

Dear colleagues,

Please find below the Finnish Competition and Consumer Authority's comments on the draft guidelines.

1. As regards the paragraph 93 of the guidelines, the FCCA's interpretation is that the preventive decision of the NCA is non-appealable. If the parties do not comply with the NCA's decision, proceedings under general competition law may be launched. It could be useful to shed some light over jurisdictional issues concerning such situations, especially when the PO's behaviour has an effect on trade between member states. It might be useful to express some views whether in such cases the sole jurisdiction lies within the Commission or whether the case is investigated co-operatively by the NCA and the Commission.
2. When applying for recognition of the NCA (see p. 54-55), should it be requested that the PO has carried out a specific self-assessment concerning its strategy and activities and the efficiencies to be generated (in case the NCA or the Commission later requests information on efficiencies).
3. The paragraph 114 presents an example, where a PO invests in a joint storage facility and is not likely generate any significant efficiencies. Is it in the first place realistic to assume that the producers of beef or arable crops could build joint storages which would be commonly used by all members of the PO? On the other hand, could it be possible to generate efficiencies through several separate co-operation activities listed in the footnote 49, which in practice could be carried out by only a few producers (which by means of individual cost effects per activity would be small but would in their entirety cover adequately significant part of the total production costs of the PO)?
4. Are the member states able to set a certain minimum size requirement for the PO within the recognition procedure? If minimum size requirement is set too high by the some member states, it could block the establishment of certain PO's, which nevertheless could potentially generate efficiencies.
5. When applying the simplified method (see p. 75), should there be a threshold for the possibly efficiency-enhancing activity/activities, above which the activity/activities would be considered adequately significant in order to gain benefit of the safe harbour rules? This threshold could for example be a certain percentage value of the total costs of the PO.

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