

**FORM FOR THE SUBMISSION OF COMPLAINTS CONCERNING ALLEGED
UNLAWFUL STATE AID OR MISUSE OF AID**

The mandatory fields are marked with a star (*).

1. Information regarding the complainant

First Name:* Leena

Surname:* Lindberg

First Name: Tuulia

Surname: Tanskanen

Address line 1:* Krogerus Attorneys Ltd

Address line 2: Fabianinkatu 9

Town/City:* Helsinki

County/State/Province:

Postcode:* 00130

Country:* Finland

Telephone:

Mobile Telephone: +358 (0)50 511 1937 (Lindberg) +358 (0)44 525 8089 (Tanskanen)

E-mail address:* leena.lindberg@krogerus.com; tuulia.tanskanen@krogerus.com

Fax: +358 (0)29 000 6201

2. I am submitting the complaint on behalf of somebody (a person or a firm)

Yes* No*

If yes, please also provide the following information

Name of the person/firm you represent*: Finnish Food and Drink Industries' Federation

Registration nr. of the entity: 0201092-3

Address line 1:* PL 115 / Pasilankatu 2

Address line 2:

Town/City:* Helsinki

County/State/Province:

Postcode:* 00241

Country:* Suomi

Telephone 1: (09) 148 871

Telephone 2:

E-mail address: * heli.tammivuori@etl.fi

Fax:

Please attach proof that the representative is authorized to act on behalf of this person/firm.*

3. Please select one of the following options, describing your identity*

- a) Competitor of the beneficiary or beneficiaries
- b) Trade association representing the interests of competitors**
- c) Non-governmental organisation
- d) Trade union
- e) EU citizen
- f) Other, please specify

Please explain why and to what extent the alleged State aid affects your competitive position / the competitive position of the person/firm you represent. Provide as much concrete evidence as possible.

Please be aware that, by virtue of Article 20(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, only interested parties within the meaning of Article 1(h) of that Regulation may submit formal complaints. Therefore, in the absence of a demonstration that you are an interested party, the present form will not be registered as a complaint, and the information provided therein will be kept as general market information.

The Finnish Food and Drink Industries' Federation (hereinafter also "Complainant") is a trade association, whose members operate *inter alia* in the oat mill business and in the sale of oat products. The State aid allegedly received by Suomen Viljava Oy to establish an extremely large oat mill distorts competition among others in the oat product market. The Finnish Food and Drink Industries' Federation is a trade association, and the interests of its members, who are undertakings in the food and drinks industry, are affected by the granting of aid.

4. Please select one of the following two options*

- Yes, you may reveal my identity
- No, you may not reveal my identity

If not, please specify the reasons:

Confidentiality: If you do not wish your identity or certain documents or information to be disclosed, please indicate this clearly, identify the confidential parts of any documents and give your reasons. In the absence of any indication about confidentiality of your identity or certain documents or information, those elements will be treated as non-confidential and may be shared with the Member State allegedly granting the State aid. The information contained in points 5 and 6 cannot be designated as confidential.

5. Information regarding the Member State granting the aid*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Country: Finland

b) If known, specify which institution or body granted the alleged unlawful State aid:

Central government: The Complainants understanding is that the State aid has been granted by the Prime Minister's Office (*valtioneuvoston kanslia*), in particular through its Ownership Steering Department or the Ministry of Agriculture and Forestry of Finland.

Region (please specify):

Other (please specify):

6. Information regarding the alleged aid measure*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Please provide a description of the alleged aid, and indicate in what form it was granted (loans, grants, guarantees, tax incentives or exemptions etc.).

Suomen Viljava Oy ("Viljava"), which is wholly owned by the state of Finland, has by its press release, dated 19 March 2021, published the project of establishing an oat mill.¹ According to the Complainant's understanding the project will be implemented at least in part by state funds. The oat mill will be constructed at Viljava's existing port storage facilities in Rauma, in other words the mill will be ideally located with regard to global ship and rail connections. It is told in the press release that the mill shall be completed at the end of year 2022.

Viljava does not have any actual pre-existing mill operations, except for activities on a minor scale in Kokemäki.² Viljava also has no previous experience in the export of milled products.

It is an extremely large-scale investment on the Finnish and also on the European level. According to the press release, the planned oat mill's capacity will be 110 million kilograms of oats, 80 million

¹ Annex 2, Viljava's press release of 19 March 2021, extract from Viljava's website. Available at <https://www.suomenviljava.fi/blog/2021/03/19/kauramylyinvestointi-raumalle-nostaa-suomalaisen-kauran-jalostusastetta/> (visited 21 November 2021).

