



The Altia & Arcus merger in Finland, Norway and Sweden



Mika Oinonen
Partner, Head of Competition and Regulatory, D.Sc. (Bus.Adm.), LL.M.



Line Voldstad
Partner, Avdelingsleder regulatorisk og FPR



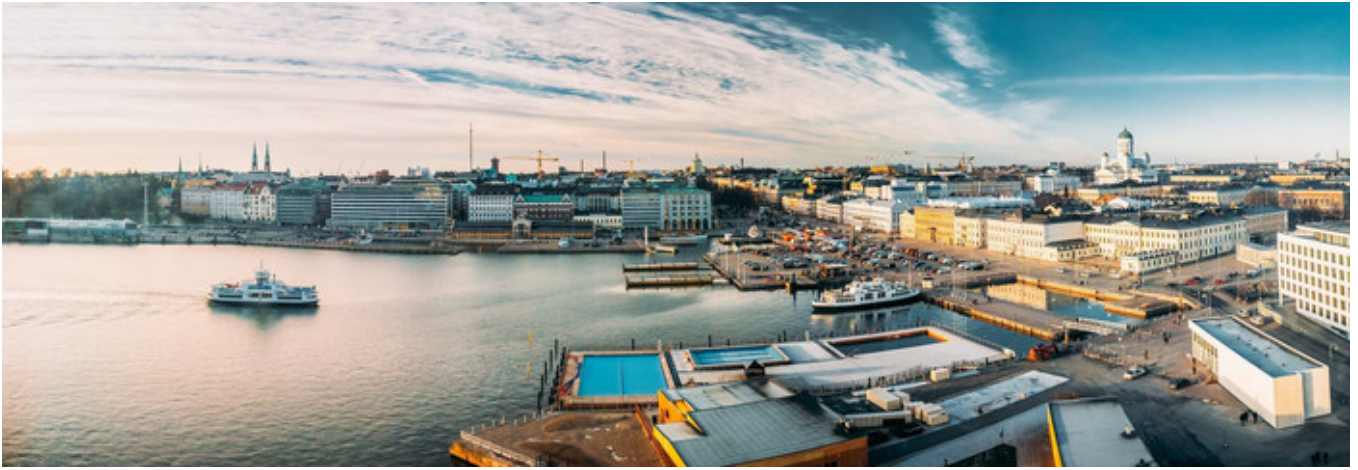
Kjetil Haare Johansen
Partner, Country Managing Partner



Erik Brändt Öfverholm
Partner, Head of Competition, Sweden

Merger between Altia Oyj (Altia) and Arcus ASA (Arcus) was notified to competition authorities in Finland, Norway and Sweden. The parties to the transaction are alcoholic beverage companies that mainly manufacture, import and distribute spirits and wines. Altia is a Finnish company that is primarily active in the Nordic countries. Arcus is a Norwegian company group that operates in 30 different countries, although with main footprint in the Nordic countries and Germany. Competition authorities in all countries where the merger was subject to (mandatory) filing accepted the merger subject to divestiture commitments.

In this article, we will shed some light on the national competition authorities' assessments and the respective outcomes and highlight the key differences and important take-aways for future cross-border competition filings in the Nordics.



Finland

In Finland the merger was notified to the Finnish Competition and Consumer Authority (the FCCA) on 2 December 2020 and was conditionally approved on 19 April 2021. The FCCA recognized severe competition concerns on the sale of both aquavit and strawberry liqueur to Finnish state alcohol retail monopoly, Alko, and the sale of aquavit to HoReCa customers. The parties would have achieved almost a monopoly position in Alko's aquavit category. The parties were also considered the closest competitors in berry liqueurs and the market would have become highly concentrated. The parties had overlapping activities also in several other categories of alcoholic beverages. However, Arcus' operations in Finland are limited and the FCCA did not identify competition concerns in other markets.

Due to the competition concerns raised by the FCCA, the parties proposed conditions already at an early stage of the investigation. Approval and execution of the transaction is conditional on Altia selling the Skåne Akvavit brand to a suitable purchaser and terminating the distribution agreement for Metsmaasikas strawberry liqueur. The effectiveness of the divestment of Skåne Akvavit brand condition is enhanced by the fact that the acquisition cannot be implemented until a binding agreement has been concluded with the buyer and the buyer has been approved by the FCCA.

According to **Sanna Syrjälä**, Director of Merger Control in the FCCA

"An up-front buyer provision may be used to increase the incentives of the parties to close the divestiture. This is the first time in Finland that the approval of a merger is bound by such a condition. In many earlier cases, finding a suitable buyer on the Finnish market has proved to be a challenge"



Norway

The merger was notified to the Competition Authority in Norway on 16 November 2020, and conditionally approved on 19 May 2021 subject to divestiture obligations on both parties. The Norwegian Competition Authority (the NCA) was particularly concerned for the sale of hard liquor to the Norwegian state alcohol retail monopoly, Vinmonopolet, as its investigations confirmed that Altia and Arcus are each other's closest competitors in the supply of aquavit, vodka and spirits with less than 22% alcohol.

