Control of concentrations

The objective of the control of concentrations is to protect the market from concentration resulting from mergers and acquisitions. The FCA assesses concentrations according to their domestic effects and also pays attention to the future development of the markets. The FCA intervenes with a concentration, if, as a result of it, a dominant position is created or strengthened which significantly impedes competition in Finland.

Since the control of concentrations began at the FCA, i.e. following October 1998, the FCA has examined more than 300 concentration cases altogether and made approximately 200 decisions. In 2000, 14 conditional decisions were made, and, in addition, one proposal to ban a concentration.

Since early 2000, the FCA has intervened with the following concentration cases:

<table>
<thead>
<tr>
<th>Parties to the concentration</th>
<th>Date of decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fritidsresor Holding Ab / Oy Finnmatkat-Finntours Ab</td>
<td>5 April 2000, dno 1076/81/1999</td>
</tr>
<tr>
<td>Säkkiväline Puhtaanapito Oy / WM Ympäristöpalvelut Oy</td>
<td>10 April 2000, dno 49/81/2000</td>
</tr>
<tr>
<td>Helsingin Puhelin plc / Tampereen Puhelin plc, Keski-Suomen Puhelin plc, Oy Finnet International Ab</td>
<td>27 April 2000, dno 1056/81/1999</td>
</tr>
<tr>
<td>Valio Oy / Kainuu Osuusmeijeri, Osuuskunta Maito-Pirkka, Aito-Maito Fin Oy</td>
<td>20 June 2000, dno 1151/81/1999</td>
</tr>
<tr>
<td>Sonera plc / Yleisradio Oy, Digita Oy</td>
<td>FCA’s proposal to ban the concentration of 17 April 2000, dno 1010/81/1999 and the Competition Council’s conditional decision of 10 July 2000, dno 53/690/2000.</td>
</tr>
<tr>
<td>EQT Scandinavia Ltd / Rosenlew Retail Products</td>
<td>3 November 2000, dno 565/81/2000</td>
</tr>
<tr>
<td>Finnlines plc / Transfennica Oy</td>
<td>Acquisition cancelled after negotiations on a package of commitments with the FCA in December 2000.</td>
</tr>
<tr>
<td>Finland Post Ltd / Atkos Printmail Oy</td>
<td>2 February 2001, dno 2/81/2001</td>
</tr>
</tbody>
</table>
In the following, descriptions of the above-mentioned cases:

• Fritidsresor Holding Ab / Oy Finnmatkat-Finntours Ab: On 10 December 1999, Finnair and Fritidsresor of the British Thomson Travel Group agreed on the sales of Finnmatkat and the related business activities to Fritidsresor. After the acquisition, there are three major tour operators arranging package tours in the Finnish market: Finnair (Aurinkomatkat, Top Club, Etumatkat), the Thomson Group (Fritidsresor, Hasse, Tema Tours, Finnmatkat) and the Air-tours Group (Tjäreborg, Spies). The joint market share of the two first groups exceeds 70 per cent and that of Airtours amounts to approximately 15 per cent.

In the context of the acquisition, the parties made a cooperation agreement under which Fritidsresor undertook to obtain the flights needed by Fritidsresor, Hasse, Tema Tours and Finnmatkat from Finnair. The high market share jointly obtained by Fritidsresor and Finnair and the agreement on flights concluded in the context of the acquisition led, combined with other factors, to a creation of a joint dominance in the package tour market.

In the negotiations with the FCA, Fritidsresor and Finnair undertook to rephrase the agreement on chartered flights so as to the exclusive purchasing clause only concerning the need for flight seats corresponding to the present capacity of Finnmatkat. Additionally, the parties undertook to shorten the period of validity of the agreement. The conditions imposed on the acquisition also contained a commitment to an equal treatment of tour operators.

The commitments were sufficient to remove the major competitive problems related to the joint dominance of Fritidsresor and Finnair in the package tour market. In its decision, the FCA found that Finnair and Fritidsresor’s abandoning of the exclusive purchasing clause improves the possibilities of the new charter company to enter the Finnish package tour market. After the transition period, shortening the period of validity will expose Finnmatkat’s flight capacity need to competition. The FCA also held that the commitments ensure the equal opportunities of other tour operators to obtain flight capacity from Finnair.