² <https://www.suomenviljava.fi/yhteystiedot/varastojen-yhteystiedot/kokemaki/> (visited 2 November 2021).

kilograms of groats and flakes will be manufactured for food use as well as 35 million kilograms of oat husk pellets to the feed and biofuel market. The total oat mill capacity for food-grade oat refinement in Finland is currently roughly 150 million kilograms. After the establishment of the mill, Viljava's capacity in domestic oat production would be approximately 110 million kilograms, meaning it would increase its capacity from 0% to 40% of all capacity in Finland as a consequence of a single investment. At the same time, Finland's production capacity in its entirety increases by 70%. According to Viljava, the oat mill will mainly produce oat products for export.

Viljava has incorporated the subsidiary Oat Mill Finland Oy for the project, which will employ ten production workers. The construction project will be started during November 2021.

Exact information on the project's financing mechanism (for example loan, guarantee, equity injection) is not publicly available. The Complainant has attempted to find out for example from national authorities, whether State aid rules have been taken into account in the funding and implementation of the project, but without receiving a final explanation. However, based on publicly available information, the Complainant's view is that State aid may have been granted to the establishment of Viljava's oat mill in three ways:

- (i) providing direct funding, a loan or a guarantee to fund the investment; and/or
- (ii) utilisation without compensation or for an under-priced compensation of the assets (incl. tower and silos) transferred to Viljava for the execution of its special task; and
- (iii) by cross-subsidising the mill business activity with income accrued from executing the special task.

Hereinafter in this complaint by aid or possible aid the aforementioned aid is meant, on which's grant or exact form no confirmation has been received from national authorities.

b) For what purpose was the alleged aid given (if known)?

As described above, the aid has been granted or will be granted for the establishment of Viljava's oat mill.

c) What is the amount of the alleged aid (if known)? If you do not have the exact figure, please provide an estimate and as much justifying evidence as possible.

No value or any estimation of the planned investment has been published. The company's representative has declined to comment on the investment's value publicly.³ The Complainant has had several discussions with government authorities (on more than 10 different occasions) but based on them, the Complainant has not received more detailed information on the investment's funding (for more detail see section 9c below).

In the Complainant's estimation the investment's value, if the required equipment, logistics, instalments, and new buildings are taken into consideration, is approximately 20 million euros. If a

³ Annex 3, Article in Satakunnan Kansan: "Suomen Viljava Oy's Rauma oat mill to start production in the beginning of 2023", 9 November 2021.

similar investment would be made without utilising the assets Viljava's possession due to its special task, the project would require investments also *inter alia* to silos, grain reception facilities and storage spaces. In the latter case, the investment's value would be approximately several tens of millions of euros higher, roughly estimated around 50 million euros. Also, the value of the lot of land at the port area should be taken into account in evaluating the amount of the aid.

For comparison, one-time investments made by private mills to oat mill capacity have been, according to publicly available information, around 5–15 million euros in situations where the investing companies have had a good financial standing, have operated in the sector for tens of years and invest heavily in growth. The additional capacity brought by the investment has in those situations typically been 10–30 million kilograms of oats.

The amount of State aid could thus exceed several tens of millions of euros.

d) Who is the beneficiary? Please give as much information as possible, including a description of the main activities of the beneficiary/firm(s) concerned.

Suomen Viljava Oy (Business ID 0992653-9, domiciled in Naantali) is a company incorporated in 2002 and wholly owned by the state of Finland, whose sector is the storage and processing services for grain and other products. Viljava's storage and logistics functions as well as the considerable assets related to them are based on assets transferred to it by the State during its incorporation and to Viljava's special task. Viljava is the largest company focused on the processing and storage of grain and agricultural bulk products in Finland. It offers storage and processing services both domestically as well as to companies in the export, import, and transit sales. Viljava's turnover during the years 2016–2021 has varied between 15 and 20 million euros. For the oat mill activity, Viljava has incorporated a subsidiary Oat Mill Finland Oy (Business ID 3201551-4).

According to Viljava's 2020 annual report: "Viljava has a national obligation and special duty on its behalf to safeguard the operation of the domestic food chain in exceptional circumstances as well as ensure the functionality of grain storage and processing markets as well as the non-interferences of duties concerning the EU intervention operations."⁴

Viljava owns the processing and storage facilities required for exporting and importing grain in the Port of Rauma, which is one of the few ports in Finland which has the required infrastructure for exporting and importing grain as an agricultural bulk product. Due to Finland's geographical location, practically all bulk export of grain passes through Viljava's port services. Viljava processes annually roughly 2 million tonnes of grain while its storage capacity is roughly 1.4 million tonnes. The company's significance in the grain value chain is illustrated by the fact that the typical grain harvest in Finland is roughly 4 million tonnes in a year and in 2021 the harvest estimate is only roughly 3.1

⁴ Viljava's annual report for year 2020, p. 2 <https://www.suomenviljava.fi/content/uploads/2021/03/Suomen-Viljava-Annual-Report-2020.pdf> (visited 21 November 2021), version in Finnish: https://www.suomenviljava.fi/content/uploads/2021/03/Viljava_vuosikertomus_2020.pdf (visited 15 November 2021). Please note that the wording is slightly different in Finnish and in English as the text in Finnish refers specifically to a 'special task'. See also Annex 2, Viljava's press release of 19 March 2021, extract from Viljava's webpages. Available at <https://www.suomenviljava.fi/en/blog/2021/03/19/investment-in-oat-mill-in-rauma-will-add-value-for-finnish-oats/> (visited 21 November 2021).

million tonnes.

