



Finnish Grocery Retail Dominance Law

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Background

- Grocery retail sector arguably a concentrated industry in Finland
 - Four major retail chains
 - Two of them hold nationally a combined market share of 80 %
- Food prices perceived high (and rising)



Background

- Research into the underlying reasons for the price trend inconclusive
 - 1) Research Institute of the Finnish Economy (2010)
 - Value added taxation, weak competitiveness of Finnish agriculture due to climate
 - 2) Finnish Competition and Consumer Authority (2012 and 2013)
 - Buyer power of grocery retailers (private label, category management, marketing allowances and risk transferring practices) possibly problematic



The Finnish Solution

- The Finnish Government enacted a new law amending the current Competition Act
 - Enters into force on 1 January 2014
- Grocery retail chains with a national market share of 30% or more are considered to hold a dominant position under competition law
- Dominance both on the procurement and sales sides of the market
- Assessment of abuse = 102 TFEU



Will it work?

- Claimed benefit: no need to establish existence of dominance in an individual case where either of the two major grocery retailer chains are alleged to have abused their market power
- Concern: Questionable, whether the grocery retail chains do in fact possess market power in several of the circumstances to which the amendment applies
 - E.g. procurement of daily consumer goods from multinational suppliers
 - ➔ Reinforcement of market power upstream?



Will it work?

- Concern: The examples of abusive behaviour provided in the governmental bill appear to go beyond the current case law under Article 102 TFEU, e.g.
 - Refusal to purchase
 - Price discrimination in purchasing
 - Predatory bidding
- ➔ Will courts e.g. in private enforcement be able to recognize the cases which truly involve anticompetitive conduct?



Conclusions

- Two dominant grocery retailers will emerge in Finland on 1 January 2014 due to an amendment in law (but not due to changes in economic reality)
- How to combine the Article 102 "effects-based" analysis in a framework which does not require the measurement of market power?
- Concerns have mainly been raised as regards interaction with suppliers, less so with customers
- The competition authority has not announced its enforcement priorities



Thank you!

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