• Säkkiväline Puhtaanapito Oy / WM Ympäristöpalvelut Oy: In early 2000, Säkkiväline Puhtaanapito Oy part of the Lassila & Tikanoja Group acquired the entire stock capital of WM Ympäristöpalvelut Oy. The American Waste Management Inc. sought to close part of its business in Europe and the acquisition formed a part of the strategy.

Through the acquisition, Säkkiväline became the market leader of comprehensive environmental management services in Finland, measured by turnover, geographical coverage and range of services. The FCA investigated the competitive effects of the acquisition in the markets of community and industrial waste management, sewer maintenance, industrial cleaning and maintenance, construction waste, recycling based on producer responsibility and hazardous waste management.

Although the concentration gained a considerable market share in various markets, the FCA had no cause to intervene with the acquisition in other respects than hazardous waste. The concentration did not cause other major competitive problems, because entry barriers were low and e.g. the expansion of the market related to recycling increases the competitors’ incentives to enter the market.

In hazardous waste management, the competitive problems are caused e.g. by the possibility of the concentration to package the different products within its range of services. Competitors operating with a narrower selection of services cannot meet the competition. The position of the concentration in the small-scale collection of hazardous waste is further
strengthened by the concentration being the holder of eight of the 11 regional exclusive rights agreements regarding lubricant waste. The regional collectors are paid a collection fee from the funds accrued on the basis of the Oil Waste Payment Act and they can also collect the oil waste free of charge from the producer, which provides them with a major competitive advantage in the collection of other hazardous waste.

In the commitments provided by Säkkiväline, it announced it would divest the collection of hazardous waste of the other party in specific overlapping operating areas and give up four regional exclusive rights agreements on the collection of lubricant waste. In addition, Säkkiväline and its Group undertook not to tie the prices or other terms of trade of hazardous waste management services (the collection services of lubricant waste included) to the purchase of other services by the customer from Säkkiväline.

The sales of the business operations boost the competitive position of the competitors or may provide a foothold to a whole new collector. The effect of the sales was increased by Säkkiväline’s commitment to divest some of the collection agreements of lubricant waste. This removed a particular competitive advantage and improved the competitors’ possibilities to create competitive pressure with regard to the concentration. The behavioural commitments support the possibilities of competitors operating on a narrower range of services to develop models which compete with the concentration e.g. in managing the entire accounts of large companies. In its decision, the FCA found that the commitments were sufficient to remove the major competitive problems.

- **Helsingin Puhelin plc** (present Elisa Communications), **Tampereen Puhelin plc**, **Keski-Suomen Puhelin plc** and **Oy Finnet International Ab**: Helsingin Puhelin (hereinafter HPY) announced in December 1999 that it had acquired control in Tampereen Puhelin (TPO), Keski-Suomen Puhelin (KSP) and Oy Finnet International Ab (FNI) through a stock exchange deal made through the exchanges.

  It is the nature of the telecommunications market that many telecom and network services are vertically integrated. An operator governing the fixed telecom network and the fixed connections, in particular, may affect the operations of many markets, which are separate as such. A company engaging in local telecom operations may affect e.g. the markets of distant or foreign calls or the Internet services, as the provision of these is also related to the use of the local telecom network. For these reasons, the assessment of the market position of the concentration was not limited to just one market at a time.

  By acquiring control in FNI, HPY integrated to the wholesale and retail market of foreign telecom services, as a result of which the Finnet companies are both customers of the HPY group and its actual or potential competitors. Through the acquisition, it became possible for HPY to adjust the conduct of FNI in favour of its own business operations. In its pricing or other terms of trade, it may favour Finnet companies which do not aggressively compete with it for major retail customers. Additionally, FNI may e.g. offer inexpensive foreign calls to the major companies which acquire from HPY the national calls within the single operator’s network, or mobile connections and services for company customers, and collect from the Finnet companies higher wholesale prices. This may impair the Finnet companies’ ability to compete on the market segment of large company customers.