The Finnish Competition and Consumer Authority has in its previous decisional practice⁵ held that Viljava has a dominant market position within the meaning of Article 7 of the Finnish Competition Act and Article 102 of the Treaty of the Functioning of the European Union ("TFEU") on the following markets:

- (i) the Finnish market for state emergency stockpiling; and
- (ii) national regional markets, excluding the region of Vaasa, for storage and logistics services for the export and import of grain in foreign trade ports.

In the year 2002, concerning the divestment of Avena, which was the predecessor of Viljava, the Competition Authority held that the commercial grain trading and feed business must not be included in the same entity with the silo network, which led to it being carved out of the target and left in the ownership of Viljava, so that the divested target only included the commercial grain trading and feed business.⁶ Currently Viljava offers, as a part of its activities, storage services to mill industry and grain trade companies, that take part in the National Emergency Supply Agency's competitive tendering concerning state emergency stockpiling of grain. The majority of the state emergency stockpiled grain is stored in Viljava's silos.

The mill industry companies are dependent on the storage services offered by Viljava. With regard to storage and logistics services, Viljava's market position has not significantly changed since the aforementioned Finnish Competition and Consumer Authority's decision. Viljava is in the first place in a significant position in offering storage and logistics services for grain in Finland's grain value chain. It is likely that Viljava still has a dominant market position:

- (i) in offering storage services for state emergency stockpiling of grain in Finland; and
- (ii) national regional markets for storage and logistics services for the export and import of grain in foreign trade ports.

More information on Viljava is available at <https://www.suomenviljava.fi/en/>.

e) To your knowledge, when was the alleged aid granted?

As described above, Viljava has published the project concerning the construction of the mill by a press release dated 19 March 2021 and according to the estimation presented by Viljava the mill's production is supposed to start at the beginning of year 2023.⁷

According to the Complainants' estimation, the supposed State aid has been granted during the year 2021 and it would be granted at least during the construction project until the year 2023, as well as still

⁵ Merger control decision with conditions of the Competition Authority (nowadays FCCA) regarding *Lännen Tehtaat Oyj / Avena Oy*, file number 389/81/2002, 4 October 2002.

⁶ See Viljava's website <https://www.suomenviljava.fi/historia/2000-luku/vuosi-2002/> (visited 2 November 2021) and the Competition Authority's merger control decision with conditions, *Lännen Tehtaat Oyj / Avena Oy*, file number 389/81/2002, 4 November 2002.

⁷ Annex 3, Article in Satakunnan Kansan: "Suomen Viljava Oy's Rauma oat mill to start production in the beginning of 2023", 9 November 2021.

after this in the form of under-priced access and utilisation rights to infrastructure.

f) Please select one of the following options:

According to my knowledge, the State aid was not notified to the Commission.

According to my knowledge, the State aid was notified, but it was granted before the decision of the Commission. If known, please indicate the notification reference number or indicate when the aid was notified.

According to my knowledge, the State aid was notified and approved by the Commission, but its implementation did not respect the applicable conditions. If known, please indicate the notification reference number or indicate when the aid was notified and approved.

According to my knowledge, the State aid was granted under a block exemption regulation, but its implementation did not respect the applicable conditions.

7. Grounds of complaint*

Please note that, for a measure to qualify as State aid under Article 107(1) TFEU, the alleged aid has to be granted by a Member State or through State resources, it has to distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, and affect trade between Member States.

a) Please explain to what extent public resources are involved (if known) and, if the measure was not adopted by a public authority (but for instance by a public undertaking), please explain why, in your view, it is imputable to public authorities of a Member State.

In the Complainant's view, State aid has been granted (i) in the form of funding, a loan or a guarantee; and/or (ii) utilisation without compensation or for an under-priced compensation of the assets (incl. tower and silos) transferred to Viljava for the execution of its special task; and (iii) enabling the cross-subsidisation of the milling business activity with income accrued from executing Viljava's special task.

Even though the investment is executed by Viljava, the investment decision is to be considered a government action for following reasons.

