



Supervision of Markets and Conduct of Business

Questions and answers – obligation to launch a bid and conditional imposition of fine	
1. Question	How will the process continue?
Answer (updated on 9 April 2019)	<p>1. Imposition of obligation to launch a bid and conditional imposition of a fine</p> <p>On 21 February 2018, the Financial Supervisory Authority (FIN-FSA) obliged Danko Koncar to launch a public bid for Afarak shares and imposed a running conditional fine to enforce the obligations stated in the decision. In its decision, the FIN-FSA required that Koncar publish a bid within a month from service of the decision.</p> <p>A public notice by FIN-FSA on the decision on Koncar was published in the Official Gazette on 11 April 2018. The FIN-FSA considered Koncar to have been informed of the decision on the seventh day from the publication of the notice, that is, on 18 April 2018 and therefore the deadline imposed on Koncar to launch a bid to have lapsed on 18 May 2018.</p> <p><i>Appeal and demand for prohibition of enforcement</i></p> <p>Koncar appealed the decision to the Helsinki Administrative Court. When lodging appeal, Koncar also applied for a prohibition of enforcement. By an interim decision rendered on 21 June 2018, the Helsinki Administrative Court rejected the appeal for a prohibition of enforcement. Subsequently, by a decision rendered on 3 September 2018, the Supreme Administrative Court rejected Koncar's application for a permission to appeal the interim decision of the Helsinki Administrative Court concerning prohibition of enforcement.</p> <p>On 1 March 2019, the Helsinki Administrative Court rejected the appeal made by Koncar to repeal the FIN-FSA decision of 21 February 2018. According to the Administrative Court, the FIN-FSA had not served the decision to Koncar in accordance with the Act on Conditional Fines, but because it is obvious in the case that Koncar has been informed of the decision, his appeal was taken under investigation by the Administrative Court. Furthermore, the Administrative Court considered that the defective service of the decision should not be considered a procedural error that would have materially affected the decision and that none of Koncar's rights have been deprived as a result. The decision of the Administrative Court is not yet legally binding. It may be appealed to the Supreme Administrative Court if it grants permission to appeal. The permission to appeal must be sought within 30 days of service of the decision of the Administrative Court. According to the Supreme Administrative Court, a permission to appeal from the decision of the Administrative Court has been sought.</p> <p>2. Enforcement of conditional fine</p>

	<p>On 9 July 2018, the FIN-FSA ordered Koncar to pay the base amount of the conditional fine of 40,000,000 euro and the supplementary amount of 10,000,000 euro accrued by that date. The conditional fine was ordered payable since Koncar failed to publish a bid by 18 May 2018 or to present a valid reason for non-compliance with the obligation.</p> <p>The deadline for appealing the decision started running from the date when the decision was served to Koncar against proof or receipt. Koncar was served the decision by means of service by public notice published in the Official Gazette on 5 October 2018. The FIN-FSA considered Koncar to have been served the decision on the seventh day after publication of the public notice in the Official Gazette, that is, on 12 October 2018.</p> <p>According to the Helsinki Administrative Court, the decision was appealed on 12 November 2018 and in connection therewith a prohibition of enforcement was applied. By an interim decision rendered on 3 December 2018, the Helsinki Administrative Court prohibited the enforcement of the conditional fine so that Koncar's assets may be seized but not sold.</p> <p>On 1 March 2019, the Helsinki Administrative Court rejected the appeal made by Koncar to repeal the FIN-FSA decision of 9 July 2018 ordering Koncar to pay the base amount of the fine, 40,000,000 euro. However, the Administrative Court repealed the FIN-FSA decision regarding the supplementary amount of 10,000,000 euro on the grounds that the first supplementary amount had not yet accrued by the time when the appealed decision was made. The Administrative Court deemed that the date of service of the decision shall be the date when the appeal concerning the imposition of the conditional fine was received by the Administrative Court, 16 May 2018. As a result, the bid should have been published at the latest on 16 June 2018 and the first supplementary amount accrued on 16 July 2018. The decision of the Administrative Court is not yet legally binding. It may be appealed to the Supreme Administrative Court if it grants permission to appeal. The permission to appeal must be sought within 30 days of service of the decision of the Administrative Court. According to the Supreme Administrative Court, a permission to appeal from the decision of the Administrative Court has been sought.</p>
<p>2. Question</p>	<p>Is the decision related to the demand made by Afarak's minority shareholders on 18 September 2017?</p>
<p>Answer</p>	<p>The FIN-FSA began to process the matter after Afarak's minority shareholders presented a demand to the FIN-FSA on 18 September 2017 to order Koncar and/or Kermas Resources Limited to make a public bid for Afarak shares at the price of at least 2.50 euro per share. However, the FIN-FSA examined, at its own initiative, the issue of Koncar's obligation to launch a bid more extensively than regarding the so called Finaline transactions. Hence, the FIN-FSA decision does not constitute a resolution of the minority shareholders' demand, as it will be resolved separately.</p>
<p>3. Question</p>	<p>Why there are three separate conditional fines imposed on Koncar? Is it possible that he will have to pay all of them?</p>
<p>Answer</p>	<p>The Act on Conditional Fines requires that a separate conditional fine be imposed for each obligation. Three separate conditional fines are imposed on Koncar, because there are three separate obligations imposed on him.</p>

	Since the obligations imposed on Koncar must be fulfilled one by one, the conditional fines will not in practice accumulate on top of each other.
4. Question	How will the decision affect investors who were shareholders in Afarak in 2009 but have subsequently sold their shares?
Answer	A public bid is addressed to the shareholders of the company at the time. If a previous shareholder in Afarak considers to have suffered a loss due to the neglect of the obligation to launch a bid, they may require damages in court from the party who failed to comply with the obligation to launch a bid.
5. Question	Will the FIN-FSA seek protective measures to ensure payment of the conditional fine?
Answer (updated on 16 November 2018)	The provision on applying for security measures in section 35 a of the FIN-FSA Act only applies to a penalty payment and an administrative fine, not to a conditional fine.
6. Question	How will the conditional fine be collected?
Answer (updated on 12 March 2019)	The FIN-FSA has sought enforcement of the conditional fine in Finland. Enforcement is the responsibility of the enforcement authority. Further information on enforcement and its publicity in general is available on the enforcement website at www.oikeus.fi/ulosotto/en/index.html