  During further proceedings in the case, HPY presented the following commitments to the FCA:
• A minimum of two members shall be appointed to FNI’s board of directors by shareholders other than HPY or the Finnet companies.
• HPY shall retain the terms of FNI’s representation, distribution and retail agreements with respect to pricing and structure of compensations. This commitment is effective for two years from the approval of the acquisition.
• HPY shall report to the FCA the realisation of point 2 each year for two years.
• Additionally, HPY found that there is no impediment to Finnet companies starting to develop and offer products which compete with FNI.

The commitments ensure that the concentration does not affect the competitive conditions in the wholesale market of foreign calls for two years. According to the FCA’s estimate, the Finnet companies have the possibility to establish a foreign operator competing with FNI within two years or negotiate on cooperation with an incumbent operator if the threat arises that the terms of agreement applied by FNI weaken their possibilities to compete e.g. in the markets of large companies. In its decision, the FCA found that the commitments provided by HPY removed the doubts about the competition concerns arising as a result of the acquisition and the FCA was thus able to accept the arrangement.

• Valio Oy / Kainuun Osuusmeijeri, Osuuskunta Maito-Pirkka, Aito-Maito Fin Oy: By agreements concluded in January 2000, Valio leased from Maito-Pirkka and Kainuun Osuusmeijeri all the properties, machinery and equipment related to refinement and marketing. After the lease period had terminated, the objects of lease transfer to Valio’s ownership. Additionally, Valio purchased from Maito-Pirkka and Kainuun Osuusmeijeri the movable fixed and capital assets. All the staff of the processing operations of Maito-Pirkka and Kainuun Osuusmeijeri and Aito Maito’s marketing and distribution became Valio’s employees. The main brands ‘Aito’ and ‘Into’ also transferred to Valio.

The FCA assessed the effects of the acquisition in over 20 product markets and found that the concentration resulted in the creation or strengthening of a dominant position in several of them. The main competitive problems were related to the purchase of raw milk and its deliveries to the producers of upgraded products; the trade of standardised or skimmed milk and raw cream; the trade of liquid dairy products (milk, sour milk, cream and sour whole milk) and the manufacture of domestic milk powder.

Valio’s market share in liquid dairy products, where it had already been found to occupy a dominant position, would have increased from approximately 60 per cent to over 70 per cent. The market share of the concentration would also have been significant with respect to standardised milk, skimmed milk and deliveries of raw cream.

The market share of the concentration in milk powders would have been approximately 60 per cent. The geographical markets of milk powders are usually considered European wide at the minimum. However, the FCA found that the rules of the ‘Joutsenlippu’ brand showing the degree of domesticity of foodstuffs lead to separate markets for domestic milk powders, as the milk used in a Joutsenlippu product shall be entirely of Finnish origin.

As a result of the concentration, the share of the Valio Group in the purchase of raw milk from producers would have arisen to approximately 80 per cent. This would have strengthened Valio’s position on all the dairy product markets. In the assessment of whether the concentration could be accepted, a central issue was how the purchase of raw material by Valio’s competitors could be secured.

1 Supreme Administrative Court 11 November 1998, dno 2482/1/1997
After negotiations between the FCA and Valio, the FCA imposed e.g. the following conditions on the acquisition:

- Valio’s competitors may purchase from Valio an annual maximum of 150 million litres of raw milk. The milk may also be purchased skimmed, standardised or as cream. The sales price of raw milk equals the average purchase price of Valio’s own dairy industry.
- Valio shall sell the ‘Aito’ and ‘Into’ brands owned by the Aito Maito Group to a competitor.
- Valio shall make export purchases of raw milk referred to in point 1 or of refined products on the basis of market prices and reasonably non-discriminatory export costs.
- Valio agrees to offer the production plants under the threat of closure or the related equipment for sale without any restrictions on use.
- Valio agrees to offer logistical services to competitors.
- Valio offers dairy processing and packaging services for the products referred to in point 1.
- Valio agrees to sell to domestic customers all the usual domestic milk powder brands manufactured by Valio at the market prices of the EU area.
- An independent expert approved by the FCA shall be appointed to monitor the following of the commitments. The expert shall make a proposal for a decision in case of a possible conflict.

