



Kilpailuviraston vuosikirja

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English Summary

It is the task of the Finnish Competition Authority (FCA) to enhance the efficiency of the economy by promoting competition. The FCA focuses on competition restriction cases, which have significance for the performance of the Finnish economy. The FCA's duties also include the control of concentrations.

The number of staff at the FCA was 56 at the end of 1999.

Assesses concentration cases

■ 1999 was the first whole year to witness the provisions on the control of concentrations, effective since 1 October 1998, applied at the FCA. The FCA received 86 concentration notifications, and in five cases, conditions were imposed on the acquisition. The companies have adapted the provisions well, and the FCA has not been informed of major failures to notify. In addition to turnover criteria, the creation of the obligation to notify requires that the company engage in business in Finland. However, fairly moderate operations may trigger the obligation to notify, since the law does not provide a minimum limit for the turnover accrued from Finland. Due to this, the share of foreign concentration cases of all notifications is appreciable.

THE MAIN CONCENTRATION DECISIONS

In the *Danisco/Cultor* case, the Danish Danisco A/S acquired majority control in Cultor. Cultor is Finland's and Danisco Denmark and Sweden's sole sugar producer. Although Danisco had not previously operated in the Finnish sugar market, it was Cultor's main potential competitor. As proposed, the concentration would have meant the strengthening of the monopoly in the Finnish sugar market.

The conditions attached by the FCA were related to the non-competition clauses between Cultor and Lännen Tehtaat, which the companies had set while com-

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binning their sugar production in 1990. Danisco committed to removing the provisions, which prevented Lännen Tehtaat from purchasing sugar from other parties than Cultor. The FCA found that, as a result of the conditions, the possibilities for potential import competition impeding the market power of the Finnish monopoly increase sufficiently in order for the concentration to be approved.

Both parties in the *Tieto/Enator* case operate in the markets of professional IT services of large organisations, processing and network services and personnel management systems. In addition to the overlap, other factors strengthening the market power of the concentration affected the assessment.

The conditions imposed on the acquisition included the selling of Enator's Finnish subsidiary. Sonera Corporation, Tieto's principal owner, was required to halve its ownership and the number of seats in the board of directors of the new Tietoenator. The FCA also imposed several behavioural conditions on Tietoenator regarding the Finnish market.

Both parties of the *York/Sabroe* concentration manufacture ammonia compressors used in industrial refrigeration equipment. Sabroe is also a partner in a joint venture contracting in the industrial refrigeration business.

Prior to the acquisition, Sabroe already possessed two of the commonest ammonia compressor brands in Finland and, as a result of the acquisition, the number three brand transferred to the ownership of the same group as well. Only one, slightly smaller independent industrial refrigeration contractor remained in the market. In the conditions imposed, the FCA required that the availability of the commonest ammonia compressors in Finland and their spare parts to third contractors be guaranteed.

In the *Talentum/Sonera* case, the FCA imposed conditions on a concentration whereby the leading Finnish telecommunications company Sonera acquired joint control in the media company Talentum's WOW Web Brand Corporation, which maintains and develops various web services. Sonera enjoys a particularly strong position as a provider of mobile communications and Internet services in Finland.

As a content packager and telecommunications operator, Sonera is important for many content providers with respect to entry to the web content market and the new mobile content market, in particular. The primary competitive problem was the risk of Sonera focusing its content production and know-how related to information transfer and consumer behaviour to its joint venture. Sonera committed to treating the joint venture and its competitors on an equal footing in the purchase and distribution of network content and to not centralising its

know-how for the use of the joint venture only. The parties also committed to removing certain exclusive rights arrangements from their concentration agreements.

In the *Checkpoint Systems, Inc/Meto AG* merger, both parties of the concentration manufacture Electronic Article Surveillance systems (EAS).

After the concentration, Checkpoint obtains a market share of more than 60% in the Finnish EAS market. Checkpoint and Meto have a large stock of delivered EAS systems in Finland, for which they can easily sell alarms.

