



EUROPEAN COMMISSION

DG Competition

***Case M.9654 –  
MEHILÄINEN /  
PIHLAJALINNA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERCER PROCEDURE**

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Article 4(4)

Date: 28.1.2020



EUROPEAN COMMISSION

Brussels, 28.1.2020  
C(2020) 573 final

## **PUBLIC VERSION**

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

**To the notifying party**

**To the Finnish Competition and  
Consumer Authority (FCCA)**

**Subject: Case M.9654 – MEHILÄINEN/PIHLAJALINNA  
Commission decision following a reasoned submission pursuant to  
Article 4(4) of Regulation No 139/2004<sup>1</sup> for referral of the case to  
Finland and Article 57 of the Agreement on the European Economic  
Area<sup>2</sup>.**

**Date of filing: 12.12.2019**

**Legal deadline for response of Member States: 14.01.2020**

**Legal deadline for the Commission decision under Article 4(4): 28.01.2020**

Dear Sir or Madam,

### **1. INTRODUCTION**

- (1) On 12 December 2019, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

respect to the proposed acquisition of sole control over **Pihlajalinna Oyi** (**'Pihlajalinna'** or the **Target**) by Mehiläinen Yhtiöt Oy (**'Mehiläinen'**), jointly referred to as **'the Parties'**. The Parties request the operation to be examined in its entirety by the competent authorities of Finland.

- (2) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on 12 December 2019.
- (4) On 9 January 2019, the Finnish Competition and Consumer Authority (FCCA) as the competent authority of Finland, informed the Commission that Finland agrees with the proposed referral.

## **2. THE PARTIES**

- (5) **Mehiläinen** is a private limited company incorporated and existing under the laws of Finland. It is the non-ultimate parent company of Mehiläinen group, which is active in the private health and social services sectors in Finland ("Mehiläinen Group"). In Finland, the Mehiläinen Group provides the following services: private healthcare, occupational healthcare, dental care, public outsourcing of mainly healthcare services, elderly care, mental rehabilitation, disabled care, and child welfare services.
- (6) Mehiläinen is indirectly under the sole control of CVC Capital Partners SICAV-FIS S.A. ("CVC"). The "CVC Network" consists of CVC and its subsidiaries, and CVC Capital Partners Advisory Group Holding Foundation and its subsidiaries, which are privately owned entities whose activities include providing investment advice to and/or managing investments on behalf of certain investment funds and platforms ("CVC Funds"). CVC Funds hold interests in a number of companies in various industries primarily in Europe, the USA and the Asia-Pacific region ("CVC Funds Portfolio Companies").
- (7) The Target, **Pihlajalinna**, is a public limited company incorporated and existing under the laws of Finland. It is the parent company of Pihlajalinna group, which is active in the private health and social care services sectors in Finland ("Pihlajalinna Group"). In Finland, the Pihlajalinna Group provides the following services: private healthcare, occupational healthcare, dental care, public outsourcing of health and social care services and social care mainly for the elderly. Pihlajalinna has been listed on the main list of Nasdaq Helsinki since June 2015.

## **3. THE OPERATION AND CONCENTRATION**

- (8) The acquisition of Pihlajalinna by Mehiläinen will be made through a voluntary recommended public cash tender offer by Mehiläinen for all the issued and outstanding shares in the Target ("the Transaction").
- (9) Upon completion of the Transaction, Mehiläinen will own directly 100% of the voting shares in the Target. Furthermore, it will have the power to appoint the

Target's board of directors. Consequently, Mehiläinen will have the power on its own to determine the Target's strategic commercial decisions, including annual budget, business plan, and appointment of senior management.

- (10) Therefore, post-Transaction, Mehiläinen will exercise sole control over the Target within the meaning of Article 3(1)(b) of the Merger Regulation.

#### **4. EU DIMENSION**

- (11) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Pihlajalinna: 488 million EUR; CVC: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Pihlajalinna: 488 million EUR; CVC: EUR [...] million) and not each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.
- (12) The Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

#### **5. ASSESSMENT**

- (13) The Transaction concerns the market for the provision of (i) healthcare services and (ii) social care services in Finland. The Parties' activities overlap in healthcare services and, within social care, in the potential segment of elderly care. The Parties are only active in Finland.

