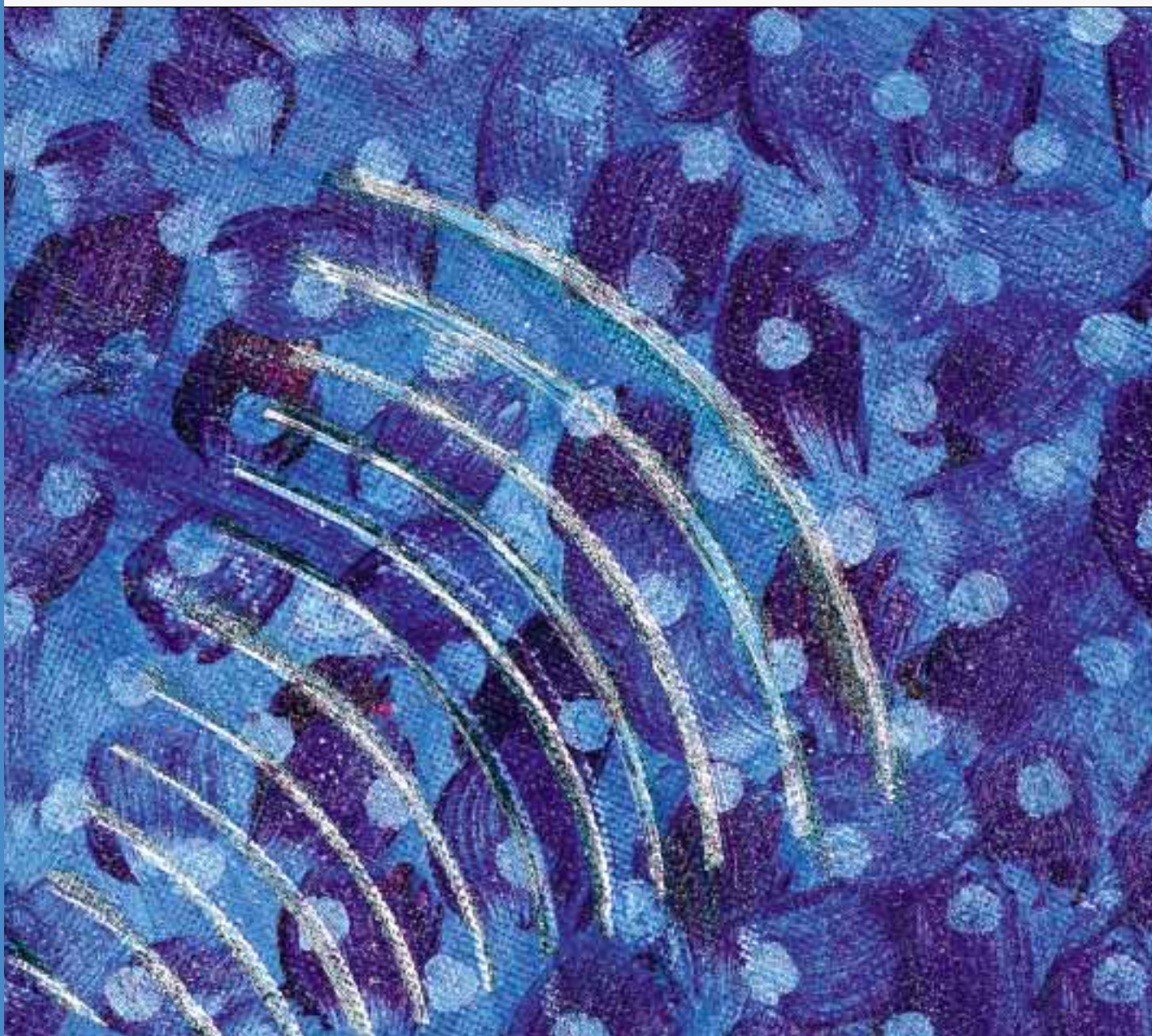




FINNISH COMPETITION AUTHORITY

YEARBOOK 2002

FCA YEARBOOK 2002



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YEARBOOK 2002

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To the Reader

The 1st of March, 2002, marked the 20th anniversary of the day when I started as the overseer of competition policy. A couple of these years were spent on holidays, almost six on weekends, and another six at home for no particular reason. This leaves six years, where, for my part, I have been responsible for the functioning of the Finnish market.

Part of this time has been usefully spent observing the surrounding world. It is no surprise to anyone when I say that many things have changed. In 1982, there was no confidence in the market's ability to optimally allocate the resources of society. Nobody thought that the pressure of competition would lead to further innovations. Instead, it was seen as a good idea to impose a price freeze that would enhance the welfare of the consumers. In the price freeze of 1982, the most significant single item of discussion from an economics viewpoint was related to the possibility of freeing Christmas ham from the price freeze. The favourable decision on the issue by Minister Esko Rekola must be regarded as one of the deeds of a great statesman. The Finns could enjoy their Christmas hams.

Until Christmas 1988, it was advantageous and legal in Finland to set up and maintain cartels. The National Board of Trade and Consumer Interests kept a file of cartels so that the cartel companies did not need to worry about the matter themselves. However, just prior to Christmas 1988, the cartels received a letter from the then recently founded Finnish Competition Authority (FCA). In that letter, the FCA declared war against cartels. Legislation lagged a little behind – cartels were not banned until 1992, when the FCA, believing in its own and the consumers' cause, with support from the Competition Council in the last lap, came down heavily on them. Over 100 cartels came crashing down.

According to public opinion, the FCA was bold enough to attack the cartels established by small enterprises but did not have the vigour to grasp real competition problems. But that time was to come. A domestic state enterprise was used as an instrument when players, who had become wealthy in the regulated Finnish motor fuel market, tried to keep out a company trying to enter the market by using new competitive tools. After some intricate footwork, the enterprise received its verdict – an infringement fine of approximately FIM 2 million. The FCA had put in a claim for FIM 100 million.

In 1998, the FCA carried out a surprise inspection in a dozen offices of the three largest Finnish forestry companies. The reason for this dawn raid was the suspicion that the companies were engaged in banned cartel co-operation. The suspicion proved to be justified, and, in 2000, the Competition Council imposed an infringement fine of FIM 10 million on each of these companies. In this case, the FCA had put in a claim for FIM 20 million. The companies appealed to the Supreme Administrative Court,

which affirmed the cartel verdicts in 2001 but lowered the sanctions to FIM 3 million per company.

The reduction of the fines to the level of “license fees” has attracted a fair amount of international attention. Major Finnish companies, well advanced in their globalisation, continued their engagement in banned activities on their home market, despite the fact that they were fully aware of its punishability – and they got off practically scot free.

At the same time, many around the world have come to realise that such naked cartels have nothing positive to offer, and for this reason they are being hunted down aggressively. Since cartels are hated, they know how to hide themselves. As this is the case, the best remedy is to impose heavy punishments on those that get caught. This is also the policy adopted by, e.g., the European Union. It is not unusual that companies involved in price cartels must pay fines of tens of millions of euros.

However, as the risk of getting caught is often minimal, a more effective combination of a carrot and stick approach has been adopted in various parts of the world: systems of amnesty have been created for the purpose of crushing cartels from inside. A cartel member who, within the EU, for example, is the first to disclose the existence of a cartel to the Commission before any investigations have been started, is pardoned from paying the imminent gigantic fines. The next penitent is pardoned a little less, and so on. This uncertainty tends to crumble the trust within the cartel brotherhood, and in the countries where this system has been adopted, our colleagues have had to widen the doorways to their offices, such has been the rush by some cartel members to disclose their own and their partners involvement in the cartel.

A fine of EUR 600,000 is not sufficient to crush cartels, not where the forestry companies that belong to the largest in the world are concerned. The European Union is moving towards network-like methods in its competition control. I wonder if it is now time to harmonize fines, given the zeal to harmonize substantial rules.

7 March 2002

Matti Purasjoki, Director General





FCA's mission statement, duties and focus areas

The Finnish Competition Authority (FCA) is a State Department under the Ministry of Trade and Industry. Its mission is to safeguard healthy and viable competition, and to increase economic efficiency by promoting competition and removing its obstacles.

In order to implement its mission, the FCA

- investigates, both on its own initiative and on the basis of requests for action, competition restrictions that substantially influence the performance of the national economy and that are detrimental to economic competition, and it takes action, when necessary, to eliminate them or their harmful effects;
- investigates the mergers and acquisitions within its authority, and decides on the submitted applications for exemptions and negative clearances;
- where necessary, submits proposals to the Market Court (the Competition Council until 1.3.2002) on prohibiting mergers and acquisitions or restrictions on competition, and on imposing fines;
- submits initiatives for promoting competition and for abolishing rules and regulations restricting competition;
- monitors the preparatory work on laws and regulations related to industry and commerce, and issues statements on matters related to its scope of responsibility;
- expresses its views in advisory meetings on matters related to restriction of competition or mergers and acquisitions that are being discussed in the European Commission, and
- handles all other matters that are the responsibility of authorities in EU Member States and fall within its scope of authority, and engages in international cooperation within its scope of responsibility.

The functioning of markets is promoted both by taking action against competition restrictions that breach the Act on Competition Restrictions (480/92, hereinafter the Competition Act) and, more generally, by influencing the functioning of competition. The objective is to extend and increase the effectiveness of the latter area of the Department's activities.

The Competition Act prohibits fixed prices, tender and price cartels, as well as cartels restricting production or dividing markets or sources of procurement. The abuse of dominant position is also prohibited. However, it is possible to obtain an exemption from a competition restraint – with the exception of dominant position –



Topics for

discussion in Finland have included the development in the marketization in the municipal public sector, merger control, and the anti-trust work of the competition authorities.

if the restriction helps make the production or distribution of commodities more effective, if it promotes technical or economic development, and if the arrangement can be deemed to also benefit the customers or consumers. Other restrictions than those specifically prohibited by law are assessed under the rule of reason.

In addition to the FCA, competition restrictions are handled in Finland by the Market Court, the Supreme Administrative Court and, particularly with respect to regional competition restrictions, by the State Provincial Offices. The Market Court has a dual role in handling matters related to competition. On the one hand, it is the first instance for decisions on prohibiting competition restrictions, mergers and acquisitions and imposing fines, and on the other, it is the first instance of appeal when appealing against decisions made by the FCA. The decisions of the Market Court can, with certain limitations, be appealed against in the Supreme Administrative Court.