Viljava is a non-listed limited liability company wholly owned by the state of Finland, and its activity is steered by the Ownership Steering Department of the Prime Minister's Office. Further, the State's strategic interest in Viljava is governed by the Ministry of Agriculture and Forestry.⁸ In addition to its pure investor interests in Viljava, the State has "interests due to which the State has reason to remain as a strong owner."⁹ The State's strategic interest in Viljava has been defined as the following: "The strategic interest is to ensure in a competitively neutral manner the functioning of the markets of grain storage and processing as well as the non-disturbance of the security of supply of the food chain as well as the tasks related to EU's inventory activities."¹⁰

The state of Finland appoints all members of Viljava's board of directors. The Prime Minister's Office's Ownership Steering Department and the Ministry of Agriculture and Forestry are represented in Viljava's board by two civil servants.

No specific details of the decision making concerning the establishment of the oat mill have been published. The Complainant, however, views that there are clear indications that the investment is a state action and that the aid has been granted from the State's funds:

- 1) The State's participation in the investment is indicated firstly by the size of the investment. The planned oat mill project is of significant size and the project is a clear change to Viljava's previous market strategy. It must be considered unlikely that Viljava would not have consulted the state of Finland, in other words the Prime Minister's Office's Ownership Steering Department or the Ministry of Agriculture and Forestry, before deciding on an investment of this magnitude. This is so especially because in Viljava's board of directors, two government officials represent the State's strategic interest as it has been formulated and supervised by the Ministry of Agriculture and Forestry. It cannot be considered likely that the representatives would have supported the decision concerning the investment without seeking the owner's approval. At the very least, it must be assumed that the opinion and approval of the highest ranking civil servants of the Ministry of Agriculture and Forestry have been sought in at least

⁸ See Corporate Governance -käytäntö Suomen Viljava Oy:ssä, available at: https://www.suomenviljava.fi/content/uploads/2021/03/20210324_Corporate-Governance_Suomen_Viljava_Oy.pdf (visited 2 November 2021).

⁹ <https://vnk.fi/omistajaohjaus/yhtiöt> (visited 19 April 2021).

¹⁰ Government resolution on state ownership policy, dated 8 April 2020, Prosperity with Responsible Ownership, p. 29 Available at (in Finnish): https://vnk.fi/documents/10616/5661433/Valtioneuvoston+omistajapoliittinen+periaatep%C3%A4%C3%A4t%C3%B6s_08042020.pdf/fde12e21-f85e-4ff8-f5c7-5110301944eb/Valtioneuvoston+omistajapoliittinen+periaatep%C3%A4%C3%A4t%C3%B6s_08042020.pdf (visited 22 November 2021).

some form before committing to such an extraordinary investment.

- 2) Secondly, the Rauma mill investment seems to be in line with the Finnish Government's resolution on the state ownership policy dated 8 April 2020. It is highlighted in the resolution that in addition to ensuring security of supply, the ownership policy aims to diversify the economic structure (primary sector, secondary sector and service sector) and to promote a sustainable structural change.¹¹ The Rauma mill project is a prime example of ownership policy actions being aligned with the Government's resolution on the state ownership policy, since building the mill means expanding Viljava's business activities outside activities related to security of supply to activities within the secondary (industrial) sector.
- 3) Thirdly, according to the Government resolution on the state ownership policy dated 8 April 2020, companies' capital investments will in general be made from the state budget.¹² Also this indicates that the oat mill project will be using state funds.
- 4) Lastly, in Viljava's annual report from the year 2020 it has explicitly been stated that Viljava has persistently worked to achieve the objectives of the Finnish Government's resolution on the state ownership policy and that the resolution forms the fundamental driver in the development of the company's operations.¹³

Taking into consideration the abovementioned factors it is likely that the investment into the Rauma mill is based on a state measure and that the aid has been granted from state funds.

b) Please explain why, in your opinion, the alleged State aid is selective (i.e. favours certain commercial undertakings or the production of certain goods).

The recipient of the State aid is a private company, whose planned investment expands its activities to a clearly competitive market. The State aid received by Viljava is selective, because it is directed solely to Viljava.

c) Please explain how, in your opinion, the alleged State aid provides an economic advantage for the beneficiary or beneficiaries.

¹¹ Government Resolution on the State Ownership Policy, dated 8 April 2020, Prosperity with Responsible Ownership, p. 7–8.

¹² Government Resolution on the State Ownership Policy 8 April 2020, Prosperity with Responsible Ownership, p. 7–8.

¹³ Viljava's annual report for year 2020, p. 2 <https://www.suomenviljava.fi/content/uploads/2021/03/Suomen-Viljava-Annual-Report-2020.pdf> (visited 20 November 2021), version in Finnish: https://www.suomenviljava.fi/content/uploads/2021/03/Viljava_vuosikertomus_2020.pdf (visited 20 November 2021).

Information on the exact funding mechanism (for example loan, guarantee, equity injection and/or low or no expected return on the investment) or the size of the investment is not publicly available. Based on the information publicly available, the Complainant, however, considers it highly unlikely that the oat mill project would be financed on market terms and that the market economy investor principle would be adhered to in the project's financing.