After Checkpoint proposed commitments to the FCA, the concentration could be approved conditionally. To guarantee the transparency of the systems, Checkpoint was obliged to provide its Finnish competitors with information on the technology of its RF alarm gates and deactivating equipment to ensure the compatibility of their alarms with the Checkpoint equipment.

Monitors annually determined key industries

■ In Finland, telecom operations have been characterised by a move from a regulated environment to a state of competition. The FCA has concentrated on trying to prevent and abolish restrictive practices especially by companies occupying a dominant position, which block the development in the field. The FCA has sought to ensure free entry of competitors into different markets. For instance, to ensure workable and just competition in the Internet service market, it has been necessary to guarantee access to operators who do not own a telecom network as well as the reasonable pricing of telecom network services.

The *Helsinki Telephone Corporation* (HTC) had abused its position by pricing its local loop and fixed connections in a discriminatory, tying and unreasonable manner. The HTC had also tied the lease of the local loop and fixed connections to the purchase of other telecom services. The FCA proposed that the Competition Council order HTC to terminate the restrictive practice under the threat of fine and impose a competition infringement fine of FIM 30 million on the company.

The FCA also made a proposal to the Competition Council about banning the abuse of dominance by the local telephone company *Päijät-Hämeen Puhelin-yhdistys*. The FCA considered that the ownership discounts used by the company in the pricing of their telephone connections tied and discriminated against customers and excluded competing telecom operators from the market.

In its proposals for reform in the field of telecommunications, the EC Com-

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mission has demanded that the Member States realise the leasing of their local loop and fixed connections as well as required that the pricing of the connections be cost-accountable and reasonable. The Commission has also paid attention to how the ownership discounts used in Finland prevent the opening up of the local telecom competition.

At the request of the Internet and telecom operator Saunalahden Serveri, the FCA examined the pricing and marketing of the Internet services offered by the *Helsinki Telephone Corporation*, *Sonera Corporation* and *Tampereen Puhelin* as well as the suspected cross-subsidisation of the Internet business by local telephone fees. None of the companies were found to occupy a dominant position as an Internet service provider and could be found guilty of under-pricing deemed a form of abuse of dominance. The FCA did not find any evidence as to suggest that telecom companies occupying a dominant position in their operating areas would have subsidised their Internet services by fees obtained from their local loop operations, hence obtaining dominance in the Internet service market.

Sonera Mobile Communications had requested a statement from the FCA on whether the company could be seen to occupy a dominant position in the Finnish mobile communications market. The FCA held that the relevant product market was the mobile service provider market. There was no cause to divide the relevant market into the NMT and GSM standards, as Sonera had suggested. The FCA found that Sonera held a share of 70% of the total mobile communications market and 67% of the GSM services, which alone was a strong indication of the existence of a dominant position.

In the mobile communications market, the markets of network services and services to end-customers can be perceived as two distinct markets. The position equals that of the European Commission notice.

Telia Finland had lodged a complaint in which it found that the national mobile operators violated the provisions of the Act on Competition Restrictions when they offered to it the national roaming service on less profitable terms than they did to foreign or their own telecom companies.

In Finland, national roaming can only be offered by the biggest telecom operator Sonera and its main competitor *Radiolinja*, and both companies are in a position to appreciably affect the price formation of the market as well as the entry of competitors to the field. The FCA found that Sonera and Radiolinja had impeded competition in the provision of national mobile services by pricing the national roaming so high that it had prevented the Swedish operator Telia from supplying national telecom services in the Finnish market. Sonera and Radiolinja's behaviour has restricted competition and considerably complicated Telia's business operations.

Telia and Radiolinja concluded a service operator agreement, which provides Telia with the opportunity to offer a national mobile communications service.

Hence, the FCA saw no cause for further proceedings.

The FCA held that the Finnish distribution policies and the related terms and fees of the satellite television channel MTV Music Television owned by *MTV Networks Europe* is unduly discriminatory of Finnish Satellite Master Antenna Television networks as compared to cable television networks. The FCA proposed that the Competition Council order MTV Europe to terminate the application of the competition restraint.

The opening up of the electricity market to competition has shifted the interest of competition authorities to the monitoring of the remaining monopolies of electricity transmission and district heating.