Due to the special features of the milk market, the usual terms of acquisition, e.g. the sales of production plants, would not have replaced the decrease in competition caused by the Aito Maito Group joining Valio. The main obstacle to competition encountered by the Valio Group is the availability of raw milk and not production capacity. The Valio Group obtains the raw milk from co-operatives, who, in turn, purchase the raw milk from their producer members. The cooperatives and producers are not parties to the acquisition, however, so it was not possible to oblige them to deliver milk to Valio’s competitors.

Milk producers can transfer from one cooperative to another. This decreases the interest of Valio’s competitors to make agreements with cooperatives, which are threatened by the move of producers to other cooperatives. In the assessment of the acquisition, the accounts given by Kainuun Osuusmeijeri and Maito-Pirkka about producer transfers and the statements heard by the FCA about the operating possibilities of the dairies possibly to be dissolved from the Valio Group were taken into consideration.

For these reasons, the transfer of raw milk to Valio’s competitors was carried out with Valio’s commitment to sell raw milk at Valio’s own purchase price to the actual and potential competitors in the domestic market. Hence, Valio’s competitors are able to balance out the decreased competition caused by the acquisition in the liquid milk market. Because fat is also created in the refinement process, Valio’s competitors are able to replace the competitive pressure produced by the Aito Maito Group in the market of butter and other fatty products.

- **Sonera plc / Yleisradio Oy, Digita Oy:** On 19 April 2000, the FCA proposed to the Competition Council that it forbid Sonera’s acquisition of joint control in Digita, the subsidiary of the Finnish Broadcasting Company (FBC). The FCA found that, in the market of 1) the digitalised public broadcasting network’s technical services, 2) the public broadcasting network’s transmission services, 3) mobile communications services, 4) digital network service systems, 5) Sonera’s local subscriber connection network services and 5) Sonera’s regional...
cable network services, the acquisition will lead to the creation or strengthening of a dominant position which significantly impedes competition in Finland or major parts thereof.

According to the FCA’s estimate, the acquisition would have had major exclusionary effects and protected Digita and Sonera’s dominant position from competition. The FCA found intervening with the acquisition important for safeguarding competition because the public broadcasting network extending to every household shall, in a few year’s time, function as an important distribution and reception channel of new Internet type content services, in addition to the basic transmission of television and radio programmes. Additionally, the convergence trend will lead to a flexible parallel and cross use of different digital networks being a major competitive factor.

The competitive problems of the acquisition were due to the market power of the parties, in particular, which is attested by the extremely high market shares in the following, closely connected markets:

- transmission services of Digita’s public broadcasting network: 100 per cent
- Sonera’s mobile services: 65 per cent
- Sonera’s Internet connection services: 40 per cent
- Sonera’s data transmission services: approximately 50 per cent
- Sonera’s trunk network services: particularly high market share (exact information a business secret)
- Sonera’s local subscriber connection network market: over 90 per cent
- cable network market located on an overlapping regional market with Sonera’s subscriber connection market: 100 per cent
- Sonera’s share of the turnover in the entire field of Finnish telecommunications: approximately 50 per cent.

As a result of the acquisition, the various content distribution channels and customer connections having the largest clientele would have concentrated on the same Group. The acquisition would have led to a situation where Sonera and Digita’s transmission networks would no longer have been competing alternatives to content producers and consumers.

According to the FCA’s estimate, the acquisition would have provided Sonera with unique competitive advantages. As a result of the acquisition, Sonera would have become a supreme multi network operator in Finland and obtained a permanent head start over its competitors in product and service development. Additionally, Sonera would have benefited from the strong position of FBC, Digita’s joint owner, in the supply of television and radio programmes, particularly since the digital television operations shall commence in the bundle of channels owned by FBC and since the company is the only one who currently has the right to national digital radio operations in Finland.

In its assessment of Sonera’s increased market power, the FCA paid attention to Digita being indispensable in the development, fitting and testing of the technical solutions and new content services of the digitalised public broadcasting network. Sonera’s position would have been further strengthened by Digita’s distribution system being able to affect the service concepts realised in the network. Hence, the acquisition would have led to Sonera being able, with Digita’s aid, to affect the competitive possibilities of other incumbents in the operating environment of digital television and radio. In its proposal, the FCA found that the possibilities to develop the field would appreciably improve if Digita could cooperate more equally with several operators, and resources would not be heavily concentrated through the acquisition.
The FCA concluded several negotiations with the parties on the commitments on the basis of which the acquisition could have been conditionally approved. The proposals of the parties left so many of the above-mentioned competitive problems open, however, that the conditional approval of the acquisition was not possible.