As described above, capital investments into state-owned companies are generally made from the State's budget. In any case, based on publicly available information, it is the Complainant's view that a private investor would never make the planned type of investment. This is especially so because no private actor could be in possession of the type of assets available in the Port of Rauma. The said assets have been transferred by the State to Viljava's control for a value that clearly undercuts the actual value of the assets for the purpose of executing Viljava's special task. According to publicly available information, Viljava utilises the existing assets and buildings in Rauma in the mill project, since for example the mill plants main equipment will be installed to the grain storages' tower part in addition to which the silos shall be used for storage.

The value of the utilised real estate and buildings is significant to the extent that it would not be possible for a private market actor to have access to it. Roughly estimated the value of the assets on the port lot utilised in the mill activity is several tens of millions of euros. Additionally, the value of the port lot should also be taken into consideration in the evaluation. Its value is nevertheless difficult to determine, because its location is uniquely favourable from the perspective of grain logistics.

The economic advantage is illustrated also by a comparison to projects of privately owned market players. According to the Complainant, Viljava's planned investment is significantly larger than those made by private oat millers in Finland during the last ten years. This is especially so, when taking into consideration the modest size of Viljava's current business activities. The investment is as large as or larger than Viljava's annual turnover, which during the years 2016-2021 has varied between 15 and 20 million euros.

In assessing the advantage, it must also be taken into account that Viljava does not have previous experience of the milling business, which highlights the exceptional nature of the investment. Viljava has no organisation, which would support its new commercial activities in the export of milled oat products. Viljava also has no brand or existing trade relations for milled products. Meanwhile, private mills operating in Finland are experienced market actors, they have existing organisations, staff and business partners dating back tens of years. Private mills have made significantly smaller investments than Viljava's planned investment, while they have focused strongly on growth in the milled oats product market already for a very long time. Compared to the activities and investments by private millers, Viljava's investment is disproportionately large.

The Complainant submits that it would be very difficult even for an experienced and well-established private miller to obtain a loan on viable terms for an investment of this size, especially considering the size of Viljava's current business and taking into account the milled oats product markets current growth as well as the fact that Viljava has no previous experience from the milling business.

For any private investor, this would be a high-risk project. Given that there is no viable and proven "business case" behind the investment, it is unlikely that private financing would be available for such a large-scale investment without e.g. state funding or guarantees. Also, the volume of the investment

will at the very least give rise to the company, as described later, to cross-subsidise the Rauma mill's activities with revenues from its grain storage and logistics business.

Viljava carries out this storage and logistics business activity on the grain storage market based on its unique position and special national task.

d) Please explain why, in your view, the alleged State aid distorts or threatens to distort competition.

The establishment of the Rauma oat mill would have a significant distorting effect on competition.

Viljava shall, as it has publicly announced, use the existing silo capacity and the infrastructure of the Port of Rauma in its planned mill business activity, which means that it will rely on infrastructure (i) of a business line in which it likely has a dominant market position and (ii) which the government has transferred to it for the purpose of offering storage capacity for grain emergency stockpiling.

Viljava's port infrastructure has been transferred from the State to Viljava for a value which clearly is below the actual value of the assets. The transfer of assets from the State has been accounted for in the preparatory works of the Act on the original incorporation of Viljava. According to the preparatory works, the fixed assets were to be priced in such a way that the company to be incorporated (Viljava) would be in a "sufficiently good position to operate profitably in the market".¹⁴ The value of the transferred assets was determined by the Finnish Government.

The infrastructure for grain storage and logistics at the Port of Rauma provides Viljava with a unique competitive advantage, unavailable to commercial market actors. Due to Viljava's access to the silo infrastructure, the Rauma mill will gain access to real estate located at an exceptionally beneficial location at the port and will be able to use the existing facilities of the port also in the milling business. Moreover, the Rauma mill will gain an advantage also with regard to construction time, since due to Viljava's storage activities, there are pre-existing facilities at the port which can be used.

By comparison, a privately owned undertaking would have to invest in real estate or consider the price of a leased property in its business, as well as to construct buildings and account for all costs and depreciations relating thereto in its milling business. In any case, similar ideal locations such as the one intended for the Rauma mill at the port are not in practice available for privately owned companies.

Furthermore, Viljava's infrastructure at the port can most likely be considered as an essential facility for the export and import of grain.

In addition, a distortion of competition may also arise in the operation of the Rauma mill as it may use Viljava's silo capacity and logistics services on more favourable terms than its competitors. In EU case-law it has been confirmed that a public undertaking operating both on a so-called closed market (such as the silo capacity) and on a competitive market (such as oat milling) must charge market prices for the services it produces on the closed-market from its subsidiary that carries out activities on the competitive market - otherwise the measure amounts to State aid within the meaning of Article 107 TFEU (see C-341/06 P, *Chronopost ja La Poste v. UFEX ym.*, para 98).

Viljava's current customers and future competitors (mills) are dependent on Viljava's silo capacity.