In 2001, the key areas of activity for the FCA were the promotion of the marketization of the public service production, and dealing with the competition-related problems of the power plants, other public utilities plants, communications and telecommunications markets and the financial sector. Due to the concentrated structure of the Finnish market, other key areas for monitoring included certain areas of trade and industry. In international affairs, the focus has been on EU-related matters, where the FCA has concentrated on issues that are important for monitoring competition in the Finnish market and for developing the competition policy of the EU.

Public services continue to be one of the focus areas for the FCA. The other focus areas for 2001 continue to play a central role in the Department's activities. However, potential competition restrictions related to environmental issues are also becoming an increasingly important focus area. In addition to these, the FCA is investing resources into developing analysis and research methods for competition restraints.

Lately, the public debate on both the Finnish and EU competition policies has been active. Topics for discussion in Finland have included the development in the marketization in the municipal public sector, merger control, and the anti-trust work of the different competition authorities, both at EU and national levels. Some of these topics were also included in the work of the competition policy working group assessing Finnish competition policy, completed in February 2002¹.

¹ Report by a Ministry of Trade and Industry working group on the functioning of domestic markets and on international competitiveness 3/2002 (in Finnish): "Kotimarkkinoiden toimivuus ja kansainvälinen kilpailukyky"

The Operating environment

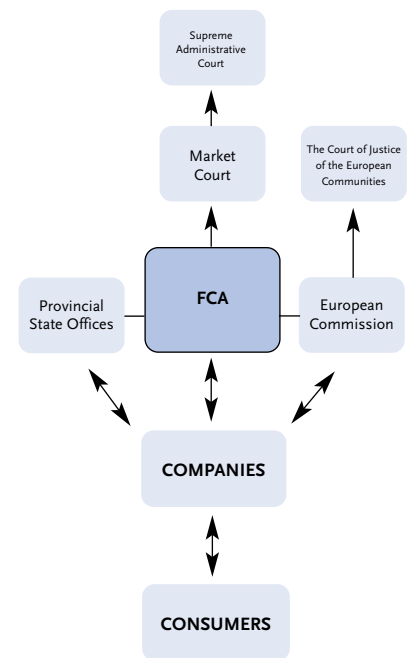
The commodities production of municipalities, and of the entire public sector in Finland, is facing a significant structural change, and the debate on how large a share of the national economy the public sector should represent is continuing in different forums. The need to restructure the service sector is made more acute by the ageing of the population and pressures to reduce the levels of taxation, due to international tax competition, and pressures towards harmonising taxation. In these circumstances, it is the duty of the competition authorities to ensure that the competition issues related to reforming the services production are sufficiently considered in decision-making.

The major changes taking place in the economic operation environment over the last few years, such as globalisation, networking and rapid technological development, have made the work of competition authorities significantly more difficult with regard to, e.g., determining the products and their replacements, and the relevant geographical markets. It also seems that an economically unstable period is developing in the international markets, and this may have rather varied effects on companies in different fields and on business life as a whole. This is why the competition authorities must pay more attention to examining and understanding the manner in which global business life and its different industries develop.

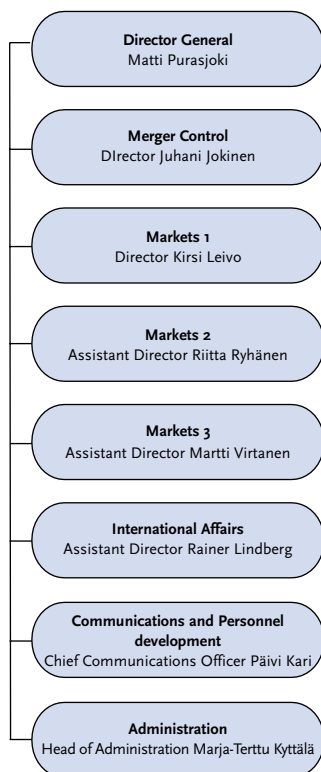
Due to the changing economic environment, certain fields of business have joined the traditionally monopolistic sectors as strategic focus areas of the FCA. These fields of business are characterised by particularly rapid structural changes due to developments in technology or the pattern of supply and demand, and any competition restraints in these fields of business are considered to have far-reaching consequences for the development of the national economy. Such fields of business in Finland include the tele- and mass communications industries, as well as the banking and insurance sectors.

Topical EU-related activities over the last few years have included, in particular, participation in the work to reform the Implementing Regulation 17, and preparatory work for other EU Directives and Regulations. The objective of the modernisation is to decentralise the powers of the Commission to the Member States, to concentrate the resources of the Commission on the most important cases only and to create the framework for network-like co-operation between the Commission and national competition authorities. The intention is also to reform competition control so that the EU competition rules would be applied whenever the trade criteria are fulfilled.

If the reform of the Regulation proceeds in the manner now being proposed, there will be significant changes in the operation of the Commission and national authorities. The reforms would significantly increase co-operation both between the



FCA's operating environment



FCA's organisation, 1 May 2002

Commission and the national authorities, and between different national authorities, thus requiring considerable additional resources for the international operations of national authorities. The reforms of the Regulation would also require amendments to the national legislation.

The internationalisation of the industry and commerce has also, in other ways, increased the need for co-operation between the competition authorities of different countries. Indications of this are the *European Competition Authorities* (ECA), an association established last year, and the *International Competition Network* (ICN), a global forum of co-operation for competition authorities, both of which are intended to promote discussion on competition-related issues between the participating countries.

In addition to the EU, the international co-operation of the FCA has, during the last few years, been particularly active with regard to the OECD and the Nordic countries. Finland has been contributing to the operation of the OECD's Competition Committee and its working groups by actively taking part in the preparatory work for the meetings and by nominating experts to appear at seminars organised by the OECD. Examples of Nordic co-operation are the network of cartel contacts established in 2001, and the working group dealing with the threats of competition within the area of air traffic in the Nordic countries.

The openness of the Finnish domestic markets and the functioning of competition are examined in the country-specific survey for the regulatory reform that the OECD started in January 2002. This will allow Finland to receive valuable external feedback on the actual functioning of the competition on the domestic market, as well as on the particular characteristics of the Finnish legislation, the production of public services and administration. The survey is expected to be completed during spring 2003.

Personnel and HR Development

At the end of 2001, the Finnish Competition Authority employed a staff of 57. In addition to permanent staff and fixed-term researchers, the Department also employs trainee secretaries, conscientious objectors performing their National Service and, during the summers, university students as trainees. Last year, a total of 87 persons worked at the Department.

The FCA had a total of 61.4 person-years of HR resources at its disposal, including the trainees and conscientious objectors. Merger control accounted for about 16% of

this, i.e. about 10 man-years. Some 12%, or 7,5 person-years, were used for international affairs. Handling other cases accounted for about 26 person-years.

At the moment, the organisation of the Department includes seven groups that are responsible for the following areas:

- Merger control
- Markets 1: communications and telecom, finance, energy and public service utilities
- Markets 2: trade, industry, transport and services
- Markets 3: governmental competition restraints, construction and the environment
- International affairs: EU co-ordination and other international co-operation, co-operation with Provincial State Offices
- Communications and personnel development: training of personnel, communications, information services and translation services
- Administration: personnel, financial and IT administration

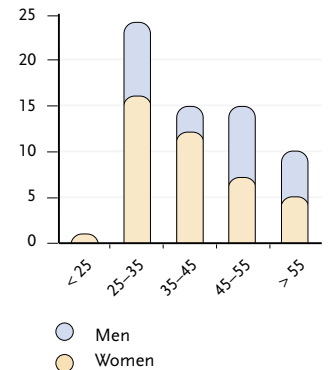
The turnover of highly educated staff, typical of the public sector, continues to be a problem also within the FCA. In 2001, the percentage of employees leaving was 22.1% and of employees joining 19.1%. The special expertise acquired at the Department is appreciated, and it is in demand both in the private and public sector.

The turnover of personnel has presented – and will continue to present – special challenges both for recruitment and introduction and other training of personnel. For several years, an important channel of recruitment has been the extensive support of university students' training carried out at the Department. This channel has been successfully used to attract the interest of highly educated young people towards the work done at the FCA. The problem has been the recruitment of experts from different fields. In addition to uncompetitive salaries, another major reason for this has been the limited availability of people with competition-related working experience and expertise.

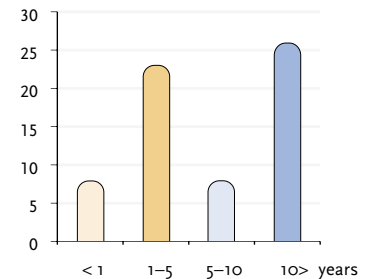
Key HR figures ¹⁾	31.12.2000	31.12.2001
Personnel with permanent office or fixed-term employment	57	57
Average age of employees	41	40.5
Average duration of employment, years	7	6.8
Percentage of female employees	56%	63%
Percentage of employees with higher/research level education	79%	78%

¹⁾ The key figures include all employees with permanent office and temporary employment, as well as employees on non-paid leave of office or maternity leave, i.e. 65 persons in all.

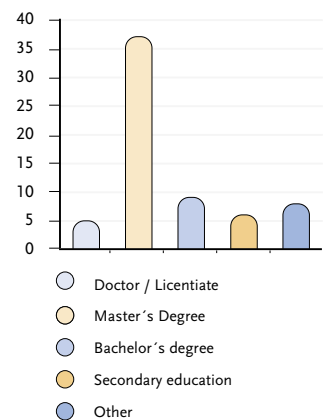
The age and gender profile of the personnel, 31 December 2001



Average duration of employment, 31 December 2001



The education profile of the personnel, 31 December 2001



Skills targets were defined for the entire staff of the FCA in 2001 for a basis for planning the training of personnel. The key areas of expertise for the Department's operation include knowledge of trade and industry and business operations, economic analysis and associated methodological expertise, as well as knowledge of the competition legislation of both Finland and the EU.

In order to help the personnel cope better with the challenges of work, the Department is now investing more resources in knowledge management and development. The objective is to transfer the core capital of knowledge within the organisation from the experts to young researchers, with the help of systematic in-depth induction and training. Job satisfaction and coping at work are now also supported more actively. The methods for achieving this include joint recreational events, tutorials given by experts, support for health-promoting exercises, and increasing the flexibility of working hours.

The Cartel Group, established within the Department last year, is responsible for maintaining and developing cartel-related expertise. The Group observes the international discussion on cartels, develops research methods and aims to create a robust system for pursuing cartel matters in courts.

Another important area of training is market definition. In this context, the FCA organised the international *Workshop on Market Definition* seminar in Helsinki in October 2001. In addition to the Department's own personnel, some 250 participants from 14 different countries attended. The seminar papers were published² in February 2002.