##### **5.1. Relevant product markets**

###### *5.1.1. Healthcare*

- (14) The Commission considered the Finnish healthcare system in case M.7058-*EQT/Terveystalo Healthcare*<sup>3</sup> in which it referred to precedents of the Finnish Competition and Consumer Authority ("FCCA"). In previous decisions, the FCCA has sub-segmented the healthcare services in Finland based on customer type (i.e., who pays for the service). The FCCA considered potential segmentations of the market as follows: a) occupational healthcare services produced by private and public service providers (employer as a payer); b) healthcare services purchased by public actors from private companies (municipality or other public actor as a payer); c) healthcare services purchased by insurance companies (insurance company as a payer); and d) healthcare services offered to private customers that are not referred through any of the channels in (i)-(iii) (private individual as a payer).<sup>4</sup>
- (15) The FCCA considered that these four types of services could possibly be further segmented according to the kind of service provided (public, private) or the size of customers (large public or private organisations with a network of office in several municipalities vs. companies operating in a narrower geographical area) but it ultimately left the precise market definition open.<sup>5</sup>

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<sup>3</sup> M.7058- *EQT/Terveystalo Healthcare*, Commission decision of 3 December 2013.

<sup>4</sup> See para 21 of the Commission decision in case M.7058.

<sup>5</sup> See para 22 of the Commission decision in case M.7058.

- (16) The Commission market investigation in case M.7058 revealed in addition three basic models of organising occupational healthcare services in Finland: i) fully private, ii) fully public and iii) combined model where private healthcare supplier deals with the provision of staff only and uses third party-facilities (owned by the public (municipality) or sometimes by private companies).<sup>6</sup>

#### 5.1.2. Social care

- (17) As regards social care services, the Parties referred to a recent decision in which the FCCA segmented the social care services market as follows<sup>7</sup>: a) elderly care; b) disabled care; c) mental and substance abuse care; and d) child welfare. The Parties submit that their activities overlap with regard to the provision of elderly care only.
- (18) The Parties' activities overlap in relation to elderly care. The Commission has considered elderly care in the context of the Spanish market in case M.8282-PAI/SARq<sup>8</sup> which it referred to the Spanish authorities. It considered product markets for (i) residences for senior citizens and (ii) the provision of day care services for elderly people, leaving open further sub-segmentation in relation to residences for senior citizens, between residences and health care centres, and between public and private beds, and in relation to the provision of day care services for elderly people, between (i) day care, (ii) home help and (iii) special accommodation services for the elderly. In an earlier decision referred to the UK, the Commission also considered potential sub-segmentation of elderly care based on: (i) nursing care; (ii) residential care; and (iii) elderly mentally infirm care, but ultimately left the market definition open.<sup>9</sup>

## 5.2. Relevant geographic market

- (19) In its previous decisions involving concentrations in the markets for the provision of healthcare services, and elderly care services, the Commission has adopted either a national or even a narrower geographic frame of reference (that is regional or local<sup>10</sup>) for investigating their effects.
- (20) For instance, in case M.7058, the Commission, while ultimately leaving the market definition open, noted that the responses to the market investigation were in favour of considering narrower than national geographic markets, in particular in view of the specificities of the tendering process and the presence of big university hospitals for the various Finnish districts.<sup>11</sup> In addition, the Commission noted that, although some local players appear to ally as a network to compete at a national level, the market investigation showed that there are very few national actors and that the few

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<sup>6</sup> See para 25 of the Commission decision in case M.7058.

<sup>7</sup> Case KKV/582/14.00.10/2017, *Attendo Intressenter AB / Mi-Hoiva Oy*.

<sup>8</sup> Referral decision of 19 December 2016.

<sup>9</sup> Referral decision of 1 February 2005 in case M.3669-Blackstone/NHP, para 18.

<sup>10</sup> See M.3669-Blackstone/NHP above, paras 21-22, where the Commission considered that the geographic scope of the market for the provision of elderly care homes can be considered as local but left open the exact delineation of these local markets.

<sup>11</sup> Furthermore, the Commission noted in this case that the FCCA had found in its precedent case that none of the relevant healthcare services markets are wider than national in their geographic scope and that some of the markets could even be narrower, that is, regional or local. See para 28 of the decision.

players active nation-wide rather compete with a number of different smaller service providers at regional level.<sup>12</sup>

### **5.3. Conclusion on market definition**

- (21) For the purpose of assessing the referral request, the exact product and geographic market definitions can be left open. The Target only operates in Finland and the overlapping activities between the Parties concern the Finnish healthcare market, which presents all the characteristics of a distinct market. On that basis, even on the widest plausible geographic market definition, the Transaction would not affect any markets outside Finland.