¹⁴ HE 239/1994, p. 7.

If Viljava's silo capacity and logistics services are exploited in the Rauma mill's commercial mill operations, those services must be provided at a market-based price, i.e. the price should cover all costs and a reasonable profit, as confirmed by the settled case law of the EU courts.¹⁵ There is no information publicly available showing that the state of Finland would have taken any measures or, would have the intention to take measures, to ensure that Viljava's intra-group pricing would be in accordance with State aid rules.

The distorting effects of the possible State aid to the Rauma mill are projected also to the oat procurement market. The volume of the oat harvest varies significantly from one year to another and whenever the oat harvest is smaller than usual, the distorting effect of Viljava's mill will be emphasised especially in the procurement market. For example, in the year 2021 the oat harvest was smaller than average.

e) Please explain why, in your view, the alleged aid affects trade between Member States.

Finland is one of the largest oat grain and milled oat product producers in the EU. For example, in the year 2019 Finland exported altogether 26.497 tonnes of oat products (to the EU and outside it), and Finland was thus the third largest exporter in the EU (excluding United Kingdom) in the year 2019.

Based on statistics on the export of oat products in the EU, Finland is among the largest exporters with a market share of some 8 % based on the information available from the year 2019. Within the EU, only Germany and Latvia exported larger volume of oat products than Finland. Belgium was the fourth largest exporter with nearly the same volume as Finland, while all other member states remained far behind the aforementioned countries in terms of export volumes.

Assuming, based on Viljava's public statements, that the Rauma oat mill will export almost all its final products and thus compete with at least all other exporters operating in the EU, this will have a significant effect on the market of oat product exports.

As can be seen in the table below, Finland would increase its market share of exported oat products in the EU from some 8% to roughly 25% merely based on the new, state-subsidised, Rauma mill. This would undoubtedly have significant effects on the market of exported oat products produced in the EU and most likely distort competition, not only within Finland, but more widely in the EU. This is also an indication of state involvement in the investment, since no privately owned financier would be likely to go in for a sudden investment of such magnitude in terms of market share.

Export of oat products in 2019	Tonnes	%	Tonnes incl. new Rauma mill	%
Austria	2 742	1%	2 742	1%
Belgium	26 424	8%	26 424	6%
Bulgaria	631	0%	631	0%
Croatia	539	0%	539	0%
Czech Republic	7 143	2%	7 143	2%
Denmark	10 086	3%	10 086	2%
Estonia	111	0%	111	0%

¹⁵ See e.g. C-341/06 P, *Chronopost and La Poste vs UFEX etc.*, para. 98.

Finland	26 497	8%	~106 497	~25%
France	6 832	2%	6 832	2%
Germany	176 200	51%	176 200	41%
Greece	143	0%	143	0%
Hungary	305	0%	305	0%
Ireland	11 548	3%	11 548	3%
Italy	526	0%	526	0%
Latvia	36 361	10%	36 361	9%
Lithuania	13 739	4%	13 739	3%
Luxemburg	35	0%	35	0%
Malta	263	0%	263	0%
Netherlands	8 831	3%	8 831	2%
Poland	5 461	2%	5 461	1%
Portugal	186	0%	186	0%
Romania	123	0%	123	0%
Slovakia	1 132	0%	1 132	0%
Slovenia	214	0%	214	0%
Spain	6 485	2%	6 485	2%
Sweden	4 418	1%	4 418	1%
Total	346 975	100%	460 478	100%

The growth of the oat product market can be expected to slow down somewhat during the next few years. This further emphasises the state-supported, by volume large, Rauma mill's competition distorting effect on the internal market.

8. Compatibility of the aid

Please indicate the reasons why in your view the alleged aid is not compatible with the internal market.

The aid has not been notified to the Commission nor have any decisions required for certain types of aid (for example de minimis -aid) been made. The State aid in question does not fulfil any criteria set for the types of State aid which are considered as compatible with the internal market.

The table below, which is based on public information, shows that there is no lack of private investors in Finland, who would be willing to invest in the oat milling market. On the contrary, private investors have lately made several significant investments. Even though the consumption of milled oat products and demand thereof has grown *inter alia* due to the products' health benefits (combined with the trend of wholesome foods), the growth has been gradual and timely investments into new or improved capacity have ensured that no shortage or lack of supply has occurred. In addition to the investments listed in the table below, capacity has been made available by small local millers, whose businesses will in the future compete with Viljava's state-supported business activity. Thus, it is clear, that the

state-owned Viljava's investment does not aim to fix any market failure.