In 2001, about 4% of effective working hours were used for training, i.e. approximately 9 person-days per employee. During the year, 8 persons took part in international seminars on competition policy, for a total duration of 30 person-days. Training services were procured for a total of EUR 62,500 (FIM 370,000), i.e. about EUR 1100 (FIM 6500) per person-year.

Development of the pay system used by the Department started in autumn 2001, in co-operation with the Energy Market Authority. The preparatory work for the reform is the responsibility of a working group consisting of two employers' and four employees' representatives. In addition to this, the FCA is a departmental pilot participant in a project, initiated by the Ministry of Finance, related to determining the correct amounts and profiles of personnel resources and to developing methods for ensuring the correct numbers and qualifications of personnel.

² *Workshop on Market Definition, Compilation of Papers*, Finnish Competition Authority, Helsinki 2002

Operational results

In 2001, the total number of domestic cases of competition restrictions and corporate mergers and acquisitions decided by the FCA decreased by about 8% from the previous year. The main reason for this was a reduction in the number of mergers and acquisitions. A total of 432 decisions were made.

Roughly one-third of the cases, other than merger or acquisition-related, were to do with an abuse of dominant position. An almost equally large number of cases consisted of governmental competition restraints. Horizontal and vertical competition restraints both accounted for 17% of the cases last year.

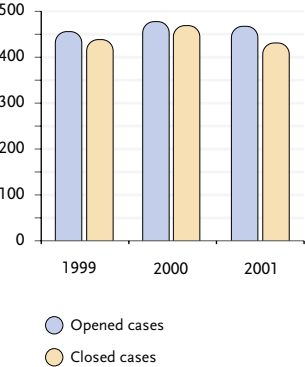
Cases closed per type of competition restraint, % (excluding merger control cases)	1999	2000	2001
Abuse of dominant position	29	34	33
Governmental competition restraints	30	22	30
Horizontal competition restraints	25	26	17
Vertical competition restraints	12	14	17
Procedural matters	4	4	3
Total	100	100	100

The department is of the view that the cases decided last year were, on average, more demanding and had more public significance than before. Approximately one-fifth of the cases were assessed to have significant implications: their share the previous year was 15% and the year before that 10%. The long-standing goal of transferring FCA resources to investigating cases that are relevant to the national economy seems, therefore, to have been at least partly achieved.

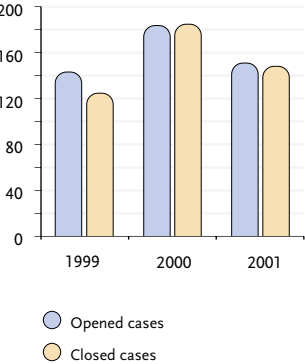
The increasing complexity of the cases is also evidenced by the lengthening times for reaching decisions and processing exemptions. The average time taken by the Department to reach a decision last year was 489 days, i.e. about 16 months. The average time for processing exemptions was approximately 9 months. Obviously, the increase in processing times is also due to the turnover of personnel and the resulting slow-down in the work processes.

The aim is to make the processing of cases more efficient by paying more attention to filtering and quickly pre-processing the emerging cases. The intention is to avoid the detailed processing of insignificant cases, thus releasing resources for handling the more significant cases and for the Department's own investigations.

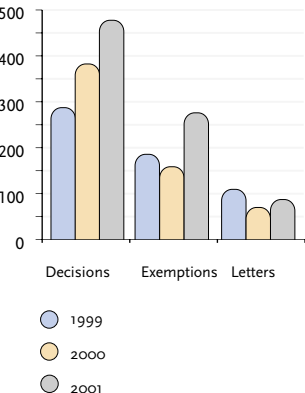
Opened and closed cases during 1999–2001



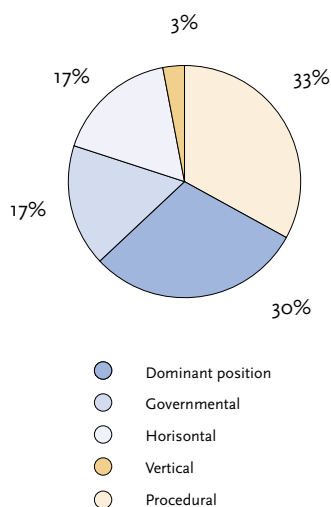
Merger control cases during 1999–2001



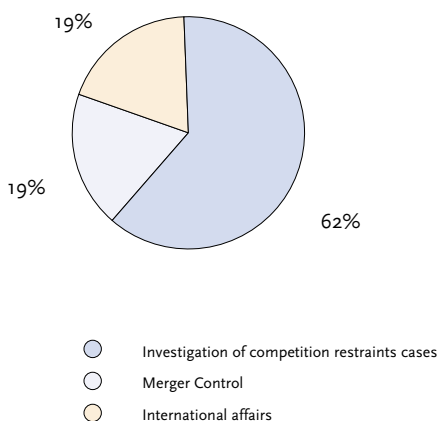
Case processing times (days) during 1999–2001



Other than merger control cases by type of restraint in 2001



FCA costs by area of responsibility in 2001 *)



*) The total costs were FIM 21.9 million i.e. EUR 3.7 million.

The processing of merger and acquisition notices were further expedited last year with respect to mergers and acquisitions approved in the first stage of processing. The average processing time for notifications was now 20 days, whereas it was 21 days the year before. The shortest processing time was 4 days and the longest 31. The processing time for most cases transferred for further processing was, in practice, the statutory maximum of 4 months.

In addition to cases processed by the FCA, a total of 82 competition restraints cases were brought to State Provincial Offices in 2001. Fifty-eight cases were decided. About half of these cases were brought on the initiative of the FCA. In their investigations, the State Provincial Offices mainly concentrated on public production as well as on the pricing and logistics arrangements of trade and industry. In addition, they co-operated with the FCA in inspections and investigating extensive cases of competition restrictions. In 2001, the State Provincial Offices used a total of 9 person-years on competition-related cases.

Four cases were presented to the Competition Council in 2001. Two of them were related to the alleged abuse of dominant position (cases *Gramex ry* and *Imatran ajoharjoitteluratasäätiö*), and two to alleged tender cartels (cases *Skanska/YIT* and *Kuopion Taksiautoilijat ry*).

Last year, the Competition Council ruled on 15 cases concerning the FCA. Seven of the cases were related to proposals by the FCA and the rest to appeals made against decisions by the FCA. In the cases of *Elisa Communications*, *Turun Puhelin* and *Salon Seudun Puhelin*, the Council's decisions were in line with the proposals of the FCA, with the exception of the amounts of fines. In the four other cases, the Competition Council decided to dismiss the FCA proposal.

The most interesting appeal case was the decision made in December 2001, whereby the Competition Council – on the basis of petitions by the competitors – disallowed the merger between *Sonera Oyj* and *Loimaan Seudun Puhelin Oy* that had been conditionally approved by the FCA. Both the FCA and Sonera have appealed to the Supreme Administrative Court on the decision.

In 2001, the Supreme Administrative Court made a total of 10 decisions in cases falling under the authority of the FCA. – A list of all the decisions made by the Competition Council and the Supreme Administrative Court last year on matters within the scope of authority of the FCA is appended at the end of this Yearbook. Most cases have also been further explored in the text when describing decisions associated with different industries.

A list of all decisions, proposals to the Competition Council, initiatives and statements issued by the FCA last year can also be found at the end of this booklet. Other new features of the booklet are the lists of papers presented by FCA experts, and of the Department's participation in external working groups.

Strategic projects and processing of other cases

■ *The objective of the Government and Markets project, started in 1998, is to secure the basic conditions for competition between private and public production in situations where areas of public production are opened for competition and where the public production, on the other hand, expands to areas previously operated exclusively by private companies. The aim has also been to establish sound principles for assessing the effects that public business activities have on competition. 2001 can be seen as the completion phase of the project.*

With regard to the production activities of the State, the focus of the project has shifted lately from actual processing of cases to influencing the policy of the owner, to eliminate market disruptions when new state enterprises or limited companies are being established. In the municipal sector, the focus area has been on developing good relations for co-operation with the Association of Finnish Local and Regional Authorities and other interest groups important in the development of the municipal sector.

The survey on the present status of the municipal service production, conducted in co-operation with the State Provincial Offices, was completed in July 2001³. The material, mainly related to social and health services and technical services, was collected from 15 different municipalities around Finland. According to the survey, the market economy and competitive tendering are rapidly joining in the provision of municipal services. Even though relatively few actual business relations with the private sector have been created, nearly all of the municipalities taking part in the survey had ongoing development projects related to the subject. As the marketization trend advances, an increasing number of public services will essentially become businesses and will, therefore, be caught by the Competition Act.

The survey report contains several practical examples of the marketization trend in municipal production activities. The objective is to provide decision-makers with information on how market economy methods and competition can, in practice, be utilised to improve the cost efficiency and quality of the services paid for by the municipality. The report also aims to give the decision-makers a systematic overview of the development process of the municipal competition and the market environment.

³ FCA study 1/2001 on the role of markets and competition in municipal production (in Finnish): "Markkinat ja kilpailu kuntien tuotantotoiminnassa"

During 2001, the report was extensively distributed among different interest groups. It was also published in PDF format on the FCA Website. The publication was distributed to all Finnish municipalities, major labour organisations and trade associations, as well as to researchers and the media. In addition, the experts of the FCA gave 15 presentations on the subject at different events.

The FCA also organised three regional seminars on the municipality theme in co-operation with State Provincial Offices and cities. The seminars were held in August 2001 in Tampere, November 2001 in Lahti, and March 2002 in Kuopio. In addition to representatives of the municipal sector, several representatives of different associations and researchers also made presentations and otherwise participated in these events.

The marketization of municipal service production has been a topic of extensive public debate since the autumn of 2001. The debate has been intensified by the interim report⁴ published by the working group on competition policy in November 2001, as well as the comments of various associations. Public awareness of the implications that the reforms in service production have for competition policy seems, therefore, to have clearly increased during the project.

A brief description of the major cases processed in the Government and the Market project during 2001:

- A study concerning the *Finnish Meteorological Institute* was completed; the study deals with the operation of the Institute in the Finnish markets for weather data, products and services. In March 2001, the FCA published its final report on the matter and submitted a proposal to the Ministry of Transport and Communications to separate the commercial operations of the Meteorological Institute into an independent company.

The working group investigating the separation of the Institute's commercial operations also suggested, in June 2001, that the weather services business should be separated. However, the working group took the view that the production of weather services for civil aviation should not be transferred to the company being established. In its statement on the issue, the FCA shared the view on separating the commercial operations, but expressed a different opinion on leaving the aviation weather services outside the commercial weather services. The reasoning behind this was that there was no evidence available from other countries that would suggest that the production of aviation weather services could not be included in the scope of commercial weather services. The Finnish Aviation Authority also does not think that the aviation weather services should be produced entirely as a public service. In its statement, the FCA also emphasised the fact that the business separated as an independent company should – in order to achieve the objectives of such separation – also be physically separated from the Meteorological Institute in accordance with the example set by the Netherlands.

