigations of serious competition restrictions typically start with the FCCA's dawn raid at the undertakings' business premises.

Further along in the investigations, the FCCA normally requests written explanations and clarifications and may also conduct interviews. Having assessed all the obtained information, the FCCA generally either prepares a draft penalty payment proposal for the undertaking to comment on or closes the investigation without making any penalty payment proposal.

As the FCCA can merely make a penalty payment proposal, it is only after the Market Court proceedings that there is an appealable decision regarding the penalty payment. Other FCCA decisions can generally be appealed to the Market Court.

There are no legal time frames for the FCCA investigations apart from the statutory limitation periods.

### 9 Investigative powers of the authorities

**What investigative powers do the authorities have? Is court approval required to invoke these powers?**

The FCCA has extensive investigative powers which are largely similar to those of the Commission.

An undertaking or an association of business undertakings shall be obliged, at the request of the FCCA, to provide the authority with all the information and documents needed for the investigation of the content,

aim and effect of a competition restriction. Such request may be supported by a conditional fine. Furthermore, submitting incorrect information to the authority such as the FCCA may cause criminal liability under the Finnish Penal Code.

The FCCA has the right to conduct inspections to supervise compliance with the Competition Act and is, at the request of the Commission, obliged to conduct an inspection as prescribed in EU competition law. After the 2011 reform of the Competition Act, the FCCA can now also carry out inspections outside business premises such as at private residences of directors with an authorisation of the Market Court. The Market Court does not grant an authorisation if it considers a search to be arbitrary or excessive.

The Competition Act does not expressly require the FCCA to present a written inspection decision when carrying out a dawn raid. It is nonetheless established practice that the FCCA issues a decision describing the scope and the aim of the inspection as well as the sanctions for opposing the inspection.

The FCCA officials must be allowed to enter any business premises, storage areas, land and vehicles in an undertaking's possession. Further, the officials performing the inspection shall have the right to examine all correspondence, financial accounts, computer files and other documents which may be relevant for ensuring compliance with Competition Act. The officials may also take copies of documents and seal business premises, books or records. When necessary, the police shall upon request provide official assistance in conducting the inspection.

The officials of the FCCA are also empowered to request oral explanations and conduct interviews on site as well as to record the interviews. The questions should be directly connected to the subject matter of the inspection. The officials of the FCCA are entitled to present only such questions that are of a factual nature (ie, necessary for identifying documents and understanding other facts). Further, the FCCA has a right to invite representatives of undertakings or persons who may, for a justified reason, be suspected of having acted in the implementation of a competition restriction, to appear before it. These interviews may also be recorded.

Undertakings' rights of defence, which pose certain limits on the FCCA's investigative powers, are set out in section 38 of the Competition Act. For example, an undertaking is not under an obligation to submit to the FCCA documents that contain confidential correspondence between an outside legal counsel and the client. Moreover, when an undertaking responds to the questions raised by the FCCA, it cannot be obligated to concede it has participated in a competition restriction.

## International cooperation

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### 10 Inter-agency cooperation

**Is there cooperation with authorities in other jurisdictions? If so, what is the legal basis for, and extent of, cooperation?**

The FCCA is a member of the European Competition Network (ECN), the main purpose of which is to secure an efficient and uniform application of EU competition rules throughout the EU.

The FCCA also actively cooperates for example with the Nordic competition authorities and partakes in the international cooperation conducted within the Organisation for Economic Co-operation and Development (OECD), the International Competition Network (ICN) and the European Competition Authorities (ECA).

### 11 Interplay between jurisdictions

**Are there other jurisdictions where there is significant interplay with your jurisdiction in cross-border cases? If so, how does this affect the investigation, prosecution and penalising of cartel activity in the jurisdiction?**

The main interplay for the FCCA is with other European competition authorities within the framework of the ECN. As members of the ECN assist each other in conducting investigations of competition law infringements, the FCCA has, for example, conducted investigations in Finland on behalf of other competition authorities, and has received similar assistance from other competition authorities.

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## Cartel proceedings

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### 12 Adjudication

#### How is a cartel proceeding adjudicated or determined?

The FCCA is responsible for investigating suspected competition infringements and adopting the infringement decisions to that effect. It has competence to, for example, order an undertaking to terminate conduct that violates competition rules, but cannot impose any fines.