Helsinki Energy, the energy company of the city of Helsinki, had abused its dominance by an unreasonable pricing of its electricity transmission and district heating services. In its proposal to the Competition Council, the FCA considered that Helsinki Energy enjoys a dominant position in its operating area in the transmission of electricity, its retail sales for users having a power need of less than 500 kW up until 1 September 1998, and in the district heating market. Helsinki Energy also engages in cross-subsidisation between the different functions of the electricity operations: the sales of electricity is subsidised by the revenue generated by the network and district heating operations and the resources related to the said operations. Helsinki Energy has not taken any steps to alter its pricing practice, although the FCA has called attention to it several times during 1998 and 1999. The FCA thus proposed that the Competition Council order the city of Helsinki/Helsinki Energy to cease the restrictive practice and impose on a competition infringement fine of FIM 30 million on it.

In Finland, the purchase of wood has traditionally been characterised by mutual cooperation between sellers and buyers to determine the sales prices.

The forest companies *StoraEnso*, *Metsäliitto Osuuskunta* and *UPM-Kymmene* were suspected to be guilty of bidding cartels violating the Act on Competition Restrictions and of collaboration in price and market sharing in the purchase of wood. The FCA delivered a statement of objections to the companies.

The FCA did not grant an exemption to the forest owners' cooperation for the determining of joint price expectations in the raw wood sales. The Central Union of Agricultural Producers and Forest Owners had not been able to demonstrate that the forest owners' negotiations with specific companies and the cooperation therein could lead to such efficiency benefits, which would exceed the restrictive effects caused by the cooperation. Customers did not seem to benefit from the price collaboration either. The detailed negotiation system has increased negotiation costs and uncertainty within the raw wood trade, artificially standardised the prices of raw wood, and lessened competition both in the sales of wood and between companies purchasing wood.

Investigates the notifications and complaints that are not deemed strategic

■ The FCA proposal on the competition infringement fine for the pricing practice applied by *Ajasto* operating in the printing house business and occupying a dominant position in the printed almanac market was decided by the Competition Council. The Council found that tying the basic discount and annual compensation to the amounts of the customer's previous year's purchases equalled a prohibited loyalty and target discount. Additionally, the Competition Council found that *Ajasto's* discount system during 1996–1998 was discriminatory and lacked the kind of clarity, transparency and cost-accountability, which is required of a company occupying a dominant position. The Competition Council imposed an infringement fine of FIM 2 million on *Ajasto*.

An initiative was made to the Ministry of Finance on the discrimination caused by the intransparency of car taxation. The consumers of other EU countries have lodged various complaints with both the EU Commission and the FCA on how their right to obtain a car from a Member State of their choice is not fulfilled in Finland because of the dual pricing of cars. Different calculation criteria are applied to foreign customers than domestic. The intransparency of taxation prevents the consumers from checking out the appropriateness of the offer. The FCA also took a stand to the right of the owners of parallelly imported cars to receive the appropriate guarantee services.

The fixed-term lease contracts of *AGA* and *Voikoski's* gas bottles, which could not be terminated in the middle of an agreement period, were found unduly binding, restrictive of competition and complicating entry into the industrial gas market. After the FCA's negotiations with the companies, they agreed to alter the conditions of the gas bottle leases so as to enable the termination of the contracts in the middle of the agreement period.

Preparations for opening up the railway network for competition proceeded slower than planned in 1999. The FCA further emphasised that the traffic between Russia and Finland, particularly the goods traffic and the passenger distant traffic purchased by the state, should be opened up for competition. The demand on reasonable and equitable pricing should be extended not only to the station area but also to other common operations, i.e. depot services and information systems. Additionally, possibilities to increase the number of loading places, particularly in densely populated areas, should be examined and when necessary, instructions be issued on their common use and pricing. As regards equipment, the FCA supported the suggestion that each operator purchase that himself, as it promotes competition not only in the conducting of traffic but also in the equipment market.