On 10 July 2000, the Competition Council conditionally approved the concentration. Departing from the commitments originally offered by the parties, the Council imposed on Sonera e.g. an obligation to refrain from seeking a licence for digital television broadcasts. In the beginning of August 2000, Sonera announced that it would not acquire control in Digita and that it would reserve the right to obtain a licence.

- **EQT Scandinavia Ltd / Rosenlew Retail Products**: EQT Scandinavia Ltd and JD Stenqvist AB part of its Group purchased, in the summer of 2000, from UPM-Kymmene plc its Rosenlew Retail Products business unit, which manufactures e.g. paper and plastic bags for the retail trade and paper bags for industrial use and other consumer packages. By the arrangement, UPM-Kymmene plc sought to concentrate on its actual core business operations. After the acquisition, JD Stenqvist AB became the biggest company in the field in Finland or the Nordic countries, measured by turnover, geographical coverage and range of services.

  The FCA intervened with the concentration only with respect to the market of block bottom paper bags manufactured for industrial use, although the concentration achieves a considerable market share on some other markets as well, such as the production of paper bags. However, the concentration did not cause major competition concerns in this respect, because the customers may replace the paper bags with plastic ones, and their markets are not as concentrated as those of paper bags.

  According to the investigations, the parties achieved a considerable market share in the market of block bottom paper bags, such as flour, sugar and animal food bags. In these markets, the major market share of the parties is combined with other factors producing market power; e.g. financial and productional strength and the lack of potential competition and import.

  In a situation where the domestic total market is not very large but where, to achieve optimal production efficiency, each type of bag must have its own production equipment, entry barriers threaten to become so high that the arrangement could have even resulted in the closure of the market. This possibility was seen to increase by the maturity of the market weakening the incentives of foreign companies to enter the field. In addition to one domestic competitor, Stenqvist is left with a few competitors in the Nordic countries. Due to reasons related to logistical total efficiency, import from countries which are located further away is often an unrealistic option for smaller market operators, in particular. Hence, the FCA found that the concentration leads to the creation of dominant position significantly impeding competition in the said market.

  EQT Scandinavia Ltd and JD Stenqvist AB proposed commitments to the FCA to remove the competitive problems. They undertook not to acquire control or other major minority share in a company operating in the market of block bottom paper bags in Finland and not to set their own representatives in the board of directors of such companies. Secondly, Stenqvist undertook not to include non-competition clauses, sole right or other tying, restrictive terms in its agreements related to the said business in the Finnish markets and, to the extent that its present agreements contain such terms, not to appeal to them. Thirdly, Stenqvist undertook to deliver block bottom bags manufactured from paper to customers operating in the Finnish markets under the present terms, price excluded, or, from the viewpoint of the customer, on more inexpensive terms than before.
In its decision, the FCA held that the exchange value of the said market is small and the harmful competition concerns are directed at a limited number of other market operators, who are well aware of the competitive scene created as a result of the concentration. The factors determining the structure of the field were not estimated to contain features which would permanently prevent other market operators from adopting operating strategies balancing the market power of the governing company in the long run. Terms of market behaviour, which ensure other operators a sufficient adaptation period, were still seen as inevitable conditions for the approval of the concentration.

- Finnlines plc / Transfennica Oy: Finnlines notified to the FCA its planned acquisition of the entire stock capital of Transfennica from UPM-Kymmene plc, Metsä-Serla plc, Myllykoski plc and Oy Metsä-Botnia Ab by an agreement concluded in June 2000. The selling companies have also been major customers of Transfennica.

  The FCA did not make a decision containing a detailed analysis, as the parties cancelled the acquisition after negotiations on a package of commitments conducted with the office. The estimates that follow are based on the FCA’s September 2000 decision on the commencement of further proceedings.

