

Case 3: "Kansallisanti" case

KOP Bank (Kansallis-Osake-Pankki = National Bank Ltd) and SYP Bank (Suomen Yhdyspankki = Union Bank of Finland Ltd) were the two leading ones of Finnish commercial banks. In Autumn 1994 KOP Bank had an issue of shares that was called "Kansallisanti" (the "National Issue"). The issue was directed to the shareholders of the bank and to the public.

After the issue KOP Bank was merged with Unitas Ltd, the parent company of Union Bank of Finland Ltd, the commercial name of which was then changed into Merita Ltd. According to the merger agreement the merger compensation was one new Merita A share of a face value of FIM 10 against three KOP shares of FIM 5 face value.

The merger and the merger agreement were accepted by the shareholders' general meetings in both companies, in KOP Bank on the 16th of March 1995. Some of the shareholders of KOP Bank who had opposed the merger decision demanded a redemption of their shares according to OYL (The Finnish Companies Act) 14:3. An arbitration tribunal established the redemptions and the current redemption price for the shares.

Some of the subscribers of shares in the Kansallisanti demanded in court from KOP Bank, then Merita Ltd, compensation of damages for alleged infringements of disclosure duties in connection with the issue of shares. The damages claim was the primary claim of some plaintiffs, while the others claimed primarily the subscription of shares to be declared void and secondarily compensation of damages. The claims were based mainly on three arguments.

Firstly, according to what the plaintiffs argued, the marketing of the Kansallisanti issue was untruthful and misleading because it was told that major shareholders should have promised in advance to subscribe shares to an amount of at least one billion FIM altogether. In reality, the subscription orders of major shareholders in question totalled only about 240 million FIM by the beginning of the issue and even finally not more than 900 million FIM.

Secondly, the claims were based on the argument that the merger of KOP Bank with Unitas Ltd was under consideration or at least anticipated at the time of the issue but no information was given about it in marketing the issue. On the contrary, it was emphasized in the marketing that it was the purpose of the issue to maintain the independence of KOP Bank, and, relating to this, there was even an expressed appeal to the idealistic and patriotic feelings of the subscribers (the KOP Bank was considered to be some kind of an emblem of the so-called Finnish "blue-white capital"). Knowing about the merger with the "Swedish-speaking" SYP Bank (Unitas Ltd) would have influenced the consideration by investors of the subscription.

And thirdly, it was argued by the plaintiffs that the idea conveyed in marketing the issue about the economic status and the future of KOP Bank was false. After the issue the result of the bank was reported to be 500 million FIM worse than anticipated. The information presented in marketing the issue also contained, according to these arguments, a considerable overvaluation of the bank's real estate property, which became apparent at the beginning of the merger procedure.

Consider the claims of the plaintiffs and the arguments presented for them from the point of view of a) legal rules and, in need, b) economics of the securities markets.

Notice that some claims presented in this case were finally solved by the Supreme Court (KKO 2000:82).