In its statement to the Ministry of Transport and Communications on the pub-

lic transport strategy, the FCA repeated its prior initiatives on the dissolving of the taxi regulation and found that dismantling regulation and increasing competition would be the best way to achieve many of the goals presented in the public transport strategy. By decreasing the public regulation, which separates the different forms of transport from each other and categorises the operations of the market, the possibilities of incumbent operators to arrange their service to correspond to demand more flexibly than before would be improved.

The *Finnish Tyre Recycling* was found to occupy a dominant position as a production community administering the use and handling of used tyres in the tyre recycling market. Hence, the company shall make sure that the cooperation agreements do not form entry barriers to business undertakings (e.g. the retreaders) participating in the recycling system. It was also found that if the quality of the operations of the agreement partners shall be assessed with respect to environmental factors, the assessment shall be made on predetermined reasonable, logical and equitable criteria. These shall be proportionate to the goals of the inspection business by the Finnish Tyre Recycling and necessary for environmental protection.

The FCA supported the proposal of the Ministry of the Environment, in which companies engaging in sparse packaging business shall be freed from the producer responsibility related to the recovery and recycling of packages. The FCA statement pointed out that, although the FCA has repeatedly suggested that the beverage packaging tax system be dissolved, the proposals have not led to any measures. The FCA still receives complaints about the harmfulness of the packaging tax. In particular, there have been problems with respect to entry to the recycling systems of the beverage packages, brought to a head by the fact that it is virtually impossible for one company to arrange a recycling system spanning the whole country. Hence, it appears that although the producer responsibility is similar for all packages, one group of products (beverage packages) is treated more severely than others. Additionally, the packaging tax distorts competition between different beverage products because the content of the package has a significant bearing on the tax treatment.

Sports and physical education activities clearly involve business activities. To ensure equal competitive prerequisites for operators, the FCA e.g. made an initiative to the Ministry of Finance on making the value added tax treatment of non-profit organisations comparable to that of other entrepreneurs and thus neutral from the viewpoint of competitive effects. The complaint, according to which the Football Association of Finland did not grant the training company Opintie permission to arrange a junior football tournament in the Åland Islands – a position which differed from the decision on the Finnish Ice Hockey Association – was

examined in cooperation with the Ministry of Education and Finnish Sports Federation, including its national sports federations. A negotiation result was achieved in the matter according to which other than sports associations may, on certain reasonable conditions, arrange sports events.

Is responsible for the Government and the markets project, strategic planning and information services

GOVERNMENT AND THE MARKETS

In the grain company *Avena's* case, the company was found to occupy a dominant position in the storage of grain in ports of entry. Following the FCA's intervention, *Avena Siilot Oy* specified its pricing principles and decreased the price level of its stock pricing. Additionally, the FCA consulted the Ministry of Agriculture and Forestry on the privatisation of *Avena Nordic Grain Oy* and the National Emergency Supply Agency, responsible for the reserve supplies of the grain, to encourage this to tender the managing contracts of the reserve supplies.

In the *Finnish National Road Administration's* case, competitive problems are due to the freezing of the office organisation reform. In its initiative to the Ministry of Transport and Communications, the FCA hurried the increase in tendering and the reorganisation of the FNRA for the production sector to operate as a limited liability company from 2002. However, turning the FNRA into a commercial enterprise would also be an important step forwards. The FCA's initiative was taken into account in the present government programme in which the organisation of the FNRA will be developed on the basis of the pilot projects currently running. Following this, a representative of the FCA has been a member in the working group preparing the reform of the FNRA organisation.

In the public sector procurement and materials administration operator *Hansel's* case, the FCA has noted the extensive development operation of the public procurement, which may have far-reaching competition policy effects. The memorandum of the government procurement committee expressed a desire to centralise the total responsibility for the procurement and materials administration to the Ministry of Finance to realise the group steering of the public administration. The FCA found in its statement that the suggestions of the memorandum point to a situation where *Kauppatalo Hansel* will be unduly favoured, sim-

ilarly to the former public procurement centre, which will lead to a decrease in competition. Subsequently, the enforcement of the working group's proposals has been dispensed with and the development of public procurement has been continued in the context of a project.