  Finnlines’ business divisions include sea transports and port services. The company is a liner shipping company specialising in freight transports, with principal operations in the Baltic and the North Sea. Finnlines’ route network covers all the major ports in Finland and approximately 20 ports abroad. In 1999, approximately 66 vessels were in service. The majority of the vessels are roro freight vessels and ropax (freight-passenger) vessels. Finnlines offers port services and related information services in Helsinki, Turku and Naantali.

  Transfennica specialises in the sea transports of forest industry products, which has approximately 20 roro vessels in its use. The vessels of Transfennica deliver e.g. paper from Finland to the major ports of Northern and Western Europe.

  According to Finnlines, the relevant product market is comprised of the sea transports of goods carried in large consignments in the routes between Finland and various European transport areas. Goods carried in large consignments refer to goods which are transported or may be transported in the freight unit, which include e.g. trailers, containers and various platforms. The transport areas in question are the German coast, the Polish coast, Scandinavia, the British Isles, the Benelux Countries and the Bay of Biscay. According to the notifier, roro linear traffic conducted by the parties competes with transports conducted as nonlinear traffic and with transport specialising in container shipping. The notifier finds that road transports are also a major competitor of roro linear traffic.

  However, the market definition of the notifier could not be accepted as a basis of the assessment of the competitive effects of the concentration. The FCA held that, from the customer’s perspective, container traffic does not replace roro traffic because the roro vessels’ ability to load and unload moving trailers cannot be utilised therein. The FCA found in its investigations that the shipping companies specialising in the use of trailer traffic should adjust their shipping systems to be able to use containers in their transports. Major differences between containers and trailers were also found in the loading and unloading of goods. Additionally, many consignees in the southbound traffic do not have the necessary docks for the unloading of goods. Container traffic was also found cheaper than roro traffic. Road transports to Central Europe are much more expensive than both forms of sea transports. E.g. for these reasons, the FCA came to the conclusion in its initial estimate that the roro linear traffic should be separated from container traffic as its own relevant product market.
The preliminary estimate of the geographical market was that the German Baltic Sea traffic, the German North Sea traffic, the Benelux Countries’ traffic, the British Isles’ traffic, the Bay of Biscay traffic and the Polish traffic each formed their own market further divided into southbound and northbound traffic.

In its preliminary estimate, the FCA held that the concentration was likely to lead to the creation of a dominant position in the market thus defined. The market shares of the concentration would have been extremely high in most transport areas, particularly in the traffic between Finland and Germany’s Baltic Sea ports. The assessment also considered the long-term freight agreements of the concentration, which ensured a certain freight volume, and the frequent schedules of Finnlines and Transfennica, their numerous routes and the operations of Finnlines as a producer of port services.

- **Carlsberg A/S / Orkla ASA**: Carlsberg founded Carlsberg Breweries A/S and, with a contract dated May 2000, 40 per cent of its shares to the Norwegian Orkla ASA. In the arrangement, Orkla transferred the Pripps Ringnes Ab Group to Carlsberg Breweries as well as the shares of Baltic Beverages Holding Ab (BBH) owned by Pripps Ringnes. I.e. parties to the transaction agreed on the merging of their brewery operations under the name of a new company called Carlsberg Breweries A/S, of whose shares Carlsberg owns 60 per cent and Orkla 40 per cent. The acquisition was approved conditionally in January 2001.

Without the conditions stipulated in the decision made by the FCA, the merger would have resulted in powerful links between the two leading competitors in the Finnish markets, namely Hartwall and Sinebrychoff, and led to a situation where these companies would have obtained joint dominance in Finland’s beer, cider, long-drink and soft-drink markets. Sinebrychoff and Hartwall’s combined market shares regarding beers and ciders are just below 90 per cent, in long drinks over 90 per cent, and in soft drinks and mineral waters approximately 75 per cent.

The principal approval condition for the transaction was that Orkla renounces its Hartwall shares and does not appoint any representatives to the board of directors of Hartwall nor to other company bodies. However, this alone was not enough to eliminate the competition concerns caused by the transaction, because Carlsberg and Hartwall would still retain a close connection with one another via their joint ownership of Baltic Beverages Holding (BBH) operating on the fast-growing Baltic and Russian markets. Additional conditions were therefore included in the decision with the purpose of preventing the naming of the same persons to the board of directors and executive positions in Sinebrychoff and BBH. The aim in doing so is to hinder the transfer of information on competitive conduct between Hartwall and Sinebrychoff.