During the course of the process, the parties proposed a set of different remedies, which were subject to a consultation amongst their customers, both the importers and retailers of alcohol. The NCA also had several meetings with interested parties, in addition to the numerous meetings with Altia and Arcus.

In the final conditional clearance decision, Altia committed to divest the brands and other assets connected to the products Skåne Akvavit to one or more suitable buyers.

Arcus, on the other hand, committed to divest the brands and other assets connected to the products Akevitt Spesial, Dworek Vodka and Kalinka S.P.R.T (except the brand name "Kalinka") to one or more suitable buyers.

The brands may be divested to one or more buyers, but Altia and Arcus can only complete (implement) the merger after binding sale and purchase agreements have been concluded and the NCA has approved the buyer(s). Further, the merged entity, which will operate under the name Anora, has undertaken to not acquire any of the divested brands for a set time period following the decision.

Additionally, Anora committed to offer necessary transitional services to the buyer(s), including services related to purchasing, production and distribution.

Senior Advisor **Jan Kristoffer Høiland** commented on the decision that

"In its dialogue with the parties, the Authority has pointed out that the merging companies are close competitors in the affected markets. It has therefore been important to ensure that the divested businesses are sold to one or more suitable buyers. A buyer should have both the ability and the incentives to develop the divested businesses into an efficient competitor to the merged entity and other market players."



Sweden

The Swedish Competition Authority (the SCA) approved the merger on 15 April 2021 subject to divestiture commitments. The SCA primarily focused its investigation on the Swedish markets for sales of (i) aquavit (*sw. kryddat brännvin/akvavit*) (ii) vodka (*sw. vodka/okryddat brännvin*) and (iii) cognac to Systembolaget, the Swedish state-owned liquor retail monopolists that account for 88% of the sales of spirits in Sweden. The SCA rejected the argument that the parties did not have market power as the barriers to market entry were low. Though small-scale entry was relatively easy, there were no examples of new entrants gaining notable market shares in the last five years. This was explained by the difficulties to qualify into the standard assortment of Systembolaget, Sweden's strict alcohol marketing laws, and a declining demand on the mature markets with well-established brands. The investigation showed that the merger would likely create or strengthen a dominant position on all the previously mentioned markets and on the market for sales of aquavit in the HoReCa sector in Sweden. According to the SCA, the competitive pressure the parties exerted on each other would disappear post-merger and the merged entity would, subsequently, have both incentive and ability to increase the prices or reduce the quality of its products.

The divestiture commitments include to

1. sell Altia's two aquavit brands Skåne Akvavit and Hallands Fläder to one suitable buyer,
2. sell Arcus' vodka brand Dworek to a suitable buyer and
3. sell Arcus' cognac brand Grönstedts to a suitable buyer, or, alternatively, sublicense Arcus' cognac brand Braastad to an independent company.

The SCA accepted these commitments as sufficient for the merger not to significantly impede competition.

Conclusions

Although the merger control rules are close to identical in the Nordic countries in most material aspects, the merger between Altia and Arcus sheds light on key nuances in the respective national competition authority's enforcement which can severely impact deal certainty and timing. Perhaps the most pertinent in this case, is that the divestiture commitment needed to be fulfilled before implementation of the merger (pre-closing) in Finland and Norway, whilst post-closing in Sweden.

Recently, such "up-front buyer" conditions have become more common, especially in smaller jurisdictions as the impact on competition particularly may raise concern, but where it can prove difficult to find a suitable buyer. Being aware of the risk in relation to certain competition authorities' inclination to require an up-front buyer is crucial to assess and plan the deals where divestiture commitments may need to be offered.

Further, the authorities have been transparent with the fact that the merger required and entailed cooperation between them, although it has not been detailed to what extent. Such cooperation is facilitated by a cooperation agreement from 2017 between the Nordic competition authorities. This shows the importance for parties to transactions triggering filing obligations in several Nordic countries to ensure consistency across the filing documents and to know that information to one of the competition authorities could be, and in certain cases is likely to be disclosed to the others as well.

Another note to be made is that the NCA seemed more reluctant to accept divestiture commitments than the SCA and the FCCA. It was the parties' 8th proposal that in the end was accepted by the NCA. While there were certainly national differences that could explain this – for example in market power, characteristics and concentration – one cannot help to see this fit into a common notion that the NCA may indeed be a stricter enforcer.

In conclusion, while a mostly aligned merger control review can be expected in Sweden, Norway and Finland, there are indeed nuances which can seem of less significance at first but can end up having severe impact in deal certainty and timing. DLA Piper can from its presence in Sweden, Norway, Finland and Denmark help clients with a pan-Nordic merger filing strategy and to ensure consistency across all jurisdictions.