Should the FCCA consider it necessary to impose a fine for anti-competitive conduct, it has to make a penalty payment proposal to the Market Court. The Market Court provides the undertaking to which the proposal relates with an opportunity to respond in writing and/or orally. The Market Court shall include a statement of reasons in its decision which indicates which facts and evidence have affected the decision and on which legal grounds it is based. The Market Court decision may be appealed to the SAC.

### 13 Burden of proof

#### Which party has the burden of proof? What is the level of proof required?

The burden of proof to demonstrate a competition infringement lies with the FCCA. The FCCA must provide sufficient proof to establish that there has been an infringement. However, to the extent an undertaking wishes to benefit from an exemption under section 6 of the Competition Act (or article 101(3) TFEU), the burden of proof lies with the concerned undertaking.

There are no statutory provisions as to the level of proof required in competition restriction matters. On the contrary, the courts follow the principle of free consideration of evidence. The SAC has confirmed in its rulings that the European Convention on Human Rights and the EU Charter of Fundamental Rights are applicable in competition cases where penalty payments have been proposed. At the same time, however, the SAC case law shows that these principles are not applied to the same extent in competition matters as in criminal matters.

### 14 Appeal process

#### What is the appeal process?

As the FCCA can merely make a penalty payment proposal, it is only after the Market Court proceedings that there is an appealable decision regarding the penalty payment. Most other FCCA decisions may be appealed to the Market Court. Therefore, a decision by the FCCA declaring an infringement of competition rules without any penalty payment proposal can generally be appealed. In the same manner, a decision finding that no infringement has occurred can be appealed by a third party if it has a direct impact on that party. Appeals shall normally be lodged within 30 days from receipt of the decision concerned.

A Market Court decision under the Competition Act is appealable to the SAC. Any person to whom the decision is addressed or whose right, obligation or interest is directly affected by the decision, as well as the FCCA, has the right of appeal. An appeal shall be lodged within 30 days of notice of the Market Court decision.

In the SAC, proceedings are predominantly conducted in writing whereas oral hearings are usually limited in scope.

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## Sanctions

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### 15 Criminal sanctions

#### What, if any, criminal sanctions are there for cartel activity? Are there maximum and minimum sanctions?

There are no criminal sanctions for competition law infringements in Finland. As noted under question 3, the Ministry of Employment and the Economy and the FCCA have investigated the possibility of extending personal criminal liability to cartel infringements. However, such criminalisation depends on political decision-making and is not likely in the near future.

Submission of false evidence to the FCCA in the course of its investigations may result in criminal sanctions in accordance with the Finnish Penal Code. To date, however, this has not been applied in practice.

### 16 Civil and administrative sanctions

#### What civil or administrative sanctions are there for cartel activity?

Upon the proposal of the FCCA, the Market Court may impose a penalty payment on undertakings that have violated competition rules unless the conduct is deemed minor or the imposition of fine otherwise unjustified with respect to safeguarding competition. In fixing the amount of fine, the gravity, extent and duration of the competition restriction shall be taken into account. Repeat offenders may be fined more heavily. The amount of the fine may be up to 10 per cent of the total turnover of the undertaking concerned in the last year of its cartel participation.

A fine cannot be imposed if the FCCA has not made a penalty payment proposal to the Market Court within five years from the occurrence of the competition restriction or, in case of a continued infringement, from the date on which the restriction ended. The five-year limitation period is interrupted by certain FCCA investigatory measures. Moreover, there is an absolute limitation period according to which a fine cannot be imposed if the FCCA has not made a penalty payment proposal to the Market Court within 10 years of the applicable dates (date on which the restriction occurred, or on which it ended in case of a continued infringement).

The FCCA may also order an undertaking to cease the activities prohibited in the Competition Act (or article 101 TFEU), and support its order by imposing a conditional fine. A conditional fine can also be used to enforce an undertaking's obligation to provide information and documents as well as the obligation to contribute to the inspections conducted under the Competition Act. The enforcement of conditional fines rests with the Market Court.

By a decision, the FCCA may order that commitments offered by the parties shall be binding if the commitments are such that they eliminate the restrictive nature of the conduct. The FCCA may also take interim measures if the application or implementation of a competition restriction shall be prevented at once. Prior to issuing an interim order, the FCCA should provide the undertaking with an opportunity to be heard. However, this is not necessary if the FCCA considers that the urgency or another specific weighty reason demands otherwise.

### 17 Sentencing guidelines

#### Do fining or sentencing principles or guidelines exist? If yes, are they binding on the adjudicator? If no, how are penalty levels normally established?

