

**European Commission**

**English translation**

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**Reference Our complaint CHAP(2014)00694 (EU-Pilot 6732/2014)**

**Matter      RESPONSE TO YOUR LETTER December 6, 2015 (which arrived by e-mail January 6, 2015)**

**Name of complainant:**

Suomen Rautatiematkustajat ry

**Represented by:**

Kalevi Kämäräinen, chairman  
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**Vastine FIRST QUESTION: DISCONTINUANCE OF TRAIN STOPS**

**1. The Commission's position**

"On the first point, the Finnish authorities stated that the competent Ministry has not approved of VR's plans to discontinue trains stopping at some commuter stations. In theory, the contract between the Ministry and VR regarding commuter services outside the Capital's regional transit system between January 1, 2012 and December 31, 2015, provides scope to discontinue services."

The Finnish authorities have, however, assured that they will review the public service obligations in transport services where appropriate, and ensure that availability of public transport as a whole is not impaired. Thus, infringement of Regulation (EC) No

1370/2007, and in particular Articles 4 and 6, could not be established."

## 2. Factual matters

We quote the minutes of Mikkeli City Board December 8, 2014<sup>1</sup> showing the damage caused by the reviews of Finnish authorities:

"A group of councillors presented to the City Board the following written question on December 8, 2014:  
"Restoration of passenger traffic at Haukivuori railway station

VR discontinued passenger train services starting from August 8, 2014 in Haukivuori with the acceptance of the Ministry of Transport despite strong opposition from its 2000 permanent residents and residents of its 1250 leisure properties.

Discontinuance of train traffic causes substantial economic losses as well as many other negative effects to the people of Haukivuori including leisure residents, business owners, the city of Mikkeli and also to the State.

As a result of the decision, the people of Haukivuori are mainly subject to public transport encirclement, only the so-called school buses run on school days towards Mikkeli and Pieksämäki. On weekdays (Mon-Fri) after 17:00 public transport is out of their reach. On Saturdays there are two bus departures and on Sundays one bus departure towards Mikkeli, these commenced as replacement public transport. At this moment there are no connections to Pieksämäki on weekends.

VR scrapped a commendable (6 daily train connections in **each direction** to the South and North, 15 000-18 000 passengers per annum) rail traffic that offered users flexibility and was profitable for VR.

Haukivuori train stops produced a net income of 400 000 - 500 000 € per year (with an average ticket price of € 30) to VR. A subsidized bus service replacing trains would cost to public funds (mainly to Mikkeli, Pieksämäki and Etelä-Savo Centre for Economic Development, Transport and the Environment) approx. 400 000 €. This is not economically viable.

In addition, the travel time compared to train has at least doubled and is also more expensive. A one-way trip Haukivuori - Mikkeli costs 9.30 €. Eligible senior citizens receive a discount only for journeys more than 45 kilometres in buses, so the wider benefits given for train travel have now been deprived from them. In early summer 2014, a pensioner still reached Mikkeli by train for only 4.30 €.

Self-reliant older people who previously could go by train to Mikkeli, for example to see a doctor, will now have to travel to there using a taxi compensated by Finland's National Social Insurance Institution (KELA). KELA subsidy is about 60 € each direction, in any case the claimant has to pay a deductible sum of 14.25 €. These trips have increased notably, so the costs to public funds increase, directly and as does the cost of the public bureaucracy such travel creates. The debt burden of Mikkeli (in this example) and the State only grows.

Because of poor public transport connections children have to move away from their homes to pursue higher education opportunities. This is a return to the 1950s.

As a result of VR's decision the people of Haukivuori collect and deliver their family members **and visitors** from and to the public transport connections in Mikkeli and Pieksämäki, forcing them to drive 160 kilometres (4 x 40km) which would be unnecessary. The same applies to hundreds of leisure residents. The risk of traffic accidents and climate pollution increases unnecessarily too.

UN climate panel (ICPP) just released a harshly worded petition on the necessity of global warming prevention measures including a halt to the use of fossil fuels world-wide by 2100, in order to stop climate warming. Finland as part of the EU supposedly will pursue this target by 2050.

## 3. Legal deliberation

What is the significance of the Finnish authorities' assurances that the public service obligations will be reviewed and, when necessary, ensure that the overall public traffic supply is not impaired, when in such a specific case it is allowed to decrease? The Finnish side has not even alleged, let alone proved, that this obligation would have resulted in a financial burden to the obliged, that is, to VR.

In addition, the State "acceptance" is contrary to the Exclusivity Agreement, because VR has been allowed to discontinue a stop without complying with the 1 to 3 year

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[https://webdom.mikkeli.fi/kunnari/internet\\_mikkeli.nsf/3e12a7fcbe6736c22569d90040f1cd/5243B281126061E9C2257DDA00299AF1?OpenDocument](https://webdom.mikkeli.fi/kunnari/internet_mikkeli.nsf/3e12a7fcbe6736c22569d90040f1cd/5243B281126061E9C2257DDA00299AF1?OpenDocument)

transition period (Article 5, paragraph 3)<sup>2</sup>:

"If the Authority requires changes to the lines served, a 3-5 year transition period will follow. If the Transport Operator wants to implement changes that have been jointly accepted between the parties, case by case transitional periods will be up to 1-3 years. Changes can be increased or decreased train service levels, as well as changes to train stopping patterns and they will be agreed in writing."

Regulation (EC) No 1370/2007, Article 4(1 a) requires that

"1. Public service contracts and general rules shall:  
clearly define the public service obligations with which the public service operator is to comply, and the geographical areas concerned;"

Practice shows that the Finnish definitions are not clear. The question of train stops hides a more principled point, however.