Company	Details and year of investment	Reported / estimated value of investment
Raisio	Expansion/improvement, 2020, Nokia	EUR 8 million
Kinnusen Mylly	New mill, 2019	EUR 9.5 million
Kinnusen Mylly	Expansion/improvement, the years preceding, 2019	EUR 10 million
Fazer	New mill, 2013, Lahti Expansion/improvement, 2017, Lahti	EUR 15 million combined
Helsingin mylly	Expansion/improvement, 2016, Vaasa	EUR 5 million

9. Information on alleged infringement of other rules of European Union law and on other procedures

a) If known, please indicate what other rules of European Union law you think have been infringed by the granting of the alleged aid. Please be aware that this does not imply necessarily that those potential infringements will be dealt with within the State aid investigation.

Viljava may be considered to have special right within the meaning of Article 106(1) TFEU. According to Viljava's annual report it has, as described above, a "national obligation and special task" to safeguard the functioning of the domestic food chain in emergencies, in addition to which this is also stated on the company's website. Although this obligation has not been directly determined by law, it may be considered to amount indirectly from when the state of Finland determines the volume of the State's emergency stockpiling and when the National Emergency Supply Agency decides in its public procurements on the requirements of storing the emergency stockpile. Moreover, Viljava's market position is based on government assets transferred to it, i.e. silos and port capacity, thanks to which it has an unparalleled position on the market in comparison to other actors.

The investment is liable to amount to an abuse of a dominant market position within the meaning of Article 102 TFEU. The combination of Viljava's likely dominant position with the fact that it is making an exceptionally large investment in an adjacent market points to a clear risk of abuse of its dominant market position. At least the following risks of abuse can be identified in Viljava's future activity:

- Pricing of storage space: Viljava may distort competition among Finnish mills active in exports by applying more favourable pricing on its own use of e.g. silo capacity than on competing mills. This would be likely to foreclose competing mills from export markets and to affect their competitiveness and pricing on the national market.
- Discrimination in the allocation of capacity: Viljava would have the incentive to reserve especially the silo capacity in Rauma for its own use and to weaken the conditions of access to capacity of its competitors.
- Discriminatory control of grain supply flows: Viljava's pricing power over the storage capacity in Rauma creates an incentive for Viljava to divert grain flows so that the oat needed by

Viljava for its mill is stored in the Rauma silos, which are connected to the Viljava mill. This would lead to logistics related advantages to Viljava, which could distort competition with other mills.

- Diverting exportable oats to Finland: There is an incentive for Viljava to artificially increase prices of cargo handling etc. for the export of grain to persuade grain traders to sell oats to Viljava instead of exporting it.
- (Under)pricing of services for the state emergency stockpiling of oats: Viljava's incentives to take part in the future in the National Emergency Supply Agency's competitive tenders would increase due to the mill. As a result of its vertical integration and by virtue of its dominant position, it would be relatively easy for Viljava to succeed in the National Emergency Supply Agency's competitive tenders because it would have both the storage capacity as well as the mill, which uses grain.
- (Under)pricing of exported oats: The artificial measures described above would allow Viljava to lower the prices of its exported oat mill products and to compensate for the unprofitable export prices by increasing the prices of the storage space it supplies to its competitors (cross-subsidisation).
- Taking advantage of competitors' trade secrets: Viljava receives extensive and detailed commercial information from competing mills and could use that information in its own competing milling business. Viljava would have the incentive to exploit the information it received about its competitors to strengthen its position, for example as a buyer of oat grain.

The Competition Authority has foreseen the above-described risks already when Viljava divested certain business activities in the year 2002. Viljava refers to this on its home page:

"The FCA considers it difficult, from the point of view of the proper functioning of the market, to place most of the country's storage capacity in the same private entity, which also has a major grain and feed trading business. This would lead to a threat of the port and silo services being exclusively bound to serve the needs of only one private grain and feed trade company."¹⁶

Viljava has both the ability and the incentive to distort competition in the purchase and import of oats, as well as at the very least in the export of milled oat products and in the provision of storage space for state emergency stockpiling services. This is so in particular due to Viljava not having experience in the milling business nor in the export of milled goods, which means that the new business may be commercially less viable than expected. In such case, Viljava is likely to, for instance, resort to predatory pricing or otherwise exploit its likely dominant position in order to cover the costs of the exceptionally large investment in the mill.

Because the company is wholly owned by the state of Finland and its activities are steered by the Prime Minister's Office, the investment would, in view of the above, likely be contrary to Article 106(1) TFEU.

In addition to abuse of a dominant market position, the Rauma project can lead to a breach of Article 101(1), because it leads to exchanging commercially sensitive information between Viljava and

¹⁶ <https://www.suomenviljava.fi/historia/2000-luku/vuosi-2002/> (visited 26 April 2021).

competing mills.