### **5.4. Assessment of the referral request**

#### *5.4.1. Legal requirements*

- (22) According to the Commission Notice on case referral,<sup>13</sup> in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:
- a) there must be indications that the concentration may significantly affect competition in a market or markets,<sup>14</sup> and
  - b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.<sup>15</sup>
- (23) Pursuant to point 17 of the Commission Notice on case referral, for there to be indications that the concentration may significantly affect competition in a market or markets, the Parties are in essence required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market in a Member State, which may prove to be significant, thus deserving closer scrutiny. While the Parties are not required to demonstrate that the effect on competition is likely to be an adverse one, they should point to indicators which are generally suggestive of the existence of some competitive effects stemming from the Transaction. In this context, the existence of ‘affected markets’ within the meaning of the Form RS is generally considered sufficient to meet the requirements of Article 4(4) of the Merger Regulation.<sup>16</sup>
- (24) Furthermore, pursuant to point 20 of the Commission Notice on case referrals, concentrations the effects of which are likely to be confined to, or have their main economic impact in a single Member State, are the most appropriate candidate cases for referral to that Member State.
- (25) On the basis of the information provided by the Parties, the Transaction leads to horizontally overlapping activities in the provision of healthcare services in each of the following:

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<sup>12</sup> See M.7058- EQT/Terveystalo Healthcare, para 29.

<sup>13</sup> Commission Notice on case referral in respect of concentrations, OJ C56, 5.3.2005, p.2

<sup>14</sup> Further developed in point 17 of the Commission Notice on Case Referrals.

<sup>15</sup> Further developed in point 18 of the Commission Notice on Case Referrals.

<sup>16</sup> Footnote 21 of the Commission Notice on Case Referrals.

- i) the Finnish market for healthcare services purchased by public actors from private companies, with a market share of around [40-50]%;
  - ii) the Finnish market for occupational healthcare services, with a market share of around [30-40]%;
  - iii) the Finnish market for healthcare services purchased by insurance companies, with a market share of around [20-30]%; and
  - iv) the Finnish market for healthcare services offered to private customers, with a market share of around [10-20]%.
- (26) Therefore, based on the information submitted by the Parties, the Transaction gives rise to affected markets in at least three out of the four markets where their activities overlap in Finland.<sup>17</sup> As the Parties are only active in Finland, all affected markets are geographically confined to one country.
- (27) In view of the foregoing, the assessment suggests that the Transaction may significantly affect competition in a number of markets in Finland, which present all the characteristics of distinct markets. Therefore, the two legal requirements set forth by Article 4(4) of the Merger Regulation appear to be fulfilled in the present case.

#### 5.4.2. Additional factors

- (28) In addition to the verification of the legal requirements, point 19 of the Notice provides that it should also be considered whether referral of the case is appropriate, and in particular “*whether the competition authority or authorities to which they are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case*”.
- (29) In addition, point 23 of the Notice states that "Consideration should also, to the extent possible, be given to whether the NCA(s) to which referral of the case is contemplated may possess specific expertise concerning local markets, or be examining, or about to examine, another transaction in the sector concerned"
- (30) Given that the likely focus of the Transaction is confined to Finland, the FCCA is best placed to examine the case. The Commission has considered as an additional factor that the FCCA has recently investigated several proposed concentrations on the Finnish healthcare services market, where it has analysed the relevant markets from a national or narrower (that is, regional or local) perspective, depending on the applicable market.<sup>18</sup> therefore, it has experience in assessing such cases and deep knowledge of the characteristics of the Finnish social and healthcare markets.

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<sup>17</sup> Furthermore, with regard to social care services, the Parties have overlapping activities in the market segment for elderly care services and potential sub-segments. However, according to the Parties, their combined market share is below 20% on this market, including in the potential sub-segments. There are therefore no affected markets arising from the Transaction.

<sup>18</sup> Cases KKV/536/14.00.10/2018, *Terveystalo Healthcare Oy / Attendo Terveyspalvelut Oy*, KKV/1152/14.00.10/2016, *Terveystalo Healthcare Oy / Diacor Terveyspalvelut Oy*.

- (31) Finally, the handling of the Transaction by a single competition authority would preserve the ‘one-stop-shop’ principle, which is an important factor of administrative efficiency.

*5.4.3. Conclusion on referral*

- (32) On the basis of the information provided by the Parties in the Reasoned Submission, the Commission concludes that the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market.
- (33) Moreover, the requested referral would be consistent with paragraphs 19-23 of the Commission Notice on case referrals, in particular because the FCCA appears to be the most appropriate authority to examine the Transaction.

**6. CONCLUSION**

- (34) For the above reasons, and given that Finland has expressed its agreement, the Commission has decided to refer the Transaction in its entirety to be examined by Finland. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*  
*Olivier GUERSENT*  
*Director-General*