In its reply the Government of Finland acknowledges that part of the rail network has been excluded from the exclusivity while it also acknowledges that "liberalized" railway sections are also unlikely to be viable to operate and that they are not open to subsidies. Operations should therefore take place with entrepreneurial economical risk (Finland's response p. 2/5). The intention of favouring the State's VR has already been admitted by the Minister of Transport, who outlined to the Government the Exclusivity Agreement (see Leike sanomalehdestä Itä-Savo 26.12.2009 (I) on complaint page 41).

According to the 25<sup>th</sup> section of the introductory part of Regulation (EC) No 1370/2007 (emphasis here):

Public passenger transport by rail raises specific issues of investment burden and infrastructure cost. In March 2004, the Commission presented a proposal to amend Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (5) so as to guarantee access for all Community railway undertakings to the infrastructure of all Member States for the purpose of operating international passenger services. **The aim of this Regulation is to establish a legal framework for compensation and/or exclusive rights for public service contracts and not the further opening of the market for railway services.**

However, Finland has "opened up further" the rail services market. Contractually this has been done without complying with Regulation (EC) No 1370/2007 Article 2(f)

"For the purpose of this Regulation:

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(f) 'exclusive right' means a right entitling a public service operator to operate certain public passenger transport services on a particular route or network or in a particular area, to the exclusion of any other such operator;<sup>3</sup>

The exclusive right should, therefore, be given to a "specific route," "specific network" or "specific area". The rail network outside the Capital's regional transit system is included only partially (exclusivity is subjected there either "on specific routes" or "part of a specific network"). This does not comply with the definitions of the Regulation and upholds the status of VR contrary to community law, *inter alia*, regarding State aid.

According to Article 107 of the Treaty on the Functioning of the European Union

"1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

2. The following shall be compatible with the internal market:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
- (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of

<sup>2</sup> [http://www.rautatiematkustajat.fi/VR\\_osto.pdf](http://www.rautatiematkustajat.fi/VR_osto.pdf)

<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R1370&from=FI>

Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.

3. The following may be considered to be compatible with the internal market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission."

The judgment of the Court of Justice of the European Union of July 24, 2003 in Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH and Oberbundesanwalt beim Bundesverwaltungsgericht (Case C-280/00)<sup>4</sup> regards to the distinction between forbidden and permitted State aid. It refers extensively to the concept of State aid:

"74 To answer the first part of the question, the various elements of the concept of State aid in Article 92(1) of the Treaty must be considered. It is settled case-law that classification as aid requires that all the conditions set out in that provision are fulfilled (see Case C-142/87 Belgium v Commission ('Tubemeuse') [1990] ECR 1-959, paragraph 25; Joined Cases C-278/92 to C-280/92 Spain v Commission [1994] ECR 1-4103, paragraph 20; and Case C-482/99 France v Commission [2002] ECR 1-4397, paragraph 68).

75 Article 92(1) of the Treaty lays down the following conditions. First, there must be an intervention by the State or through State resources. Second, the intervention must be liable to affect trade between Member States. Third, it must confer an advantage on the recipient. Fourth, it must distort or threaten to distort competition.

76 The national court's question concerns more particularly the second of those conditions.

77 In this respect, it must be observed, first, that it is not impossible that a public subsidy granted to an undertaking which provides only local or regional transport services and does not provide any transport services outside its State of origin may none the less have an effect on trade between Member States.

78 Where a Member State grants a public subsidy to an undertaking, the supply of transport services by that undertaking may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of providing their transport services in the market in that Member State (see, to that effect, Case 102/87 France v Commission [1988] ECR 4067, paragraph 19; Case C-305/89 Italy v Commission [1991] ECR I-1603, paragraph 26; and Spain v Commission, paragraph 40).

79 In the present case, that finding is not merely hypothetical, since, as appears in particular from the observations of the Commission, several Member States have since 1995 started to open certain transport markets to competition from undertakings established in other Member States, so that a number of undertakings are already offering their urban, suburban or regional transport services in Member States other than their State of origin.

80 Next, the Commission notice of 6 March 1996 on the de minimis rule for State aid (OJ 1996 C 68, p. 9), as its fourth paragraph states, does not concern transport. Similarly, Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid (OJ 2001 L 10, p. 30), in accordance with the third recital in the preamble and Article 1(a), does not apply to that sector.

81 Finally, according to the Court's case-law, there is no threshold or percentage below which it may be considered that trade between Member States is not affected. The relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected (see Tubemeuse, paragraph 43, and Spain v Commission, paragraph 42).

82 The second condition for the application of Article 92(1) of the Treaty, namely that the aid must be capable of affecting trade between Member States, does not therefore depend on the local or regional character of the transport services supplied or on the scale of the field of activity concerned.

83 However, for a State measure to be able to come under Article 92(1) of the Treaty, it must also, as stated in paragraph 75 above, be capable of being regarded as an advantage conferred on the recipient undertaking.

84 Measures which, whatever their form, are likely directly or indirectly to favour certain undertakings (Case 6/64 Costa [1964] ECR 585, at p. 595) or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions (Case C-39/94 SFEI and Others [1996] ECR 1-3547, paragraph 60, and Case C-342/96 Spain v Commission [1999] ECR 1-2459, paragraph 41) are regarded as aid.

85 Mention should, however, be made of the Court's decision in a case concerning an indemnity provided for by Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (OJ 1975 L 194, p. 23). That indemnity was able to be granted to waste oil collection and/or disposal undertakings as compensation for the collection and/or disposal obligations imposed on them by the Member State, provided that it did not exceed the annual uncovered costs actually recorded by the undertakings taking into account a reasonable profit. The

Court held that an indemnity of that type did not constitute aid within the meaning of Articles 92 et seq. of the Treaty, but rather consideration for the services performed by the collection or disposal undertakings (see Case 240/83 ADBHU [1985] ECR 531, paragraph 3, last sentence, and paragraph 18).