An important decision by the Competition Council was obtained at the beginning of 2002 on the matter of the Meteorological Institute, following a proposal that the FCA had made to the Council in 2000. In its decision, the Competition Council shared the Department's view that the

⁴ Report by a Ministry of Trade and Industry working group on achieving quality and efficiency through competition in services 17/2001 (in Finnish): "*Laatua ja tehokkuutta palvelujen kilpailulla*"

Meteorological Institute had, during the period between June 1999 and December 1999, been guilty of abusing its dominant position, as it reduced the quality of the weather radar data it was supplying to the Swedish Meteorological and Hydrological Institute (SMHI). The Meteorological Institute's Finnish competitor, *Foreca Oy* (formerly Oy Weather Service Finland Ltd), was acquiring its weather data from SMHI. Meanwhile, the Meteorological Institute was using the original, non-degraded radar data in its own commercial weather service operations. As a sanction for this conduct, the Competition Council, in line with the proposal by the FCA, imposed a competition infringement fine of EUR 20,000 on the Institute.

- Regarding *Trading House Hansel*, a company specialising in procurement and material operations, the Department has continued with its investigations, which were started prior to this. The evidence gathered so far does not seem to indicate that Hansel's operations would involve prohibited competition restraints. However, Hansel's dual role as a party publishing tenders and as a supplier of goods is problematic from the point of view of competition. On the other hand, an extensive reform of public procurement is being prepared by the authorities, and the potential reform of the legal position of Hansel is a part of this process. The matter has also been discussed in a working group set up by the Ministry of Finance, which has also heard the FCA's representatives. The objective of the reform is to develop the organisation, procedures and methods of the State procurement operations more efficiently and economically.

In August 2001, the Ministry of Trade and Industry requested that the FCA issue a statement on the final report on the State procurement development report, prepared by the Ministry of Finance working group (Ministry of Finance Working Group Memorandum 18/2001). In its statement, the FCA stated that the potential advantages of economies of scale and cost savings for the State had perhaps been given too much emphasis in the report findings. Increasing the degree of centralisation in procurement operations does yield advantages associated with economies of scale, but at the same time there is a danger of maintaining or creating monopolistic structures. In the opinion of the FCA, the key issue in developing public procurement should be increasing the responsibilities and independence of the procurement units. When profit responsibility is applied, the public procurement units and their trading partners, who are free of artificial competition restraints, will best find both the traditional economies of scale and the procurement solutions that are in line with the latest innovative modes of operation. The joint procurement unit of the State, Hansel, should also find its place in such an environment so that, on the one hand, it would have complete freedom of operation, but on the other, it would not enjoy artificial competitive advantages and would not be able to benefit from institutional circumstances distorting competition.

- The investigations into the suspected abuse of a dominant position by the *Forest and Park Service* (Finnish Metsähallitus) in the markets for seed and seedling production ceased in May 2001. The investigations did not produce evidence of an abuse of dominant position. During the investigations, the commercial seed and seedling production of the Forest and Park Service was separated into *Forelia Oy*, an arrangement previously suggested by the FCA.
- The focus area of the work that the FCA carried out in connection with the *Finnish Road Administration* was participation in the follow-up working group for the organisational restructuring of the Road Administration. The investigation into alleged predatory pricing in the regional contracts for public road maintenance, implemented in 1999, was also completed. The investigation did not produce evidence of predatory pricing.

- In May 2001, the Ministry of Labour requested, from the FCA, a statement on a draft Decree on *personnel services offered by the Labour Administration*, where the idea was to establish the commercial short-term hiring out of personnel by the Employment Offices as a permanent part of their invoiced services to employers. The request for statement was made in an effort to establish whether the Labour Authorities would, in that case, be using their dominant position in violation of the Competition Act. In its statement, the FCA stated that, from the competition point of view, the best solution would be to separate the hiring out of personnel into a company that is independent of the other operations of the Labour Administration. The new State-owned enterprise should also be given exactly the same operating conditions as private enterprises, in order to make the solution transparent to all of the players.
- The Finnish Competition Authority has also commented on whether *the educational establishments under federations of municipalities or similar administrative arrangements* can mutually agree on offering educational services in response to the tenders issued by the Labour Administration, or whether such agreements are considered to be in violation of the Competition Act. In its statement to the Ministry of Labour, the FCA stated that the present competition legislation does not give rise to any objections to such an agreement, because co-operation between two business units having essentially the same ownership is, as a rule, outside the scope of application of the prohibitions stipulated in Articles 5 and 6 of the Competition Act. However, the comment also states that municipalities and federations of municipalities can, as sellers of educational services under free market conditions, thus significantly restrict competition, and that the concentration of suppliers of educational services is a most unwelcome phenomenon from the point of view of competition. In the future, particular attention should be paid to creating competitive conditions between the educational establishments owned by one municipality or federation of municipalities.
- The final report of the investigation into the subsidy operations of *RAY, Finland's Slot Machine Association*, was issued in January 2001. The matter has already been discussed in detail in the 2001 Yearbook. The interesting point in the matter is that the framework of analysis for competitive effects, developed in connection with the case, has since been found to carry a more general significance, e.g. in matters concerning state subsidies for sports and the construction of sports venues.
- In the case of the *Central Laboratory Unit of the Pirkanmaa Hospital District*, the FCA, in 2001, submitted a proposal to the Ministry of Social Affairs and Health to amend the Decree on the charges applied in social and health services. In its proposal, the Department considered it essential from the point of functional competition that when the units of public healthcare operate as businesses, they adhere to the same commercial pricing principles as their competitors. According to the present regulations, hospitals are only allowed to charge for the actual costs of laboratory and X-ray tests that are not carried out in connection with other tests or treatments. The situation is the same for laboratory and imaging tests carried out in health centres.
- The decision of the FCA on the actions of the *Finnish Dental Association*, in violation of the Competition Act, can also be considered to have general significance. The case concerned the tender for dental services for the City of Helsinki, where the Association urged its members to boycott the tender on the basis that the City of Helsinki had reserved the right to prepare the treatment plan of the patients itself, instead of the private dentists actually carrying out the treatment. The Finnish Dental Association withdrew its boycotting actions after an intervention by the FCA.

■ *With the energy and public utilities, the FCA aims to take action particularly in obvious cases of discrimination and unreasonable pricing, as well as arrangements that are tying or otherwise restrict the freedom of operation of the customers. The objective is to ensure and increase the prerequisites for competition on the electricity and other energy markets as well as on the markets for public utilities, and to prevent the artificial exclusion of competitors and new modes of operation. In the energy business, particular attention is paid to the so-called natural monopolies and threats to competition in cases where companies simultaneously operate on both open and monopolistic markets.*

During 2001, a total of six project-related processes were pending at the Competition Council, of which the FCA proposals concerning *Helsinki Energy* and *Kuopio Energy*, and the appeal concerning *Olostunturi*, were decided. The process concerning *Vapo* ended when *Vapo* withdrew its appeal. The cases of the FCA proposal on the unreasonable port charges imposed by the *Port of Helsinki*, and the case concerning the pricing of the *water supply service of the Kuusamo Region* were still pending at the Market Court.

In its decisions on *Helsinki Energy* and *Kuopio Energy*, the Competition Council took the view that the energy companies were not guilty of an abuse of dominant position in the pricing of electricity and district heating, and thus dismissed the request of the FCA to prohibit overpricing and to impose an infringement fine. The Council studied the pricing of grid transfer charges both from the perspective of price comparisons and from the perspective of profitability of the energy companies and decided that no unreasonable aspects, as described in the Competition Act, could be found in the pricing of electricity transfer prices. Likewise, the Competition Council could not find any evidence of unreasonable pricing in the sales of electricity or district heating. Furthermore, the Council stated that the competition authorities should only directly intervene with pricing in cases where the preferred methods have been shown to be inadequate or when the company's pricing is *manifestly* unfair.

In its decision, the Competition Council also considered the application of the Electricity Market Act and the Competition Act when assessing unreasonable pricing. According to the Competition Council, the fact that the pricing is not in compliance with the requirement of reasonableness stipulated in the Electricity Market Act does not necessarily mean that the pricing would also automatically be in violation of the Competition, whereas a price that, according to the Electricity Market Act, is reasonable and acceptable, cannot be deemed unreasonable on the basis of the Competition Act.

The Competition Council decisions described above have a substantial influence on processing cases relating to unreasonable pricing. The matter has significance, because most cases brought to the FCA regarding natural monopolies deal with the alleged unreasonableness and inequality and/or disregard of actual costs of pricing and other terms and conditions of supply. Examples of this are the numerous requests for action regarding the unreasonable pricing of district heating that the Department received last year.

Behind these requests for action lie the intensifying competition on the electricity markets and the resulting decline of sales margins, which have pressurised companies

Energy and public service utilities

“ *The Competition Council decisions concerning energy companies have a substantial influence on processing cases relating to unreasonable pricing.* ”

Communications and telecom markets

producing both electricity and district heating into increasing their prices for district heating. The energy companies and plants have also clearly increased their energy charges as the cost of fuel for heat generation has increased.

A significant reform took place in the water supply industry when the new Water Supply Act came into force on 1.3.2001. As the sector does not have its own monitoring authority, it is important to ensure that the objectives of competition policy are taken into account in the legislation concerning the industry, and the regulations and instructions issued on its basis. The FCA participated in the preparatory work for the Act by issuing a statement on the draft in spring 2000.

■ *For the communications and telecom markets, the objective is to take action particularly on such competition restrictions that prevent the development of new methods of operation or entry into the field. The typical cases involve pricing in connection with an abuse of dominant position with respect to various “bottlenecks” such as the fixed network and the mobile network. In addition, defending established market positions using tying terms and conditions of supply is common in the industry.*

In addition to the now de-regulated telecom markets, defending established market positions is most likely to occur in the concentrated graphical mass communications markets. The introduction of new technology and the converging of different forms of services and communications are associated with such co-operation arrangements between companies that may be necessary due to high investment costs but which may, nevertheless, be potentially detrimental to the competitive possibilities of some companies, as well as to the technical and economic development of the industry.