Furthermore, the conditions stipulate on decision-making procedures in certain matters connected to BBH. Should Carlsberg and Hartwall disagree on certain investments or the distribution of profits at BBH, Carlsberg shall, for its part, submit the matter to an independent trustee approved by the FCA. This is intended to prevent Carlsberg from acting in BBH in a way likely to induce Hartwall to hold back from competition in the Finnish markets.

Furthermore, the decision includes a condition whereby Carlsberg undertakes to see to it that AB Pripps Bryggerier terminates its distribution agreement with Hartwall regarding the beer Lapin Kulta in Sweden, terminates its import agreement with Hartwall regarding importing of Ramlösa to Finland, and terminates its licence agreement with Hartwall regarding the soft drink Pommac. Additionally, Carlsberg undertakes to terminate its agreement with Hartwall on the licence-based production of Tuborg.
In case the parties to the transaction fail to fulfil these commitments, Carlsberg is required in the decision either to sell its Sinebrychoff shares or alternatively to implement such an arrangement as will result in the companies belonging to either the Carlsberg or Hartwall Groups not owning shares in BBH. The purpose behind this condition is to ensure that Carlsberg and Orkla fulfil their commitments. The fulfilment of the commitments is monitored by an independent trustee, whose appointing, rights and tasks have been set out in the decision.

Decisions concerning the merger of Carlsberg and Orkla were previously issued in December 2000 by the competition authorities of Sweden and Norway. In Sweden, Carlsberg undertook to give up some of its trademarks and to terminate its co-operation with the Coca-Cola Company of Sweden. In Norway, too, Carlsberg undertook to terminate its co-operation with Coca-Cola.

- **Georgia-Pacific Corporation / Fort James Corporation**: In July 2000, Georgia-Pacific Corporation and Fort James Corporation signed an agreement with the aim of merging Fort James Corporation into the existing tissue production of Georgia-Pacific Corporation.

  The Georgia-Pacific Corporation (GP) is an American Group, which manufactures and delivers e.g. building materials, paper and pulp. To the Finnish tissue market GP delivers hygienic control dispensing systems.

  The Fort James Corporation (FJ) is likewise an American Group, which manufactures and delivers e.g. bathroom and tissue products to consumers for ‘away from home’ purposes. FJ manufactures and sells tissue products to the Finnish market and currently has production facilities in the Finnish cities of Nokia and Ikaalinen. The company is known in Finland for its Embo, Emilia, Nessu and Luonnonystävä brands.

  As a result of mutual arrangements between GP and its Finnish main competitor Metsä-Tissue, such major links were formed between GP and Metsä-Tissue that they could not be perceived to exist in a normal competitive situation with each other. The FCA found that the cooperation arrangements could lead to the creation of joint dominance for GP and Metsä-Tissue. The companies’ joint market share in several segments of the Finnish tissue market is extremely high, 85–100 per cent.

  The above-mentioned companies have cooperated particularly with respect to dispensing systems and the related products in the European market. In practice, this has meant cooperation in product development, marketing, sales and strategy within the joint venture of GP and Metsä-Tissue.

- **Suomen Posti Oy / Atkos Printmail Oy**: In January 2001, Finland Post Ltd notified a concentration to the FCA, where Atkos Printmail offering e.g. printing, mailing and direct marketing services to customers transfers from the previous joint control of Finland Post and TietoEnator plc to the sole control of Finland Post. The concentration was approved conditionally in February 2001 during stage I proceedings.

  The eLetter offered by Finland Post and the printing and mailing services of Atkos Printmail correspond to each other, with the exception that the eLetter service of Finland Post also contains the delivery of the letters to the recipient.

  Finland Post enjoys a monopoly position in the distribution of addressed mail deliveries in Finland and Atkos Printmail has considerable market power in the printing and mailing services. In its decision, the FCA found that, through the acquisition, Finland Post obtains the possibility to cross-subsidise the competitive parts of the eLetter service such as printing and mailing. With possible cross-subsidisation and discriminatory distribution terms, Fin-
land Post may favour Atkos Printmail in the future, at the expense of its competitors. As a result of the concentration, Finland Post is also able to package pricing and joint marketing and hence to complicate the entry of new competitors into the market.