86 Similarly, the Court has held that, provided that a tax on direct sales imposed on pharmaceutical laboratories corresponds to the additional costs actually incurred by wholesale distributors in discharging their public service obligations, not assessing wholesale distributors to the tax may be regarded as compensation for the services they provide and hence not State aid within the meaning of Article 92 of the Treaty. The Court said that, provided there was the necessary equivalence between the exemption and the additional costs incurred, wholesale distributors would not be enjoying any real advantage for the purposes of Article 92(1) of the Treaty, because the only effect of the tax would be to put distributors and laboratories on an equal competitive footing (Ferring, paragraph 27).

87 It follows from those judgments that, where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them, such a measure is not caught by Article 92(1) of the Treaty.

88 However, for such compensation to escape classification as State aid in a particular case, a number of conditions must be satisfied.

89 First, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. In the main proceedings, the national court will therefore have to examine whether the public service obligations which were imposed on Altmark Trans are clear from the national legislation and/or the licences at issue in the main proceedings.

90 Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings.

91 Payment by a Member State of compensation for the loss incurred by an undertaking without the parameters of such compensation having been established beforehand, where it turns out after the event that the operation of certain services in connection with the discharge of public service obligations was not economically viable, therefore constitutes a financial measure which falls within the concept of State aid within the meaning of Article 92(1) of the Treaty.

92 Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations. Compliance with such a condition is essential to ensure that the recipient undertaking is not given any advantage which distorts or threatens to distort competition by strengthening that undertaking's competitive position.

93 Fourth, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

94 It follows from the above considerations that, where public subsidies granted to undertakings expressly required to discharge public service obligations in order to compensate for the costs incurred in discharging those obligations comply with the conditions set out in paragraphs 89 to 93 above, such subsidies do not fall within Article 92(1) of the Treaty. Conversely, a State measure which does not comply with one or more of those conditions must be regarded as State aid within the meaning of that provision.

95 The answer to the first part of the question referred for a preliminary ruling must therefore be that the condition for the application of Article 92(1) of the Treaty that the aid must be such as to affect trade between Member States does not depend on the local or regional character of the transport services supplied or on the scale of the field of activity concerned.

However, public subsidies intended to enable the operation of urban, suburban or regional scheduled transport services are not caught by that provision where such subsidies are to be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations. For the purpose of applying that criterion, it is for the national court to ascertain that the following conditions are satisfied:

- first, the recipient undertaking is actually required to discharge public service obligations and those obligations have been clearly defined;
- second, the parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner;
- third, the compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations;
- fourth, where the undertaking which is to discharge public service obligations is not chosen in a public procurement procedure, the level of compensation needed has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.”

Paragraph 75 of the judgment lists four conditions for the application of Article 92, paragraph 1 (nowadays Article 107, paragraph 1):

1. There must be an intervention by the State or through State resources.
2. The intervention must be liable to affect trade between Member States.
3. It must confer an advantage on the recipient.
4. The intervention must distort or threaten to distort competition.

When the conditions are compared with Finnish aid granted to VR, it can be stated:

1. There is clearly an intervention by the State and using State resources.
2. Finland has partially opened the domestic passenger rail services to competition, even though Regulation (EC) No 1370/2007 did not require it. This measure is liable to affect trade between Member States (paragraphs 76 - 82 and paragraph 79 in particular).
3. Since VR is the sole beneficiary on the partially opened market, it is difficult to comprehend the arrangement otherwise than as an advantage conferred on the recipient (paragraphs 83 - 87 and paragraphs 84 and 87 in particular).
4. Even the ombudsman of the Government of Finland sees obscurities<sup>5</sup> in the arrangement, so the definition of public-service obligation cannot be clear (paragraph 89) as neither are the parameters on the basis of which the compensation is calculated (paragraph 90). Moreover, it is probably not clear if the compensation exceeds what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations (paragraph 92). In addition, we believe that there is not a comparable Finnish company, which could be used as benchmark (paragraph 93). Instead, there are studies by the Government of Finland as well as others according to which services are likely to be available clearly more cheaply through competition. Even one of these four conditions is sufficient enough to render the aid as incompatible with paragraph 1 of Article 107 (paragraph 94).

#### According to paragraph 102 of the Altmark Case

"In paragraph 37 above, it was stated that, if there were no regulation applicable to the case in the main proceedings, it would have to be examined whether the subsidies at issue in the main proceedings fell within the provisions of the Treaty concerning State aid."

As we see it, Regulation (EC) No 1370/2007 would apply **if Finland had not opened rail services market further**. Therefore, the situation must be judged in light of the provisions of the Treaty. It is also of value to note the Commission's characterization of paragraph 69 referred to in paragraph 79 of the judgment. The statement of principles apply exactly to the passenger traffic market reality:

"In the present case, that finding is not merely hypothetical, since, as appears in particular from the observations of the Commission, several Member States have since 1995 started to open certain transport markets to competition from undertakings established in other Member States, so that a number of undertakings are already offering their urban, suburban or regional transport services in Member States other than their State of origin."

Also Article 9(1) of Regulation (EC) No 1370/2007 clearly emphasizes that the compensation shall be compatible with the common market:

"1. Public service compensation for the operation of public passenger transport services or for complying with tariff obligations established through general rules paid in accordance with this Regulation shall be compatible with the common market. Such compensation shall be exempt from the prior notification requirement laid down in Article 88(3) of the Treaty."