Telecommunications

Regarding the telecom industry, the FCA issued statements in 2001 on, e.g., the proposal for an Act on electronic signatures, the proposal for implementing the EU domain suffix in the Internet name administration, the applicability of present market definitions on defining considerable market power, as well as on the reform of the telecommunications legislation. In addition, the Department participated in the preparatory work for the EU Directive proposal, i.e. the so-called Framework Directive, on common regulatory systems for electronic communications networks and services.

A summary of two significant decisions made last year concerning the telecom industry is provided below. Both cases concerned the telecommunications group *Elisa Communications Oyj*.

- The decision made in March 2001 concerned a case where Elisa was found guilty of unreasonable or otherwise restrictive pricing in its ISDN sales campaign implemented 2.–21.1.2001, as it offered the ISDN connection and the installation of an ISDN interface at a price that did not correspond to the actual costs and was discriminatory. The offer also failed to clearly indicate which part of the

price constituted the connection charges and which part the rental of the network interface. At the same time, the Department also studied earlier campaigns by Elisa. Since the company undertook to refrain from arranging similar campaigns in the future, the Department did not find it necessary to take the matter to the Competition Council.

- In a decision issued in June 2001, Elisa was found guilty of an abuse of dominant position as it had priced the connection service required for providing Internet local calls and the fixed-price Nettitaksa service higher than the fees it was charging for its services to end-user customers. In addition, Elisa had unjustly discriminated against *Jippii Group Oyj* with regard to the payments for the so-called termination fees. Since Internet local calls and the Nettitaksa service are only available when calling an Internet service connected to Elisa's network, the competing operators must buy the connecting services from Elisa to be able to provide Elisa's subscribers with the same services. However, the competing operators were unable to offer a fixed-price Internet call service, equivalent to the Nettitaksa service, at a competitive price, because the fees Elisa was charging for the connection were clearly higher than the price it was charging for the Nettitaksa service. Since Elisa undertook to immediately abandon the restrictive pricing practices, the Department did not find it necessary to take the matter to the Competition Council.

During 2001, the Competition Council made four decisions concerning telecommunications. The more significant decisions are the precedents on the pricing of subscriber lines and permanent connections. The Supreme Administrative Court issued an important decision on a case concerning ownership discounts in telephone co-operatives.

- In May 2001, the Competition Council issued its decisions on the pricing of subscriber lines and fixed connections by *Elisa Communications Oyj*, *Turun Puhelin Oy* and *Salon Seudun Puhelin Oy*. In its decision, the Competition Council stated that each of these telephone companies had a dominant position with regard to offering fixed subscriber lines within its own operating area, and that the companies had abused their dominant positions by pricing the subscriber lines in a way that was discriminatory, tying and unreasonable. The competition restriction was implemented both by using dual pricing where new customers, i.e. mainly new competitors, were charged clearly higher prices than old customers, and through tying contractual terms where the prices were tied to the term of the agreement. The companies controlling the subscriber line network had been charging their competitors a substantially higher price for the bottleneck utility than the price offered to their own service operator. The monopolistic pricing had rendered the competitors' entry into the local markets unprofitable.

The actions were also deemed to have resulted in the market shares of these companies remaining at over 90% in their traditional operating areas. With their pricing of subscriber lines, the companies had prevented new companies from entering the market and protected their own dominant position. The Competition Council imposed a fine of FIM 25 million (EUR 4.2 million) on Elisa, FIM 3,5 million (EUR 590,000) on Turun Puhelin and FIM 1 million (EUR 170,000) on Salon Seudun Puhelin. When determining the fines, the Competition Council took into account the companies' turnover figures and particularly the harmful effects of the pricing. Turun Puhelin and Salon Seudun Puhelin appealed against the decision in the Supreme Administrative Court. However, the Court dismissed the appeals by both companies in its April 2002 decisions.

- In December 2001, the Competition Council issued a decision concerning the alleged restrictive practices of *Sonera*, Finland's largest mobile phone operator, with regard to its roaming prices. The

matter had been taken to the competition authorities by *Telia*, Sonera's Swedish competitor. In its decision, the Competition Council confirmed the view of the FCA that Sonera does not have, either on its own or together with the second-largest mobile operators Radiolinja, a dominant position in the market for access to national mobile phone networks. The Council did, however, overturn the FCA decision to the extent that Sonera's pricing had no harmful effects on economic competition, and referred the case back to the FCA. The objective was to establish the degree to which Sonera could possibly otherwise prevent or slow down the competitors' entry to the field of business through the pricing of its network services.

- In August 2001, the Supreme Administrative Court issued its decision on the matter of *Päijät-Hämeen Puhelinosuuskunta (PHP) telephone co-operative* ownership discounts. On the basis of a proposal by the FCA, the Competition Council took the view that the ownership discount granted by the PHP, having a dominant position, was comparable to a loyalty discount, and ordered the PHP to stop applying the tying, discriminatory and non-cost-accountable discount practice that was in violation of the Competition Act. In its decision, the Supreme Administrative Court dismissed the appeal by the PHP and confirmed that it was guilty of an abuse of a dominant position.

Mass communications

- In a decision by the FCA issued in June 2001, the *Finnish news agency Suomen Tietotoimisto (STT)* was considered to have a dominant position in Finnish language news, as well as in the Finnish market for daily news on domestic affairs, politics, culture, foreign affairs and sports. As regards news in the Swedish language, it was considered to have a dominant position with respect to financial news. Prior to 1.1.2001, the STT had not publicised a price list of its basic news services, so its pricing was not transparent. In addition, the STT was selling and pricing its basic news service only as a complete package including all news areas, and this was considered an act of bundling, which is prohibited by law. The pricing system was also considered to contain features that discriminated against the papers that are distributed free of charge.

During the investigation, the STT changed its pricing of basic news services so that a customer can now buy only the areas of news it wants from the service, and the company announced that it would change the pricing of papers distributed free of charge to correspond to the situation with other newspapers from the beginning of 2002. In order to allow the FCA to satisfy itself that the reforms have been carried out, the decision required the STT to report the reforms to the Department by 15.1.2002. As the pricing of STT's additional news services was not, in the opinion of the Department, compliant with the law either, the Department required that the STT will have to remove the discriminatory features of the pricing and submit a report on the matter to the Department by 31.3.2002. The FCA did not propose to the Competition Council that a competition infringement fine should be imposed, because the STT had taken the initiative and asked the FCA to establish whether its pricing was acceptable from the viewpoint of competition legislation, and it had actively endeavoured to change its methods. In addition, the STT was granted an exemption for price co-operation in news services production.

- In December 2001, the FCA submitted a proposal that the Competition Council should impose a fine of FIM 3 million (EUR 505,000) on *Gramex ry*, the organisation for the copyrights of performing artists and record producers, for an abuse of dominant position. Gramex had applied a different tariff to Radio Nova, a nationwide commercial radio broadcaster, than to local radio stations, and had also made offers for special deals on copyright fees to certain radio stations outside the mainstream. In its

decision, the FCA took the view that local and nation-wide radio stations operate in the same national markets for selling advertising time, which is why demanding different copyright fees from commercial radio stations without an acceptable reason will lead to a distortion of competition.

- The FCA decision on the reasonableness of the pricing of *Finland Post* stated that the Post had not been guilty of an abuse of a dominant position in connection with the reform of services it implemented in April 2000. On the contrary, the reform was considered necessary to improve the profitability of domestic parcel services and to develop the services. Furthermore, Finland Post had given the customer groups facing the largest price increases time to prepare for the changes and tried to prevent the potentially harmful effects of the change by offering a new service alternative. The objective is to influence the Posts' future methods of operation, particularly with respect to the development of its electronic services, by discussing in advance the need to consider the competition aspect when planning future operations.
- In its decision issued in January 2001, the Competition Council found, in deviation from the proposal of the FCA, that the distribution channel solution chosen by *MTV Networks Europe (MTVNE)* did not reduce, or was not likely to reduce, efficiency, or impede the businesses of others, and was, therefore, not a prohibited competition restraint under Article 9 of the Competition Act. Originally, the FCA had started its investigations on the initiative of *SANT ry*, the Finnish satellite and antennae association. According to *SANT ry*, the distribution arrangements of *MTV Europe* had caused a distorted competitive situation between the different companies selling the *MTV* channel through different distribution channels. However, according to the assessment of the Competition Council, the distribution channel solution of the *MTVNE* was in keeping with normal commercial principles, and the company could, therefore, not be considered to have treated its customers in a wanton or discriminatory manner. In considering the potential disadvantages that the agreement might have for the consumers, the Competition Council took into account the fact that the chosen distribution channel solution did not prevent the consumers from receiving the *MTV* channel via satellite. The FCA did not appeal against the Competition Council decision.

■ *The structural change and concentration trend are continuing in the financial markets, resulting in attempts to defend methods of operation and market positions that became established at the time when the markets were more strongly regulated, through applying arrangements that exclude foreign competitors, or conditions that are tying or otherwise substantially restrictive with respect to the customers' freedom of operation. The aim of the FCA is to take action particularly on such competition restrictions that the companies in the field are using to defend their established market positions as the operating environment continues to become more international and the structure of the industry changes as a result of, e.g., the integration of the financial and insurance markets.*

The FCA participated in the working group set up by the Ministry of Social Affairs and Health to study the competition aspects of the statutory employment pension scheme which completed its work in February 2002.⁵ The FCA is of the opinion that the report

⁵ Report of a Ministry of Social Affairs and Health working group 2001:35

Financial markets

of the working group contains certain reform proposals that, as such, have a positive effect on the competition in the employment pension markets, such as the extension of possibilities for transferring insurance stock. However, most of the key issues for competition that the working group was discussing were returned for further preparatory work.

The employment pension insurance business in Finland has, through a so-called decentralised system, been entrusted to private employment insurance companies who compete for customers. The decentralisation is believed to reduce the risks associated with investing the funds and to make the system more effective. The FCA is of the opinion that when the employment system is being developed, one should ensure that these decentralised system objectives can actually be achieved.

The so-called supplementary statement attached to the working group report by the FCA highlights two issues: the co-operation between employment pension institutions in matters related to pricing and competitive conditions, and the restrictions on transferring the insurance stock.

The FCA feels that the working group report does not pay attention to the fact that the extensive co-operation between employment pension institutions in matters affecting pricing and equal terms of competition is detrimental to competition. The co-operation between employment pension institutions, for example in determining the calculated interest, must be seen as alien from the viewpoint of competition. It has also been suggested that the present system leads to unequal terms of competition for the employment pension institutions, because employment pension companies play a greater role in determining the calculated interest than the employment pension funds and trusts.

The model proposed by the working group, where the transfer of insurance stock would require the consent of both the transferor and the transferee, would, in the opinion of the FCA, unnecessarily limit the possibilities for competition. Another problematic proposal is the suggestion that after the transfer, the employer should stay with the same pension institution for a minimum period of 5 years.