According to section 13 of the Competition Act, 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. In addition, the FCCA has issued guidelines on the assessment of the quantum of penalty payment and on the immunity from and reduction of fines in cartel cases. The guidelines are not binding on the FCCA or the courts, but at least the FCCA is unlikely to deviate from them.

### 18 Debarment

#### Is debarment from government procurement procedures automatic or available as a discretionary sanction for cartel infringements? If so, what is the usual time period?

According to section 54 of the Finnish Act on Public Procurement, debarment from government procurement procedures is available as a discretionary sanction for cartel infringements. The Act does not provide for any set time period.

## 19 Parallel proceedings

**Where possible sanctions for cartel activity include criminal and civil or administrative sanctions, can they be pursued in respect of the same conduct? If not, how is the choice of which sanction to pursue made?**

As noted, criminal sanctions for cartel activities are not available under the Competition Act. Therefore, the sanctions that the FCCA and the Market Court can impose are administrative in nature. Civil law claims for liability for damage can be pursued simultaneously in respect of the same infringement. Such claims may also be made as stand-alone actions irrespective of any prior FCCA investigation or court decision.

## Private rights of action

### 20 Private damage claims

**Are private damage claims available? What level of damages and cost awards can be recovered?**

Private damages claims are available under Finnish law. The Competition Act contains a specific provision, section 20, according to which an undertaking or association of undertakings that either intentionally or negligently commits a competition infringement is obliged to compensate the damage caused by the restraint on competition. Compensation can be claimed not only by undertakings but also by private persons and public entities that have suffered damage as a result of the infringement. Private damages claims are filed in the district courts as opposed to the Market Court. Such claims can also be tried in arbitration.

Section 20 of the Competition Act provides that the right to compensation covers direct and indirect economic losses resulting from the competition infringement (such as expenses, price differences and lost profit). A claim for damages under the Competition Act must be brought within 10 years following the date on which the infringement occurred or from the date on which it ended in case of a continued infringement. A claim can in any event be initiated within one year from a final infringement decision.

### 21 Class actions

**Are class actions possible? If yes, what is the process for such cases? If not, what is the scope for representative or group actions and what is the process for such cases?**

The Finnish Act on Class Actions (444/2007) entered into force on 1 October 2007. The Act may be applied between consumers and undertakings in matters within the competence of the Finnish Consumer Ombudsman. It is therefore not applicable to competition restriction cases.

Notwithstanding the above, a representative action has been held admissible under Finnish law by the Helsinki District Court in July 2013 in an interim decision. The District Court's finding would have been challengeable upon appeal of the final ruling but the case was settled by the parties in May 2014. Thus, there is no established case law on the question of whether, and under which conditions, representative actions on damages concerning competition infringements are considered admissible under Finnish law.

## Cooperating parties

### 22 Immunity

**Is there an immunity programme? What are the basic elements of the programme? What is the importance of being 'first in' to cooperate?**

A leniency programme was first implemented in Finland in May 2004. In accordance with section 14 of the Competition Act, the first undertaking to expose a cartel may benefit from immunity if the undertaking:

- produces information or evidence, on the grounds of which the FCCA may conduct a dawn raid; or
- following such a dawn raid, delivers information or evidence, on the grounds of which the FCCA can establish that section 5 of the Competition Act (and/or article 101 TFEU) has been violated.

Section 14 of the Competition Act applies only where competitors have agreed to fix purchase or selling prices or other trading conditions, to limit production or sales or to share markets, customers or sources of

supply. Only one undertaking can obtain full immunity. This means that the undertaking must be first to provide the required information or evidence to the FCCA. An undertaking that has coerced others to participate in the infringement cannot benefit from full immunity but can still qualify for a reduction in fine. A leading role in the formation and sustenance of the cartel does not as such debar the undertaking from applying for full immunity.

An immunity applicant is expected to provide the FCCA with comprehensive and precise information on:

- the nature of the competition restriction;
- which companies have been involved;
- which product markets are concerned;
- which geographic areas are concerned;
- how long the competition restriction has been in force; and
- how the competition restriction has been implemented.

In addition, the immunity applicant must satisfy all the criteria set out in section 16 of the Competition Act whereby it must:

- immediately cease participation in the competition restriction unless the FCCA has advised otherwise;
- cooperate with the FCCA throughout the entire investigation;
- not destroy any relevant evidence prior to or after submitting the application; and
- refrain from disclosing to third parties the fact that it has made or intends to make a leniency application or the content of said application.