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<sup>5</sup> see Rautateiden henkilöliikenteen avaaminen kilpailulle (LVM:n julkaisuja 21 / 2012 on complaint pages 29 to 31, of which): 'Positive experiences on the opening to competition in other countries regard mainly tendered services. Apart from the Capital region competitive bidding could be tried in other tendered services - especially in the light of eventual good experience in the Capital region. This would now render services acquired on regional policy grounds to open discussion, which would require approving such transparency. Tendering, however, would eliminate the opacity and cross-subsidies problem regarding contemporary obligation system.'

#### 4. Conclusion

Once the subject of the complaint admits to having opened the market more than the minimum regulatory demands, how can the Commission leave unresolved whether the arrangement violates Community law or not?

### **SECOND QUESTION: ROLLING STOCK ACQUISITIONS**

#### 1. The Commission's position

"On the second point, the Finnish authorities provided information on VR making significant investments in rolling stock within the duration of the public service contract. During the investment programme which started in 2010 VR invested or was investing more than 400 million euros in new equipment, which is to be used when implementing the public service contract. Thus, extension of the duration of a public service contract issued without tender by up to 50 per cent conforms with Regulation (EC) No 1370/2007 Article 4(4). In any case - because this contract was made before the entry into force of the Regulation – the maximum duration of transitional rule Article 8(3) subparagraph d is directly applicable. It states that the agreed contract can be extended until the termination of it, provided that its limited duration complies with Article 4, that is 15 years for railway contracts. Thus, breach of Regulation (EC) No 1370/2007, and in particular Article 4 could not be established."

#### 2. Factual matters

There is no mention whatsoever of rolling stock issues in the original Agreement signed in 2009<sup>6</sup>. Only point-4 of the extension agreement signed in the summer of 2013 mentions this<sup>7</sup>:

"Investments in Western Lapland night train traffic:  
The parties agree in this context that the Transport Operator undertakes to invest in night train rolling stock renewal by 31 December 2018, which enables the continuation of the Western Lapland night train traffic to Kolari when current rolling stock reaches end of useful life. The Transport Operator acquires one trainset for the traffic, which makes it possible to operate three days a week in each direction, as well as to build facilities required to maintain the rolling stock. The Transport Operator is entitled to utilize these investments in other activities."

#### 3. Legal deliberation

**Article 4(4) of Regulation (EC) No 1370/2007 applies only where the operator provides assets which are both significant in relation to the overall assets needed to carry out the passenger transport services covered by the public service contract and linked predominantly to the passenger transport services covered by the contract:**

"Public service contracts and general rules shall:

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4. If necessary, having regard to the conditions of asset depreciation, the duration of the public service contract may be extended by a maximum of 50% if the public service operator provides assets which are both significant in relation to the overall assets needed to carry out the passenger transport services covered by the public service contract and linked predominantly to the passenger transport services covered by the contract. If justified by costs deriving from the particular geographical situation, the duration of public service contracts specified in paragraph 3 in the outermost regions may be extended by a maximum of 50 %."

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<sup>6</sup> [http://www.rautatiematkustajat.fi/VR\\_osto.pdf](http://www.rautatiematkustajat.fi/VR_osto.pdf)

<sup>7</sup> [http://www.rautatiematkustajat.fi/Monopolin\\_jatkosopimus2013.pdf](http://www.rautatiematkustajat.fi/Monopolin_jatkosopimus2013.pdf)

The sleeping car purchase, the only thing mentioned, is not significant in the overall context of the contract, as the fleet serves mostly only one route, which is not even served every day.

In our complaint, we have also listed a number of VR equipment purchases that have been made without mentioning them in the Exclusivity Agreement and the Government of Finland lists even more of them now. If the original Exclusivity Agreement was valid, thus contrary to our understanding of community law, only the right to the Western Lapland night train service could perhaps be extended. Otherwise the arrangement violates Article 5(6) of Regulation (EC) No 1370/2007 if it exceeds 10 years:

"Award of public service contracts  
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6. Unless prohibited by national law, competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies."

### **THIRD QUESTION: ROLLING STOCK SCRAPPING**

#### **1. The Commission's position**

"On the third point, the Finnish authorities stated that VR-owned rolling stock is used until VR sees that it is unfit for repair and has reached the end of its useful life. In this situation, it is stated that VR utilizes the decommissioned rolling stock prior to scrapping by taking spare parts for similar, extant rolling stock. In addition, the Finnish authorities note that the Finnish Competition and Consumer Agency monitors VR's operation according to the Competition Act, as well as Article 102 of the Treaty on the Functioning of the European Union."

#### **2. Factual matters**

Already in our original complaint there is evidence of VR's own view that equipment can be renewed (see extracts from "Vauhtia ja Voimaa Valtionrautatiet 1862 – 1987", on page 52). In addition, on the same page ("Facebook-ketju 13.3.2013"), a former VR employee is quoted, telling of reluctance to sell equipment for fear that it ends up in the hands of competitors. The Commission is, however, happy with Finland's official and unreasoned belief that such equipment would be suitable only for scrap.

However, VR resells<sup>8</sup> demonstrably poor condition motor vehicles to outsiders (here a Volkswagen Transporter model year 2007<sup>9</sup>). The company also refurbishes its railway rolling stock for its own use, for example, converting sleeping car CEmt 24087<sup>10</sup>

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<sup>8</sup> <https://huutokaupat.com/fi/lmoittajat/340>

<sup>9</sup> <https://huutokaupat.com/fi/v/126032>

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<https://spreadsheets.google.com/spreadsheet/pub?hl=en&hl=en&key=oAlBjg6ull14OdHdQckFuSDhuMG1uOFZuMkJIMVpvU3c&single=true&gid=0&output=html>

originally completed in 1980 to car Emx 60 10 9969 001<sup>11</sup> in 2014<sup>12</sup> and baggage wagons Fot 23903 and 23904 completed in 1984<sup>13</sup> to generator vans De 55 10 9437 001-4 and 55 10 9437 002-4<sup>14</sup> in 2008 (at that time they were also greatly renewed)<sup>15</sup>.