It was an approval condition for the transaction that Finland Post retain Atkos Printmail as a separate subsidiary and not transfer the current business operations to Finland Post. In addition, a condition was included in the decision whereby Finland Post undertook to offer the distribution service of a corresponding product to the eLetter on general, equal, non-discriminatory and transparent terms to outside companies as well as companies part of the Finland Post Group. The commitments were aimed at decreasing the risk of cross-subsidisation born as a result of the concentration.

- Metsäliitto Osuuskunta / Vapo Oy: In March 2001, the FCA conditionally approved a concentration whereby Vapo Oy transfers from the state’s control to the joint control of the state and Metsäliitto Osuuskunta. A central condition for the approval of the transaction was that the parties partially divest the business activities related to wood based fuels (sawdust, bark and industrial wood residues and forest residues). Additionally, the conditions include some behavioural commitments set on the parties and conditions related to the supervision of their implementation.

The starting point of the investigation was that the Vapo conglomerate holds a dominant position in the energy peat market and that it is active in the wood based fuel market. Biowatti Oy, a nationwide bio energy company and also a subsidiary of the Finnish forest industry enterprise Metsäliitto, specialises in wood based fuels. In practice, wood based fuels are the sole energy form competing with peat and they are used particularly in the production of heat and energy by the industry. The share of Metsäliitto of the approximately 6.4 TWh wood based fuel market is approximately 30 per cent and the share of Vapo approximately 20 per cent.

If conditions had not been imposed, the concentration would have led to the strengthening of a dominant position significantly impeding competition in the peat market and the creation of a dominant position in the wood based fuel market. The central condition for the approval of the concentration was that, in practice, Vapo divests all of its raw material purchases for wood fuels and wood based fuel deliveries from outside the Vapo Group in Finland. Metsäliitto undertakes to divest some of Biowatti’s wood fuel delivery agreements with customers outside of the Vapo Group and some of the raw material supply agreements for wood fuels from outside the Vapo Group.

The functions to be divested from the concentration form a viable, competitive and regionally extensive business entity, whose share of the total market of wood based fuels is 20–40 per cent. The acquirer of the business activities shall be independent of the parties of the transaction and shall have the necessary financial and other resources. The acquirer shall be approved by the FCA, and an independent trustee shall be appointed to monitor the implementation of the conditions.

The behavioural commitments are aimed at limiting the parties’ possibilities to artificially connect the purchases of energy peat and wood based fuels, on the one hand, and wood based fuels and raw material procurements, on the other.

The European Commission transferred the examination of the concentration by its decision of 8 February 2001 to the FCA as regards the above-mentioned markets. On the same day, the Commission approved the acquisition of raw wood procurement and sawn timber.
Issues examined in the control of concentrations in 2000
(figures from 1999 in parenthesis):

<table>
<thead>
<tr>
<th>Total no of decisions</th>
<th>Pending notifications</th>
<th>Pending prenotifications</th>
<th>Cancelled prenotifications</th>
<th>Other closed issues</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>31 December 2000</td>
<td>31 December 2000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>114 (81)</td>
<td>9 (7)</td>
<td>10 (13)</td>
<td>27 (18)</td>
<td>35 (25)</td>
</tr>
</tbody>
</table>

Decisions made in the control of concentrations in 2000 by the type of decision (figures from 1999 in parenthesis):

- Proposal to ban 1 (0)
- Approved conditionally 5 (5)
- Approved as such during Stage II 1 (1)
- Approved as such during Stage I 103 (74)
- Other merger decisions 4 (1)

Decisions made in 2000 by the type of concentration (figures from 1999 in parenthesis):

- Acquisition of control 60 (41)
- Acquisition of business operations 43 (33)
- Merger 3 (1)
- Joint venture 8 (6)

Nationality of the parties in decisions made in 2000 (figures from 1999 in parenthesis):

- All parties Finnish 49 (26)
- All parties foreign 40 (32)
- Minimum of one foreign party 25 (23)

Procedural decisions made in 2000 (figures from 1999 in parenthesis):

- Derogation from implementation ban 6 (2)
- Severely deficient notification 5 (8)