In 2001, the FCA issued statements related to finance and banking on, e.g., reports of the banking services working group and the working group on the control of financial and insurance conglomerates, the draft of the Government proposal for amending the Securities Market Act, and the draft of the Government proposal for amending the laws on pension trusts and funds.

The decisions that the FCA issued in January 2001 concerning the operations of *the Helsinki Stock Exchange* and *the Finnish Central Securities Depository* were already discussed in the 2001 Yearbook. Both cases have an appeal pending in the Market Court. A description of the other key decisions issued in 2001 concerning finance and banking is given below.



The co-operation between employment pension institutions, for example in determining the calculated interest, must be seen as alien from the viewpoint of competition.

- In January 2001, the FCA renewed the exemption granted for *Automatia Rahakoriti Oy* for the co-operation on smart cards between its owners, i.e. *Nordea*, *OKObank* and *Sampo*. The exemption was granted on the grounds that the co-operation can be still seen to contribute to bringing new methods of payment to the market and to the technical development in the field, thus yielding the efficiency benefits already acknowledged in earlier decisions. The exemption will be valid until 30.5.2002.
- In June 2001, the FCA also granted an exemption for co-operation on cash dispenser services to *Automatia Pankkiautomaatit Oy*, a company in the same group of companies as above. However, the Department stated in its decision that with the co-operation, Automatia will achieve a dominant position in the markets for cash dispenser machine services, which means that passing the benefits on to customers or consumers cannot be taken for granted. This is why the exemption was granted in a limited form compared to the application, and it contains terms and conditions that are aimed at securing both the possibility for banks other than the shareholders to join the system, and the freedom for all parties to freely choose the best possible partner for cash dispenser services. In addition, Automatia agreed to nominate an independent expert, approved by the FCA, to monitor its adherence to these conditions. The exemption remains valid until 31.5.2006.
- In May 2001, the Competition Council issued a decision concerning a contractual clause between *credit card companies and merchants accepting credit card payments*, prohibiting the merchants from charging a handling fee to the customers and from granting a discount to customers using other methods of payment. The FCA took the view that the contractual clause was a harmful restriction on competition, as specified in Section 9 of the Act on competition restrictions, and it made a submission on the matter to the Competition Council. In its own decision, the Competition Council dismissed the FCA proposal. This decision has been appealed to the Supreme Administrative Court.

■ *With industry, the objective of the FCA is to take action particularly on competition restrictions caused by the concentration of enterprises and the fact that the oligopoly structure is becoming more common. Such detrimental methods include the easier exchange of information between companies and a possibility of reaching a silent consensus. Particular attention is also paid to the effects that distribution systems have on competition and on the prevention of abuse of dominant position in, e.g., pricing and discount schemes.*

With regards to competition policy, the most significant decision concerning the industry last year was the decision issued in December by the Supreme Administrative Court in the matter of the wood purchasing cartel of the forestry companies (*Metsäliitto, Stora Enso, UPM-Kymmene*):

In its decision, the Supreme Administrative Court stated, as had the FCA and the Competition Council prior to that, that the above-mentioned companies had exercised price co-operation and allocation of sources of supply in the wood procurement markets, in violation of the Competition Act, and it imposed competition infringement fines on the companies for the offence. However, the amount of the fines, FIM 3 million, i.e. about EUR 505,000 per company, was considerably less than the fine of FIM 10 million (EUR 1.7 million) imposed by the Competition Council. During the process, the amount of the fines was reduced to one-seventh of the FIM 20 million in the original proposal by the FCA.

Industry

When determining the amount of the competition infringement fines, the Supreme Administrative Court considered as aggravating the fact that the companies had continued the prohibited exchange of information from 1993 until 1997 and the fact that such conduct had specifically been found prohibited in the exemption decision of 1994. In the opinion of the Supreme Administrative Court, this did not, however, justify exceeding the maximum of FIM 4 million in the normal scale of fines. The reduction of fines was justified on the grounds that the illegal exchange of information had, to a large extent, taken place at the initiative of, and in the presence of, the counterpart of the forestry companies, i.e. the sellers of wood raw material. The conduct was also found to have been regionally limited and it was considered to have features that the Supreme Administrative Court deemed to be beneficial to the raw wood trade.

The most significant decisions of 2001 for the food sector were the exemption decision concerning the horizontal co-operation started between egg producers, and the decision of the FCA on the matter concerning *Sucros Oy*. Descriptions of three other cases involving the sector are also given below.

- The objective of the co-operation between *egg producers* was to reduce the exported production quantities because exports were unprofitable for the producers. Approximately 80% of egg producers are members of this so-called quality production pact. In its decision, the FCA allowed the voluntary production stoppages by individual producers, but prohibited price co-operation and the exclusion of the producers from outside the pact from the marketing channels.
- The FCA considered that the sugar company *Sucros Oy* had abused its dominant position in the sugar beet purchasing market by requiring sugar beet farmers to acquire shares in the company to qualify for supplying sugar beets to the company. When the matter was investigated, it transpired that the requirement for acquiring shares was based on a so-called branch agreement between the sugar company and the farmer's union, and that the clause had been included in the agreement at the request of the union representing the farmers. During the process, the parties announced that the requirement for shareholding will be omitted from the agreement before the beginning of the 2002 growing season. Due to this fact and certain other specific features of the case, the FCA found that the matter did not warrant further action.
- The investigation on the distribution of mobile phones in the Finnish market by *Nokia Mobile Phones* ended at the Department when it transpired that the allegation of illegal conduct was without foundation. The investigation had originally been started because the FCA had received several complaints about Nokia refusing to grant the mobile phone dealership status to retailers in the business. Some wordings in the selection criteria imposed by Nokia on prospective dealers had earlier given reason to suggest that the terms and conditions of supply were in conflict with the Competition Act. The questions raised concerned, e.g., inter-trading between dealers and the requirement for minimum net sales imposed on the dealers. The case was dropped after Nokia announced that it will edit its documents to avoid further misunderstandings.
- In the case of *Ajasto Oy*, a calendar publisher, the Supreme Administrative Court upheld the view of the Competition Council that Ajasto had abused its dominant position during 1995–1997. The FIM 2 million (EUR 340,000) competition infringement fine imposed by the Council was also maintained.
- In the case of the two construction companies, *YIT-Yhtymä Oy* and *Skanska Pohjanmaa Oy*, the Supreme Administrative Court upheld the decision of the Competition Council whereby the said

companies had been guilty of operating a tender cartel in connection with the sales of the real estate assets of the bankrupt estate of *Rakennusliike Hakoranta Ky*. Earlier in the year, the Competition Council had returned this case to the FCA, having stated that the competition restriction could not be considered minor.

■ *In trade and commerce, the FCA aims to intervene particularly in cases of competition restrictions caused by an abuse of purchasing power as well as the developments and concentration of pricing and logistics operations. To ensure entry into markets for new players and products, the Department strives to influence the municipalities' policies regarding trading places and other governmental regulations, and ensures that the mutual quality control and recycling arrangements between companies do not contain unreasonable or discriminatory clauses.*

The most significant decisions concerning trade and commerce last year involved the exemption application of the *K Group* regarding resale price maintenance in connection with the restructuring of retail chain operations and the exemption application of the *S Group* regarding horizontal co-operation. A total of 16 cases were decided during the year. The procurement and logistics co-operation between different trading groups was the subject of the decisions on the exemption applications by *Inex Partners Oy* and *Finnfrost Oy*.

The exemptions concerning the daily consumer goods chains and procurement co-operation were granted with shorter validity than that applied for, and with conditions attached for ensuring that the retail business will maintain a possibility of using its own competitive tools, and of subjecting its own chain organisation to competitive tendering. The conditions are also designed to allow the suppliers to continue to sell their products by by-passing the chain organisation. Similar conditions were attached to the exemptions on the consumer durables business.

Last year, the *S Group* abided by the request of the FCA and changed its strategic objectives in such a way that the geographical operating areas of regional retail co-operatives are no longer determined by joint decisions at the Group. The change will relax the strict regional boundaries between the co-operatives which previously essentially prevented them from trading outside their own areas. The FCA took the view that such division of territories constituted a division of markets prohibited by the Competition Act. In addition, the Department did not find any grounds for allowing the arrangement through an exemption. Since the effects of the division of markets were, in practice, minor, and the strict rules of division were abolished, the FCA did not propose that the Competition Council impose a fine in the matter.

Regarding the *motor trade*, the Department has participated in the preparatory work for reforming the EC block exemption. The FCA has previously pointed out that the present motor vehicle taxation system is not neutral towards parallel importers,

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and at the moment the Department has several active complaints concerning fiscal discrimination, in connection with both parallel imports and parallel exports. Last year, the Advocate-General of the European Court of Justice also reached the same conclusion in his proposal.

Traffic and transport

The working group set up by the competition authorities of Finland, Sweden, Norway and Denmark started its work in October 2001 with the objective of preparing a report on the *air traffic markets* in the Nordic countries. The report will contain a description of both the market conditions and the operation of air carriers and other players in the field, such as Aviation Authorities and companies offering computerised booking system services. The work will be completed in May 2002.

As regards the Finnish markets for air traffic, the FCA is presently conducting an extensive investigation on *Finnair*, wherein its market position and certain features of its operations, such as the bonus scheme, are being investigated.

In its statement to the Ministry of Transport and Communications on the proposal for the Railway Act, the Act on the Finnish Rail Administration, and for amending the Act on Railway Transport, the FCA states that the basic approach of the proposal is a conservative one, implementing only the statutory changes brought about by EU legislation. The competition was only proposed to be opened for international traffic within the EU while the domestic transport of goods and persons, as well as the traffic between Finland and Russia, would remain the monopoly of the *VR Group* (formerly the Finnish State Railways). The previously presented views in favour of further opening the competition were reiterated in the statement from the FCA.

Two traffic- and transport-related proposals for imposing a fine were submitted to the Competition Council last year:

- In the submission of March 2001, the consortium formed by *Imatran ajoharjoitteluratasäätiö*, a foundation operating a training track for learner drivers, and the *driving schools association of the Lappeenranta-Imatra region* was deemed to have a dominant position in providing training track services for training in slippery road conditions in the Imatra-Lappeenranta region. The consortium was also deemed to have abused its position by starting to give private driving instructors compulsory induction training on the track for a fee. A fine of FIM 10,000 (EUR 1700) was proposed for the foundation, and a fine of FIM 30,000 (EUR 5000) was proposed for the driving schools' association.
- Another proposal, submitted in April 2001, concerned the illegal co-operation conducted by the *Kuopio taxi drivers' association* in connection with two separate tenders. The FCA proposed that a fine of FIM 15,000 (EUR 2500) be imposed on the taxi drivers taking part in the competition restraint, and a fine of FIM 15,000 on the Kuopio taxi drivers' association.