Perhaps the most striking example of destroying rolling stock is the scrapping of two saloon carriages completed in 1992 (original numbers A 1 and A 2)<sup>16</sup> and scrapped in 2013<sup>17</sup>. They were originally intended for the President of the Republic of Finland and the Government, and they were in traffic only rarely:

"Presidents Mauno Koivisto, Martti Ahtisaari and Tarja Halonen had time to use the President's car during 10 years.

- President Halonen has made eight tours during her tenure. It has not been in heavy use, says the president's chief press officer Maria Romantschuk. Halonen has taken the train, for example to Pieksämäki, Turku and Lahti. Mostly she travels by car or by aeroplane.

The carriage is "quite OK" according to Romantschuk.

You can hold meetings and stay there and the kitchen provides even an evening snack.

There are no statistics of the travels of President Halonen's two predecessors. According to VR-Group spokesperson Camilla Ahlstrand's memory President Ahtisaari used the car more than ten times."<sup>18</sup>

Proxion Ltd, a Finnish company aspiring to enter the rail transport market, filed a complaint regarding VR's actions more than two years ago in December 2012<sup>19</sup>, because the company does not resell or lease its railway rolling stock to others. The complaint is still pending. The company recently changed its name to Fennia Rail Ltd and decided to acquire type-774.7<sup>20</sup> diesel locomotives<sup>21</sup> from the Czech Republic a few months ago. They are modernized versions of locomotive types 770<sup>22</sup>, 771<sup>23</sup>, and ČME-742<sup>24</sup>, which were originally designed and built when the country of manufacture still belonged to the so-called Eastern bloc (and with a quality "reputation" of their own).

While the same railway operator renovates cars completed in 1980 and 1984, and for further example older locomotives, that have all endured much harder use who could honestly believe that these cars completed in 1992, are of no use whatsoever? It should be mentioned for another example that there is passenger rolling stock dating from

<sup>11</sup> <http://www.vaunut.org/kuval/68759?s=1>

<sup>12</sup> <http://vaunut.org/kuva/96127>

<sup>13</sup> <http://vaunut.org/kuvasivu/38882>

<sup>14</sup>

<https://spreadsheets.google.com/spreadsheet/pub?hl=en&hl=en&key=oAlBjg6ull14OdHdQckFuSDhuMG1uOFZuMkJIMVpvU3c&single=true&gid=0&output=html>

<sup>15</sup> <http://vaunut.org/kuvasivu/45703>

<sup>16</sup> <http://vaunut.org/kuva/58450?s=1>

<sup>17</sup> <http://www.ts.fi/uutiset/kotimaa/543075/VRn+salonkivaunut+lahevat+kierratykseen+ja+romuksi>

<sup>18</sup> <http://www.ts.fi/uutiset/kotimaa/1074033108/Presidentillinen+kyyti+avautuu+setelitukulla>

<sup>19</sup> [http://yle.fi/uutiset/kilpailuvirasto\\_selvittamaan\\_proxionin\\_ja\\_vrn\\_riitaa/6370922](http://yle.fi/uutiset/kilpailuvirasto_selvittamaan_proxionin_ja_vrn_riitaa/6370922)

<sup>20</sup> <http://www.mainlinediesels.net/index.php?nav=1000944&lang=en>

<sup>21</sup> <http://www.fenniarail.fi/nyt.html>, <http://www.fenniarail.fi/news.html>

<sup>22</sup> [http://en.wikipedia.org/wiki/%C4%8CKD\\_T-669\\_diesel\\_locomotive](http://en.wikipedia.org/wiki/%C4%8CKD_T-669_diesel_locomotive), [http://cs.wikipedia.org/wiki/Lokomotiva\\_770](http://cs.wikipedia.org/wiki/Lokomotiva_770)

<sup>23</sup> [http://cs.wikipedia.org/wiki/Lokomotiva\\_771](http://cs.wikipedia.org/wiki/Lokomotiva_771)

<sup>24</sup> <http://www.czloko.cz/en/locomotives/774-7.html>

1938<sup>25</sup> still in commercial use in the UK<sup>26</sup>.

### 3. Legal deliberation

The Government of Finland still repeats VR's contention that the Finnish railway rolling stock in question is suitable only for scrapping, while the company itself even resells used cars. Meanwhile, a company evidently grown frustrated by the Finnish Competition Authority's slow performance, has decided to acquire refurbished railway rolling stock from the former Eastern bloc. The actions of the State's railway company could be seen to be nothing less than the obstruction of other entrepreneurs trying to enter the market, supported by the slow action of Finnish Competition Authority. Such cannot be pursuant to Article 102 of the Treaty on the Functioning of the European Union, and is particularly harmful because of our non-standard track gauge.

## **ADDITIONAL ISSUE: CITY RAIL LOOP-LINE AS PROHIBITED STATE AID**

### 1. The Commission's position

The Commission does not take a position on the City Rail Loop-line mentioned in our complaint (p. 36) and additional letter (p. 3 and 4). The Commission, therefore, is likely to consider the track project as appropriate.

### 2. Factual matters

After sending our additional letter, the Finnish Transport Agency has published a report, according to which the benefit-cost ratio of the project varies between 0.38 and 0.58 (p. 53, 54). The meaning of the figures is clarified on page 48<sup>27</sup>:

"The basic review of the project's cost-benefit ratio is about 0.5, which is well below the socio-economic break-even point (1.0). The project's socio-economic loss for the current value of the 30-year period is 458 million euros. Implementation of the project and the way it changes the operational environment, however, contains uncertainties whose importance to society in terms of economic efficiency is evaluated in the next chapter."