Once the undertaking seeking immunity has provided the FCCA with all the required information and documents in its possession, the FCCA shall inform the undertaking in writing whether or not it qualifies for conditional immunity. The FCCA shall issue a final written decision on the issue at the end of the procedure. This decision cannot be appealed.

The FCCA's guidelines contain further details on the FCCA's leniency programme.

### 23 Subsequent cooperating parties

**Is there a formal partial leniency programme for parties that cooperate after the immunity application? If yes, what are the basic elements of the programme? If not, to what extent can subsequent cooperating parties expect to receive favourable treatment?**

Undertakings that are not first in to submit the required information and documents to the FCCA may receive a reduction in fine under section 15 of the Competition Act. To receive a reduction, an undertaking must provide the FCCA with information and evidence that is significant for establishing the competition restriction or its entire extent or nature before the FCCA has obtained the information from elsewhere. An undertaking applying for reduction in fine must fulfil the same conditions set out in section 16 of the Competition Act as an immunity applicant.

The reduction depends on the order in which the applicant submitted the required information and evidence to the FCCA. The fine shall be reduced by 30 to 50 per cent if the undertaking is the first one to submit significant information, by 20 to 30 per cent if the undertaking is second and by 20 per cent at most for other applicants fulfilling the criteria.

According to the FCCA's guidelines, the amount of the reduction depends on how significant the provided information and evidence has been for establishing the competition restriction. The FCCA may in its penalty payment proposal to the Market Court propose a reduction of fines concerning one or several cooperating undertakings. The Market Court is not bound by the proposal.

### 24 Going in second

**What is the significance of being the second versus third or subsequent cooperating party? Is there an 'immunity plus' or 'amnesty plus' option?**

The Competition Act does not provide for an 'immunity plus' or 'amnesty plus' option. Applicants submitting significant information and evidence to the FCCA after the immunity applicant may be entitled to a reduction in the penalty payment as set out in section 15 of the Competition Act (see question 23).

## 25 Approaching the authorities

### Are there deadlines for making or completing an application for immunity or leniency? Are markers available and what are the time limits and conditions applicable to them?

There are no set deadlines for making an application for immunity or leniency. As only the first undertaking to submit the required information and evidence is entitled to full immunity, timing is essential.

It is a normal practice that an undertaking first conducts a preliminary internal analysis to assess whether it is possible that it has engaged in a competition infringement which could qualify for immunity or leniency. Following this, an undertaking may contact the FCCA anonymously (typically through an external counsel) to ascertain whether immunity is still available. This contact does not affect the order of priority in case there are several applicants for immunity but the undertaking will only be told if another cartel participant has already applied for immunity. An application should be submitted as soon as possible following these steps.

A system similar to the Commission's marker procedure is operated by the FCCA. According to section 17 of the Competition Act, the FCCA may set a deadline for an applicant to provide the required information and evidence. As long as the applicant provides the information within the required time frame, the moment of application is deemed to be the point in time when the first application to the FCCA was submitted.

## 26 Cooperation

### What is the nature, level and timing of cooperation that is required or expected from an immunity applicant? Is there any difference in the requirements or expectations for subsequent cooperating parties?

An immunity applicant must provide all relevant information and evidence in its possession to enable the FCCA to conduct an inspection, or following an inspection, to enable the establishment of an infringement.

To receive a reduction in fine, subsequent cooperating parties must submit to the FCCA such information and evidence that is significant for establishing an infringement or its entire extent or nature before the authority has received the information from any other source. See questions 22 and 23 for further details.

## 27 Confidentiality

### What confidentiality protection is afforded to the immunity applicant? Is the same level of confidentiality protection applicable to subsequent cooperating parties?

The Competition Act does not contain provisions on the issue of confidentiality in competition proceedings. Therefore, the Act on Openness of Government Activities (621/1999, as amended) applies. The Act applies to documents in the possession of a public authority that have been either prepared by the authority or provided to the authority for the consideration of the matter. Official documents are public unless a specific legal exception applies. As a main rule, a party to the proceedings shall have access even to the contents of such a document which is not public, if it may influence the consideration of the matter. Such access may be denied only under certain conditions, for example, where it would be contrary to a very important public or private interest.