The Finnish Competition and Consumer Authority has already in its previous decisional practice stated that combining information concerning the storage of grain to business concerning an adjacent market could have a negative effect on competition. The Competition Authority stated the following in its decision concerning the sale of certain activities of Viljava in 2002:

"According to the information obtained by the Competition Authority, the concentration would award to the new company an advantage which, considering the other market players in the sector, would distort competition in various forms. The shareholding may, among other things, enable Lännen Tehtaat to obtain market information concerning its competitors, such as their need for storage capacity, the speed of the inventory turnover, raw material purchases, time of purchase, etc. This view is considered correct by the Competition Authority."¹⁷

The investment planned by Viljava would have exactly the same harmful effects as the aforementioned case, which resulted in a commitment not to include any storage space, meaning the silos, in the target of the acquisition. The milling business is already as such a relatively transparent market, because the grain is a publicly quoted commodity. This means that when Viljava would get access to the type of information noted above, including information on purchase times and qualities of raw material, it could not only exploit this information to leverage its market power from storage to milling, but the increased information exchange could also result in reduced competition on the milling market more generally.

b) Have you already approached the Commission's services or any other European institution concerning the same issue? *

Yes **No**

If yes, please attach copies of correspondence.

The European Flour Millers has unofficially discussed the matter over the phone with DG COMP's Food Task Force's representatives as well as the State Aid Unit.

c) Have you already approached national authorities or national courts concerning the same issue? *

Yes **No**

If yes, please indicate which authorities or courts; also, if there has already been a decision or judgement, please attach a copy (if available); if, on the contrary, the case is still pending, please indicate its reference (if available).

The Complainant has been in contact with the Finnish Competitive and Consumer Authority concerning national rules on competitive neutrality as well as the rules regarding dominant market position. The Finnish Competition and Consumer Authority has, as a consequence of this, provided guidance to Viljava. However, the Complainant is not aware that the Finnish Competition and Consumer Authority, the state of Finland, or Viljava itself would have taken actions to prevent the distortion of competition. No official decisions have been made on the matter.

¹⁷ Merger control decision with conditions of the Competition Authority (nowadays FCCA) regarding *Lännen Tehtaat Oyj / Avena Oy*, file number 389/81/2002, 4 October 2002.

Between 19 March and 15 November 2021 the Complainant has had discussions with the following authorities and responsible political actors:

- Finnish Competition and Consumer Authority (FCCA): (30 March, 12 April, 1 June and 29 June) Discussed competition law and State aid issues. Based on the discussions, the FCCA initiated discussions with Viljava to provide guidance on competitive neutrality.
- Prime Minister's Office's Ownership Steering Department: (24 May) Discussed Viljava's ownership steering strategy. No further information was received on the investment.
- Minister responsible for ownership steering, Minister Tuppurainen: (2 June) Discussed Viljava's ownership steering strategy as well as the role of the Ministry of Agriculture and Forestry in Finland in the company's ownership steering.
- Minister responsible for strategic guidance, Minister Leppä: (18 June) Discussed the functioning of the food industry in case Viljava enters the market and the role of the Prime Minister's Office's Ownership Steering Department in the ownership steering.
- Ministry of Economic Affairs and Employment, State Aid Unit: (29 June, 14 September, and 29 October) Discussed the risks regarding competitive neutrality and State aid in relation to the investment. The State Aid Unit has had held discussions on the matter with several stakeholders, but the Complainant did not receive concrete information on the investment or its funding.
- State-Secretary for Minister Tuppurainen, Vuorenkoski: (2 November) Discussed the investment and compliance with the rules regarding competitive neutrality.
- State-Secretary for Ministers Leppä and Lintilä, Ihanus: (11 November) Discussed the investment and the Prime Minister's Office's Ownership Steering Department's role in the matter.

d) Please provide any other information that may be relevant for the assessment of this case.

10. Supporting documents

Please list any documents and evidence which are submitted in support of the complaint and add annexes if necessary.

- Whenever possible, a copy of the national law or other measure which provides the legal basis for the payment of the alleged aid should be provided.
- Whenever possible, please attach any available evidence that the State aid was granted (e.g. press release, published accounts).
- If the complaint is submitted on behalf of someone else (a natural person or a firm) please attach proof that you as a representative are authorised to act.

- Where applicable, please attach copies of all previous correspondence with the European Commission or any other European or national institution concerning the same issue.
- If the issue has already been dealt with by a national court/authority, please attach a copy of the judgement/decision, if available.

Annex 1. Power of attorney

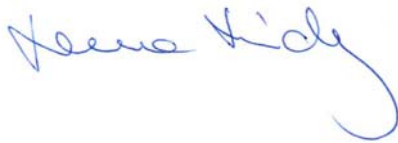
Annex 2. Viljava's press release of 19 March 2021, extract from Viljava's website

Annex 3. Article in Satakunnan Kansa: "Suomen Viljava Oy's Rauma oat mill to start production in the beginning of 2023", 9 November 2021

I hereby declare that all the information in this form and annexes is provided in good faith.

Place, date and signature of complainant

Helsinki 22.11.2021



Leena Lindberg

Attorney-at-law



Tuulia Tanskanen

Attorney-at-law