The cost estimate has also increased dramatically:

"The total cost for traditional budget funding for comparison, would be approx. 1.9 billion euros and annual costs to financiers 24.9 million euros. However, in the current economic situation, raising the necessary funding at once is not realistic."<sup>28</sup>

Prime Minister Jyrki Katainen has promoted this rail project.<sup>29</sup> Commission's Vice-President Jyrki Katainen also seems to promote the project because it is mentioned in the EU investment package:

"What to invest in?  
In viable projects with real added value for the European economy."<sup>30</sup>

"Urban rail transport in Helsinki node City Rail Loop  
Finnish Transport Agency

<sup>25</sup> <http://www.networksoutheast.net/island-line-iow.html>

<sup>26</sup> [https://www.youtube.com/watch?v=nbLoOz\\_FmQ](https://www.youtube.com/watch?v=nbLoOz_FmQ)

<sup>27</sup>

<http://portal.liikennevirasto.fi/portal/page/portal/f/hankkeet/suunnitteilla/pisara/Pisaran%2ohankearvointi%2oratasuunnitelmaa/heesta%2012.11.14.pdf>

<sup>28</sup> <http://www.lvm.fi/uutinen/4424923/pisararan-d-rahoitusmalleista-selvitys>

<sup>29</sup> <http://193.185.124.16/index.php/politiikka/984-politiikka/6773-hallitus-panostaa-ratahankkeisiin-pisaraa-ja-raitiohankkeita-tuetaan>

<sup>30</sup> [http://ec.europa.eu/priorities/jobs-growth-investment/plan/index\\_en.htm](http://ec.europa.eu/priorities/jobs-growth-investment/plan/index_en.htm)

Construction of City Rail Loop improves the functionality of railway network in Finland by giving more capacity to Helsinki Node  
 (Scan-Med Corridor and North-Sea Baltic Corridor)  
 No  
 950 M €<sup>31</sup>

On the other hand, it is stated on the first page of the investment package project list (English version as previous quotes; emphasis here):

"DISCLAIMER: A mention of the EIB or the European Commission in any of the project lists provided by the Member States and/or the Commission does not necessarily imply there has been any previous contact with the EIB or the European Commission on the project in question, nor that it will become a project receiving financing from the EIB or the European Commission in the future. **All projects submitted to the EIB for funding will be subject to normal due diligence in line with existing EIB procedures and guidelines and/ or the European Union legislation should they be considered for finance.** Co-financing by ESI Funds or other EU programmes of any project is subject to the respect of all applicable European Union and national rules."

### 3. Legal deliberation

If the City Rail Loop-line project cannot be addressed as part of the complaint, the Commission should view it critically as a waste of community funds. It really is not a "viable project with real added value for the European economy."

## **LAST POINT: PROCEDURAL QUESTIONS**

### 1. The Commission's position

"Against this background, the Commission shall close the case, unless you provide any further evidence that clearly demonstrates the Regulation (EC) No 1370/2007 or other EU legislation infringement, within four weeks of receipt of this letter."

### 2. Factual matters

In the EU Pilot system, both the Commission and the Member State are bestowed a 10-week response time.<sup>32</sup> For example, according to the practice of the Finnish law enforcers (the Parliamentary Ombudsman<sup>33</sup> and the Chancellor of Justice<sup>34</sup>) the complainant receives the complaint material for comments. Only after this a ruling is given. The Commission's conduct is the opposite, and in addition it is required that the complainant must act in more than two times shorter period than the other parties (four weeks), and still requires that the complainant must demonstrate a **clear** rules violation.

### 3. Legal deliberation

The Commission's procedures lead to the fact that the complainant is put at a disadvantage in the complaint process.

**Summary** According to Article 106 paragraph 1 of the Treaty on the Functioning of the European Union

"1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in

<sup>31</sup> [http://ec.europa.eu/priorities/jobs-growth-investment/plan/docs/project-list\\_part-1\\_en.pdf](http://ec.europa.eu/priorities/jobs-growth-investment/plan/docs/project-list_part-1_en.pdf)

<sup>32</sup> [http://ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/eu\\_pilot/index\\_en.htm](http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/eu_pilot/index_en.htm)

<sup>33</sup> <http://www.oikeusasiat.fi/Resource.phx/eoia/english/index.htm>

<sup>34</sup> <http://www.okv.fi/en/chancellor/chancellor-justice/>

the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109."

Because of the quote and reasons mentioned now as well as before, the matter should not remain at this stage.

### **Place, date and signatures**

Kemijärvi February 2, 2015

Suomen Rautatiematkustajat ry.

Kemijärvi

Kalevi Kämäräinen

Juha P. Korhonen

Chairman

Vice chairman

[www.rautatiematkustajat.fi](http://www.rautatiematkustajat.fi)

[www.facebook.com/pages/Rautatiematkustajat/158345494253217](http://www.facebook.com/pages/Rautatiematkustajat/158345494253217)

[www.facebook.com/groups/108232592543581/](http://www.facebook.com/groups/108232592543581/)

Original version in Finnish:

[http://www.rautatiematkustajat.fi/eu-kantelu/SRM\\_PSA\\_VASTINE.pdf](http://www.rautatiematkustajat.fi/eu-kantelu/SRM_PSA_VASTINE.pdf)

### **Link List**

#### **Other attachments**

Commission's letter December 6, 2015 (A5/J S/trg/move.a.5(2015)32207)

Undated reply by the Finnish Government in EU Pilot 6732/14

Notice of sale regarding Volkswagen Transporter with bids

#### **List of links mentioned in the footnotes**

Extract from the minutes of the Board of Directors of the City of Mikkeli December 8, 2014