The most significant of the service sector-related matters processed in 2001 was the statement issued to the Ministry of Trade and Industry on the legislative initiative concerning the *hotel and catering business*. The statement assessed, *inter alia*, the interfaces of the legislation on alcoholic beverages, presently undergoing a reform process, and the recently reformed act on the opening hours of businesses, as well as their effects on the competitive conditions of the hotel and catering trade. In addition, the statement discussed the significance and competitive implications of the business enterprises' self-control, the control by authorities, the value-added tax and alcohol tax, the regulation of so-called takeaway sales of alcohol and the so-called grey economy.

Competing businesses in the catering trade must, in the opinion of the FCA, be treated equally. Only certain aspects associated with peace keeping, health or safety promotion, or environmental considerations may require another approach. To achieve these objectives, however, it is not necessary to maintain the special regulations related to the hotel and catering business.

The statement expressed the view that starting a business within the hotel and catering trade should also be as simple and equitable as possible. On a general level, this implies the implementation of such flexible regulations as would guarantee the unrestricted realisation of the business idea, free pricing and the freedom to choose the opening hours. The benefits of and need for regulation must be critically assessed, also taking into account the cost of regulation incurred to the enterprises and the State, as well as the benefits and disadvantages to the consumers.

Environmental objectives and environmental legislation are increasingly mentioned as a basis for restricting competition. In connection with this issue, the FCA is in the process of initiating a study of the competition policy dimensions of various environmental doctrines. The tensions between environmental issues and competition policy are manifest in, e.g., recycling systems, where openness must be ensured by prejudgement. Particular attention is paid to ensuring adequate operating conditions for importing companies.

Focus areas for investigations into environmental matters in 2001 were the issues related to the recycling system of beverage containers. The Department also has its representative in the working group studying the environmental control systems for beverage containers, set up by the Ministry of Finance in August 2001. The working group is scheduled to complete its work in October 2002.

The Service industry

Environmental issues

Merger Control

■ *The purpose of merger control is to maintain the functioning of markets by intervening with such mergers leading to either a dominant or a strengthened position, that significantly impede competition in Finland. Corporate mergers and acquisitions are assessed on the basis of their effects in Finland, and the assessment also takes into account the future development of the markets.*

The FCA issued a total of 104 decisions concerning corporate acquisitions and mergers in 2001. In five cases, the merger was approved on the basis of certain conditions. In 2000, the number of merger-related decisions was 114.

Even though the number of decisions made last year was almost the same as the year before, the total number of all corporate merger cases decreased from the previous year. The total number of new cases in 2001 was 150, compared to 184 the previous year. A total of 23 written statements were issued last year in cases other than those submitted as corporate merger notifications.

Compared to previous years, the workload in merger control has been increased due to the necessity to monitor the adherence to conditions attached to previous merger decisions, and the applications for amending such conditions.

The most important merger-related decisions of 2001 were:

The parties	The date and Diary No of the decision
Carlsberg AS/the brewery business of Orkla ASA	2.1.2001, D. No. 573/81/00
Georgia-Pacific Corporation/Fort James Corporation	30.1.2001, D. No. 830/81/2000
Finland Post Ltd/Atkos Printmail Oy	2.2.2001, D. No. 2/81/01
Metsäliitto Osuuskunta/Vapo Oy	8.3.2001, D. No. 1021/81/00
YIT Group Oyj/Calor AB	7.5.2001, D. No. 1025/81/00
Sonera Oyj/Loimaan Seudun Puhelin Oy	3.8.2001, D. No. 1202/81/00, (The decision of the Competition Council against the merger, issued on 18.12.2001, an appeal in the Supreme Administrative Court is pending)

- **Carlsberg/Orkla:** On 2.1.2001, the FCA conditionally approved the corporate merger between the Danish Carlsberg A/S and the Norwegian Orkla ASA. The main condition for approving the merger was that Orkla would dispose of the Hartwall shares in its possession and would not nominate its representative to the Board of Directors or other administrative bodies of Hartwall. The decision also included a condition, based on the undertakings given by the parties, whereby Carlsberg undertakes to ensure that Sinebrychoff does not reveal its sales data or technical information in the meetings of the Brewery Association or directly to the Brewery Association, for statistical or other purposes.

Orkla sold its shares in Hartwall during the autumn of 2001. The other conditions have also been met, either in the manner specified in the original decision, or in a manner later ordered by the FCA. The FCA has issued a statement to Carlsberg on the condition of exchange of information with the Brewery Association regarding its operations. The FCA stated that it is not appropriate to start deciding on the acceptability, from the competition aspect, of the exchange of information between competitors, possibly required by the administration of beverage container recycling and the uniform container system on the basis of the regulations governing corporate mergers. Such assessment must be carried out on the basis of the regulations of the Competition Act, not on the regulations on corporate mergers, as this better allows taking into account the overall effect of the competition restraint.

- **Georgia-Pacific/Fort James:** On 30.1.2001, the FCA conditionally approved the corporate merger whereby Fort James Corporation is merged with Georgia-Pacific Corporation. Georgia-Pacific Corporation is a U.S. multi-industry corporation that manufactures, *inter alia*, paper and so-called dispensers for sanitary products. Fort James Corporation manufactures soft tissue products and paper towels for consumers and institutions. In Finland, Fort James has production facilities in Nokia and Ikaalinen. The competitive problems caused by the merger included those caused by the arrangements between Georgia-Pacific and its main competitor on the Finnish market, *Metsä-Tissue Oyj*, which resulted in such significant ties being formed between Georgia-Pacific and Metsä-Tissue that competition between the two companies would not have been genuine. Therefore, the merger could, due to these ties, lead to the creation of a joint dominant position for Georgia-Pacific and Metsä-Tissue. Between them, the two companies have an extremely high joint market share in certain sectors of the Finnish soft tissue market, 85–100%.

The co-operation between Georgia-Pacific and Metsä-Tissue particularly concerned the product development, marketing and sales of dispensers and their related products, as well as the strategic plans for their development in the joint enterprise of Georgia-Pacific and Metsä-Tissue. The condition for approving the merger was that Georgia-Pacific Corporation abandons this co-operation with Metsä-Tissue Oyj. The result of severing these ties was the creation of conditions for genuine competition between Georgia-Pacific and Metsä-Tissue on the Finnish market.

- **Finland Post/Atkos Printmail:** On 2.2.2001, the FCA approved a corporate merger whereby Atkos Printmail Oy is transferred from the joint control of Finland Post and TietoEnator to the sole control of the Finnish Postal Service. The decision was conditional and issued without submitting the case for further proceedings. Atkos Printmail provides its customers with printing, mailing and direct marketing services. The company possesses considerable market power in printing and mailing services. In its decision, the Department states that the eLetter offered by Finland Post and the printing and mailing services offered by Atkos Printmail are similar, with the exception that the eLetter service by the Finland Post also includes the delivery of letters.

Finland Post has a monopoly in the delivery of addressed letters in Finland. In its decision, the FCA states that the merger provided Finland Post with an opportunity to use postal charges to cross-subsidise the competing elements of the eLetter service, such as printing and mailing. Using the cross-subsidy, and letter delivery conditions that possibly discriminate against the competitors of Atkos Printmail, Finland Post has the opportunity to favour Atkos Printmail at the cost of its competitors. The merger will also result in Finland Post having the possibility of using package pricing and joint marketing to make it more difficult for new players to enter the market.

The approval of the merger was granted on the condition that Finland Post would keep Atkos Printmail as a separate subsidiary and would refrain from transferring any of its present business operations to Finland Post Ltd. The decision also carries a condition whereby Finland Post agrees to offer the delivery services for products similar to the eLetter, at terms and conditions that are general,

equal, non-discriminatory and transparent, to external companies and companies within the Finland Post Group. This undertaking reduces the risk of cross-subsidy associated with the merger.

- **Metsäliitto/Vapo:** On 23.1.2001, the FCA requested that the European Commission partially transfer the Vapo/Metsäliitto merger for investigation by the FCA. The transfer request was based on Article 9 of Council Regulation (EEC) No. 4064/89 of 21.12.1989 on the control of concentrations between undertakings. The initiative for making the request came from the Commission. The FCA approved the merger on 8.3.2001, but attached conditions upon its implementation.

In the transaction, the Finnish State sold 33.3% of the shares it held in Vapo to Metsäliitto. According to the Shareholder's Agreement between the parties, Vapo became a joint enterprise under the joint control of the State and Metsäliitto, i.e. they jointly decide on its business operations.

The starting point of the Department's appraisal was the dominant position held by Vapo in the market for peat energy, as well as its operations in the market for wood-based fuels. Metsäliitto, in turn, owns Biowatti Oy, a bio-energy company with countrywide operations, specialising in wood-based fuels. The wood-based fuels are, in practice, the only form of energy competing with peat. Metsäliitto's share of the total wood fuel market of 6.4 TWh is approximately 30%, and Vapo has a share of about 20%. Wood and peat fuels are used in particular by industry as well as by district heating and electricity companies.

Had the merger been approved unconditionally, it would have resulted in the strengthening of a dominant position with restrictive effects on the peat market, and in the creation of a dominant position in the market for wood-based fuels. The key condition for approving the merger was that Vapo must, in practice, give up all wood-based fuel procurement and supply operations in Finland, outside the merged group. Metsäliitto, in turn, undertakes to cancel part of Biowatti's wood fuel supply agreements with customers outside the merged group, as well as some of the wood fuel procurement agreements with parties outside the group.

The operations divested from the concentration of enterprises will form a viable and competitive business entity with regional coverage, holding a 20–40% share of the total market for wood-based fuels. The conditions set by the FCA require that the buyer of the business operations must be independent of the merged parties and must have adequate financial and other resources. The buyer must be approved by the FCA, and an independent expert will be nominated to oversee that the conditions are met.

On 21.12.2001, the Finnish State and Metsäliitto requested that the FCA amend the conditions attached to the merger, because no interested buyer candidates had been found for the parts to be divested. Later however, on 19.3.2002, the parties announced that they had signed a new Letter of Understanding concerning the sale of shares in Vapo, with the effect that the transaction that was the subject of the decision by the FCA was annulled.