In a previous competition restriction case, one of the investigated companies requested disclosure of materials which its competitor had submitted to the FCCA pursuant to a leniency application. The FCCA refused to grant access. Upon appeal, the Administrative Court of Helsinki concluded that the requested materials were not public. The competitor of the leniency applicant was considered as a party to the proceedings. Access to the materials was nonetheless denied by the Administrative Court on the basis that such access would have been contrary to a very important public interest at the stage when the matter was still pending before the FCCA. The SAC upheld the decision.

Further, according to section 17 of the Competition Act, information and evidence provided to the FCCA in immunity or leniency application can only be used in handling of the public enforcement case by the FCCA, the Market Court or the SAC. According to the Government Bill, such information and evidence cannot therefore be used, for example, for private damages actions. The FCCA may share the documents with other members of the ECN.

## Update and trends

There have been only a few new significant cartel cases during the last couple of years. However, following landmark judgments by the Market Court and the SAC in 2009–2012, a large number of private enforcement actions have been initiated before general courts. More specifically, there are over 700 separate damages claims relating to previous competition infringements in the asphalt, raw wood procurement and car spare part markets. The capital monetary interest relating to the pending claims is close to €400 million. In addition, a significant claim relating to a decision by the European Commission on the hydrogen peroxide market was settled in May 2014.

Regarding the damages claims concerning the asphalt, raw wood and car spare part markets, there are, to date, only first-instance court decisions. In those decisions, certain claims have been dismissed entirely either as time-barred or lacking sufficient evidence on the alleged damage. In turn, certain claims have been partly accepted. Most of these decisions have been appealed and higher court case law is expected in a few years' time. Until then, uncertainty remains as to many of the substantial legal and factual issues typically associated with private enforcement claims.

## 28 Settlements

### Does the enforcement authority have the ability to enter into a plea bargain, settlement or other binding resolution with a party to resolve liability and penalty for alleged cartel activity?

The Competition Act does not provide for any settlement procedure for cartel cases.

## 29 Corporate defendant and employees

### When immunity or leniency is granted to a corporate defendant, how will its current and former employees be treated?

The Competition Act only applies to undertakings engaged in economic activity. Therefore, the treatment of current and former employees of a corporate defendant is not within the scope of the Competition Act.

## 30 Dealing with the enforcement agency

### What are the practical steps for an immunity applicant or subsequent cooperating party in dealing with the enforcement agency?

Please see questions 22 and 25.

## 31 Policy assessments and reviews

### Are there any ongoing or anticipated assessments or reviews of the immunity/leniency regime?

There are currently no ongoing assessments or reviews of the immunity/leniency regime.

## Defending a case

## 32 Representation

### May counsel represent employees under investigation in addition to the corporation that employs them? When should a present or past employee be advised to seek independent legal advice?

The FCCA's investigations of the suspected cartel infringements and the following Market Court and SAC proceedings are directed against undertakings only. An undertaking's employees are therefore out of the scope of the Competition Act. However, should an undertaking and its employee have diverging interests, it is advisable that they are represented by separate counsel.

**33 Multiple corporate defendants**

**May counsel represent multiple corporate defendants? Does it depend on whether they are affiliated?**

It is possible for a counsel to represent multiple corporate defendants. However, a conflict of interest between the defendants may in practice prevent such representation.

**34 Payment of legal costs**

**May a corporation pay the legal costs of and penalties imposed on its employees?**

Penalties cannot be imposed on an undertaking's employees under the Competition Act. If there are costs associated with an employee as a result of his or her involvement in the FCCA's investigations, there is no prohibition under law for a corporation to pay them.

**35 Taxes**

**Are fines or other penalties tax-deductible? Are private damages awards tax-deductible?**

Under Finnish tax laws, fines are generally not tax-deductible. By contrast, recent tax authority praxis indicates that private damages are tax-deductible under certain circumstances.

**36 International double jeopardy**

**Do the sanctions imposed on corporations or individuals take into account any penalties imposed in other jurisdictions? In private damage claims, is overlapping liability for damages in other jurisdictions taken into account?**

So far, there have not been any instances where the FCCA or Finnish courts would have taken into account penalties imposed in other jurisdictions. This is the case also concerning private damages claims. In such claims, Finnish courts would in any event have to apply the prohibition against unjust enrichment according to which damages shall not exceed the actual damage suffered by the claimant.

**37 Getting the fine down**

**What is the optimal way in which to get the fine down?**

An undertaking can take advantage of the immunity and leniency procedure as described in more detail in questions 22 to 26.

# HANNES SNELLMAN

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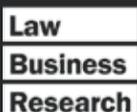
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