[https://webdom.mikkeli.fi/kunnari/internet\\_mikkeli.nsf/3e12a7fc9e6736c22569d90040f1cd/5243B381126061E9C2257DDA00299AF1?OpenDocument](https://webdom.mikkeli.fi/kunnari/internet_mikkeli.nsf/3e12a7fc9e6736c22569d90040f1cd/5243B381126061E9C2257DDA00299AF1?OpenDocument)

Original Exclusivity Agreement signed in 2009

[http://www.rautatiematkustajat.fi/VR\\_osto.pdf](http://www.rautatiematkustajat.fi/VR_osto.pdf)

Regulation (EC) No 1370/2007 in English

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0001:0001:FI:PDF>

The Altmark case in English

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62000CJ0280:FI:HTML>

Extension to the Exclusivity Agreement signed in 2013

[http://www.rautatiematkustajat.fi/Monopolin\\_jatkosopimus2013.pdf](http://www.rautatiematkustajat.fi/Monopolin_jatkosopimus2013.pdf)

VR-Group's auction ad regarding Volkswagen Transporter

<https://huutokaupat.com/fi/ilmoittajat/340>

More information about the Volkswagen Transporter with bids

<https://huutokaupat.com/fi/v/126032>

List of VR's passenger cars from 1862 onwards

<https://spreadsheets.google.com/spreadsheet/pub?hl=en&hl=en&key=0AlBj96uIl14OdHdQckFuSDhuMG1uOFZuMkJIMVpvU3c&single=true&gid=0&output=html>

Car CEmt 24087 at the workshop in 2014

<http://vaunut.org/kuva/96127>

Car CEmt 24087 as converted to van Emx 60 10 9969 001 in 2015

<http://www.vaunut.org/kuva/98759?s=1>

Another of the Fot-wagons before conversion

<http://vaunut.org/kuvasivu/38882>

Fot as van De 55 10 9437 001-4

<http://vaunut.org/kuvasivu/45703>

Saloon carriages A 1 and A 2 in 1995

<http://vaunut.org/kuva/58450?s=1>

Turun Sanomat news about scrapping of the saloon carriages in 2013

<http://www.ts.fi/uutiset/kotimaa/543075/VRn+salonkivaunut+lahtevat+kierratykseen+ja+romuksi>

Turun Sanomat news about another of the saloon carriages entering commercial service in 2005

<http://www.ts.fi/uutiset/kotimaa/1074033108/Presidentillinen+kyyti+avautuu+setelitukulla>

News about complaint of VR to the Finnish Competition Authority

[http://yle.fi/uutiset/kilpailuvirasto\\_selvittamaan\\_proxionin\\_ja\\_vrn\\_ritaa/6370922](http://yle.fi/uutiset/kilpailuvirasto_selvittamaan_proxionin_ja_vrn_ritaa/6370922)

General information about the 774.7 diesel locomotives

<http://www.mainlinediesels.net/index.php?nav=1000944&lang=en>

Fennia Rail Ltd in the news

<http://www.fenniarail.fi/nyt.html>

<http://www.fenniarail.fi/news.html>

Information about locomotive types 770, 771 and ČME742

[http://en.wikipedia.org/wiki/%C4%8CKD\\_T-669\\_diesel\\_locomotive](http://en.wikipedia.org/wiki/%C4%8CKD_T-669_diesel_locomotive)

[http://cs.wikipedia.org/wiki/Lokomotiva\\_770](http://cs.wikipedia.org/wiki/Lokomotiva_770)

[http://cs.wikipedia.org/wiki/Lokomotiva\\_771](http://cs.wikipedia.org/wiki/Lokomotiva_771)

Manufacturer's information about the locomotive type 774.7

<http://www.czloko.cz/en/locomotives/774-7.html>

A train completed in 1938 in motion on the Isle of Wight in December 2014

[https://www.youtube.com/watch?v=nbL0O2\\_FmQ](https://www.youtube.com/watch?v=nbL0O2_FmQ)

Information about the rolling stock completed in 1938 still in use on the Isle of Wight

<http://www.networksoutheast.net/island-line-iow.html>

Finnish Transport Agency's survey on the City Rail Loop-line November 12, 2014

<http://portal.liikennevirasto.fi/portal/page/portal/f/hankkeet/suunnitteilla/pisara/Pisaran%20hankearviointi%20ratasuunnitelma vaiheessa%2012.11.14.pdf>

Ministry of Transport and Communications Bulletin regarding financing models of the City Rail Loop-line November 13, 2014

<http://www.lvm.fi/uutinen/4424923/pisararadan-rahoitusmalleista-selvitys>

News showing Prime Minister Jyrki Katainen's Government promotes, inter alia, the City Rail Loop-line

<http://193.185.124.16/index.php/politiikka/984-politiikka/76773-hallitus-panostaa-ratahankkeisiin->

[pisaraa-ja-raitiohankkeita-tuetaan](#)

EU Commission's investment package site with foreword by Vice-President Jyrki Katainen  
[http://ec.europa.eu/priorities/jobs-growth-investment/plan/index\\_en.htm](http://ec.europa.eu/priorities/jobs-growth-investment/plan/index_en.htm)

EU Commission's investment package list in English  
[http://ec.europa.eu/priorities/jobs-growth-investment/plan/docs/project-list\\_part-1\\_en.pdf](http://ec.europa.eu/priorities/jobs-growth-investment/plan/docs/project-list_part-1_en.pdf)

EU Pilot on the web  
[http://ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/eu\\_pilot/index\\_en.htm](http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/eu_pilot/index_en.htm)

The Parliamentary Ombudsman's website  
<http://www.oikeusasiemies.fi/Resource.phx/hoa/english/index.htm>

The Chancellor of Justice's website  
<http://www.okv.fi/en/chancellor/chancellor-justice/>



VR-Yhtymä Oy järjestää: Nettihuutokauppa

## VOLKSWAGEN TRANSPORTER 2.5 TDI/3000 4MOTION, Kokkola

kohdenumero 126032



Korkein tarjous

**550 €**, hintaan lisätään 24 % arvonlisäveroa

Aikaa jäljellä

**5 pv 21 t 33 min 53 sek**

Tiistai 03.02.2015 klo 14:00  
(tai 3 minuuttia viimeisen hyväksytyn tarjouksen jälkeen)

### Tarjouksia 11 kpl

11.

