

• Finland: New Competition Act approved by the Parliament

On 11 March 2011, the Finnish Parliament approved the new Finnish Competition Act. The Act will enter into force in autumn 2011. The main amendments are the following.

One of the major changes brought by the new law relates to the existing dominance test in merger control enforcement. In future, the assessment of mergers will be based on the SIEC-test. Also certain procedural rules for merger enforcement relating to the right of appeal and the implementation of the notified merger have been clarified.

As for antitrust matters, the national competition law was harmonised with Articles 101 and 102 TFEU already in 2004 and the new law does not change this. All the existing substantial prohibition provisions remain the same with the exception of the definition of an undertaking. It was indeed found that the current definition of an undertaking in the national law was not in line with the EU case law. The corresponding national provision has consequently been amended in order to harmonise the definition with the EU system.

The other changes relating to antitrust matters are mostly procedural. The new law clarifies the rights of defence in competition enforcement proceedings as it explicitly refers to the relevant European case law e.g. in terms of self-incrimination and legal professional privilege. Also, the prioritisation rules become more transparent and operational in the sense that circumstances for prioritisation actions have been clarified which should diminish ambiguity in that regard. These changes are important given that the Finnish Competition Authority (FCA) is expected to focus on the most important competition restraints. Due to this, the FCA is also given powers to prioritise its enforcement actions more effectively. For instance, it may use its prioritisation powers if a complaint is 'manifestly groundless'.

As for cartels, the national leniency provisions have been amended aiming to align them with the European Competition Network's Model Leniency Programme. For example, the law includes a new provision according to which an undertaking which took steps to coerce other undertakings to participate in the cartel is not eligible for immunity from fines. In addition, the new law introduces concrete provisions concerning the amount of reduction of fines, as well as, the further requirements to qualify for immunity or for reduction of fines. According to the new law, immunity may also be granted after the authority has carried out an inspection.

The penalty system remains similar to the current law in the sense that it is based on administrative fines. The provisions for calculating the limitation period are now similar to those in Regulation 1/2003. The FCA's investigative powers have been strengthened to provide for inspections of non-business premises. However, an authorization of the Market Court is required in order to do so.

Finally, the provisions on the compensation for damages are modified so that any individual will be able seek compensation for damages. In the current Competition Act, only business undertaking are mentioned as having this right.