28.01.2015 klo 16:10:22:

tarjottu

550 €

<b>Huutajan automaattinen korotus ?</b>			
<b>10.</b>	28.01.2015 klo 16:10:22:	tarjottu	500 €
<b>9.</b>	28.01.2015 klo 16:10:16:	tarjottu	450 €
<b>Huutajan automaattinen korotus ?</b>			
<b>8.</b>	28.01.2015 klo 16:10:16:	tarjottu	400 €
<b>7.</b>	28.01.2015 klo 16:10:00:	tarjottu	350 €
<b>Huutajan automaattinen korotus ?</b>			
<b>6.</b>	28.01.2015 klo 16:10:00:	tarjottu	300 €
<b>5.</b>	28.01.2015 klo 16:09:51:	tarjottu	250 €
<b>Huutajan automaattinen korotus ?</b>			
<b>4.</b>	28.01.2015 klo 16:09:51:	tarjottu	200 €
<b>3.</b>	28.01.2015 klo 16:04:11:	tarjottu	150 €
<b>Huutajan automaattinen korotus ?</b>			
<b>2.</b>	28.01.2015 klo 08:40:41:	tarjottu	100 €

## Myydään

Käyttöönotto 19.6.2007.

Mittarilukema 382 000 km.

Katsastamaton.

Kahdet renkaat.

Vetokoukku.

Takatilan vanerointi.

Soitin.

Poistetaan ikään ja tekniseen kuntoon perustuen.

Moottorivaurio ( ei ajokuntoinen)

Tuulilasi halki

Ruostetta ja kolhuja.

Huoltohistoria liitteenä.

Rekisteriote liitteenä.

Yritystunnukset poistetaan ennen luovutusta.

## Myyntiehdot

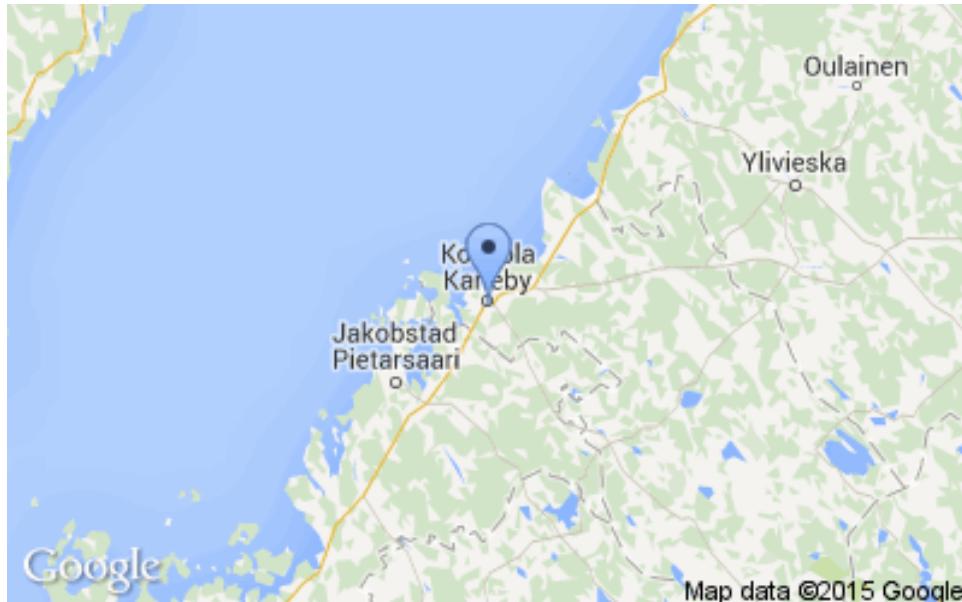
Kohde myydään siinä kunnossa ja niillä varusteilla kuin se ilmoituksessa ja kaupantekohetkellä on. Ostajalla ei ole vaihto eikä palautus oikeutta.

Myyjä pidättää oikeuden hyväksyä tai hylätä korkein tarjous.

Ostaja vastaa myytävän koteen kuormauksesta, sekä pois kuljetuksesta.

## Kohteen sijainti

VR-YHTYMÄ OY , Kokkolan varikko, Latojankatu 8, 67700 Kokkola



## Näyttö

Sovittava erikseen. Yhteyshenkilö Kokkolassa Kari Nisula puh. 040 - 86 33321

## Tiedustelut

VR-Yhtymä Oy:

- Ritva Rantanen, puh: 040 86 34430

## Maksutapa

Verkkopankkimaksu. Pankit: Nordea, Danske Bank, Osuuspankki, S-pankki, Aktia, Tapiola-pankki, Handelsbanken, Ålandsbanken, Pop-pankki, Säästöpankki  
(Tai summan ylittäessä 50000 €, Lasku/tilisiirto)

## Viimeksi päivitetty

Ilmoitus on päivitetty 28.01.2015 10:58.

## Ilmoitus julkaistu

Ilmoitus on julkaistu 21.01.2015 15:54.

Huutokaupat Suomessa, auktioner i Finland, auctions in Finland

Yli miljoona kävijää kuukaudessa Suomesta, Virossa, Ruotsista ja Venäjältä.

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