- **YIT/Calor:** On 7.5.2001, the FCA approved a merger whereby the YIT Corporation acquired the entire share capital of the Swedish company Calor AB. Both YIT and *Kalmeri Oy*, the Finnish subsidiary of Calor, offer pipeline installation and maintenance services for the process and energy industry. The merger was approved in its proposed form after further proceedings.

FCA's investigations particularly focused on the competitive situation in the markets for large industrial pipeline installations worth several million Finnish marks, because some of the players in the market had disclosed to the Department that the merged company would attain an extremely strong position in the market for large industrial pipeline contracts. The investigations found that, despite the considerable market share of the concentration and its other competitive advantages, enough competing alternatives were still available in the market so that the concentration could not be considered to achieve such a dominant position as would substantially restrict competi-

tion. It was found that the competitors of the concentration had, after the merger, won large contracts that had been the subject of major expected threats to competition regarding the merger. Splitting contracts down to smaller parts had also made more alternatives available to the buyers. Due e.g. to these factors, the FCA took the view that the merger did not create or strengthen a dominant position as stipulated in the Competition Act.

- **Sonera/Loimaan Seudun Puhelin/Turun Puhelin:** On 16.2.2001, Sonera Corporation notified the FCA of a corporate acquisition whereby it acquired, through a directed emission, 16.67% of the shares and voting rights in the Loimaa regional telephone company, Loimaan Seudun Puhelin Oy (LSP). This results in factual control of LSP because the remainder of its ownership is otherwise totally scattered into small shareholdings. The transaction was conditional to LSP first having bought 33% of the shares in the Turku telephone company, Turun Puhelin (TP), from the City of Turku. This was a total transaction whereby LSP acquired the control of TP, and Sonera acquired the control of LSP.

The acquired party, LSP, is a telephone company operating within 11 municipalities, owned by some 11,500 holders of a subscriber line. TP is a telecom group with local operations in many of the key sectors of the electronic communications business. In their respective operating areas, both LSP and TP have possessed considerable market power in the markets for the rental of telecom copper lines, the local trunk network and cable television network, and the local telecom services provided to both private customers and the small- and medium-sized companies. The concentration of both the subscriber line networks and the cable television networks into the hands of Sonera's corporate conglomerate, which at the same time is dominating the markets, will add to its market power. In addition, both LSP and TP have been operating as the key distribution channels for the products of some of Sonera's competitors.

The key conditions for approving the transaction were that LSP and TP give up most of the mobile telephony infrastructure they had earlier been leasing to Sonera's competitors and that Sonera sells the fixed area network that it had constructed in the Turku region. In addition, TP agreed to sell one of its regional telecom centres and to lease part of its cable television network capacity to its competitors. Certain other conditions were also imposed on the parties with regard to their behaviour in relation to the provision of fixed and mobile network infrastructure and the distribution of certain products. An independent expert, approved by the FCA, was nominated to oversee that the conditions are met.

The FCA is of the opinion that, without the said conditions, the merger would have led to the creation or strengthening of a dominant position significantly impeding competition, at least in the areas of leasing the equipment required for the maintenance of the network subscriber line, the trunk network and cable television and mobile phone networks locally and the markets of the mobile telephony services nationally. Without the conditions, the merger would, in practice, have led to a situation where one corporate conglomerate would, in the operating areas of LSP and TP, have had simultaneous control of the infrastructures of both the competing fixed network and the mobile network.

The decision of the FCA was appealed at the Competition Council. The appellants were the local telephone companies *Lännen Puhelin Oy* and *Salon Seudun Puhelin Oy*, the network operator *Suomen 2 G Oy* and *DNA Finland Oy*, a mobile operator competing with Sonera Corporation. In its decision of 18.12.2001, the Competition Council took the view that the two latter companies had the right of appeal concerning the decision of the FCA. The Competition Council annulled the FCA decision and banned the merger. With the exception of *Suomen 2 G Oy* and *DNA Finland Oy*, all parties have appealed the case to the Supreme Administrative Court.

” *The Competition Council disallowed – on the basis of petitions by the competitors – a merger that had been conditionally approved by the FCA.*

Several merger decisions, and statements to the parties of the mergers, issued last year, expressed views of interpretation regarding the merger regulations. The main interpretation problems were caused by the two-year rule applied to mergers involving companies within the same line of business, which has now taken full effect as the merger control regulations have been in force for more than two years. New situations calling for interpretation will keep emerging in practical merger cases.

- *The two-year rule and Joint Venture as the party acquiring control*⁶ (548/80/01): The request for a statement, addressed to the FCA, concerned an arrangement where a Joint Venture (JV) acquired a company (Subject) operating in the same line of business. The JV itself had been the Subject of a corporate merger during the two previous years, with the result that an Investor had now become a co-owner in the JV with the Private Individual that had previously been the sole owner, so that the Investor and the Private Individual now jointly controlled the JV.

The FCA was requested to comment on whether the formation of the Joint venture, i.e. the transformation of sole control into joint control, could be construed as such earlier corporate acquisition by the acquiring party as would require that the turnover of the JV, or half of it, should be added to the turnover of the new Subject under Article 11 b, Paragraph 5 of the Competition Act.

According to Article 11 b, Paragraph 5 of the Act, when calculating the turnover of the Subject of an acquisition, it will be supplemented with the turnovers of all the companies or trusts operating in Finland and in the same line of business, that the acquiring party had acquired control of during the two years preceding the acquisition of the Subject. According to the earlier case history of the FCA, it is not necessary that the acquiring party in all the transactions that are being taken into account under the two-year rule is the same juridical person. For example, in the case of *Hafab/Muovi 90* (9.3.1999, D. No. 66/81/99), the turnover of the Subject of the acquisition, Muovi 90, was added together with the turnover of the acquiring party itself, i.e. Hafab, because the *Pipelife Group* had acquired the sole control of Hafab during the preceding two years. Therefore, the two-year rule cannot be circumvented by first having the parent company in the role of the acquiring party, followed by one of its subsidiaries.

The matter concerning the JV was about whether the above principle should be applied to the acquisition of the Subject. The FCA statement expressed the view that this firstly depends on whether the JV was within the same economic control, in the sense that its acquisition of the Subject can equally be seen as an acquisition by the Private Individual and the Investor on the basis of economic facts. Secondly, the statement also discussed the juridical nature of the merger resulting in the changed circumstances of control in the JV.

According to a memorandum issued by the FCA on merger control, in situations where the party acquiring control is a Joint Venture in charge of all business operations that are typical of independent financial units, and already established in the market, the parties in a merger are normally the JV and the acquired subject. On the other hand, in situations where the facts, such as the shareholders' substantial participation in initiating, arranging or financing the transaction, point to the JV being used as a tool for a corporate acquisition by the parent company, the parent companies can be considered as the true parties of the transaction (see also the Commission Report on the concept of companies taking part in a concentration of companies, Point 28). In

⁶ For applying the 2-year rule in situations where the turnover of companies acquired by a shareholder of a Joint Venture company, in the same line of business, are added to the turnover of a Subject acquired by the Joint Venture, see the FCA Yearbook 2000, p. 74.

these cases, the turnover of the Subject of the acquisition is calculated together with the turnover of the company, using the joint control pro-rata to its control in the JV.

The report obtained by the FCA suggested that the JV had the necessary financial and other resources to carry out business operations independently, and that the acquisition of the Subject took place at the initiative and in the interest of the Subject. The turnover of the JV was tens of times larger than the turnover of the Subject, so that the JV could not be considered dependant on, e.g., the financial support of the shareholders. The JV could, therefore, be considered the true party acquiring the Subject.

Regarding the nature of the merger concerning the acquisition of control in the JV, the FCA stated that the transformation of the sole control by the Private Individual into a joint control by the Private Individual and the Investor could not be considered similar to the arrangement implemented in the case of Hafab/Muovi 90 described above. The situation with respect to applying the two-year rule would have been different if the Private Individual and the Investor had jointly acquired control in the JV, in which case the later implemented joint acquisition of control would, for the purpose of applying the two-year rule, be treated in the same manner as the acquisition by the JV. In the latter case, the turnover of the JV would be added to the turnover of the newly acquired Subject in the same manner as in the case of Hafab/Muovi 90.

In its statement, the FCA took the view that the turnover of JV should not be added to the turnover of the Subject on the basis of the two-year rule. Therefore, there was no need to report the merger to the FCA.

- *The two-year rule and a non-independent JV as the Subject of an earlier acquisition (571/80/01)*: The party acquiring control had, during the two years preceding the new transaction, acquired joint control of the company. The JV only produced services for one of its two major shareholders, which is why it could not be considered as an operationally independent Joint Venture company as defined in Article 11, Paragraph 1(4) of the Competition Act. The FCA took the view that when calculating the turnover in accordance with the two-year rule, only corporate acquisitions and mergers that can be considered as corporate acquisitions or mergers, in the meaning of the regulations governing mergers, will be taken into account. The turnover of the non-independent JV was, therefore, not added to the turnover of the subject of the new merger.
- *The date used in determining the turnover of the previously acquired Subject (Decision 15.6.2001, D. No. 454/81/01)*: In 2001, *Atkos Oy* acquired *Postlink Oy*, a company in the same line of business. *Atkos* had itself been transferred from the joint control of *Finland Post* and *TietoEnator* into the sole control of *Finland Post*. According to Article 11 b, Paragraph 5 of the Competition Act, the turnover of the subject of the acquisition, *Postlink*, was calculated together with the turnover of *Atkos* during the financial year for which the latest audited Final Accounts were available, on the date the merger was implemented. On this basis, the 1999 turnover of *Atkos* was added to the turnover of *Postlink*.
- *The two-year rule and a public bid (1058/80/01)*: The request for statement included a question about the date, which would be decisive when determining whether the turnover of a company acquired earlier through a public bid should be added to the turnover of the subject of a new acquisition. The possible alternative dates are, for example, the date the bid was announced, the date that the majority shareholding was acquired, the date the bid expired, or the date when the Subject of the acquisition was taken over. In its statement, the Department stated that the deciding date is the date of making the bid, in accordance with Article 6, Paragraph 2 of the Securities Markets Act. The opinion was analogical to the Implementing Provision of the merger regulations. According to the Provision, merger control is applicable to mergers implemented after the Act has come into force. The grounds for the Implementing Provision (HE 243/97) state that the

implementation of a merger refers to a date specified in Article 11 c, Paragraph 1 of the Act, and this date of implementation is the date from which the period for notifying the merger is calculated.

- *Foreign enterprises and the two-year rule* (284/81/01): In a corporate merger, the parent company of the company making the acquisition had been the subject of an acquisition during the preceding two years. In the request for a statement, the FCA was asked whether the turnover of the Group of the parent company that had been the subject of the earlier acquisition should be added to the turnover of the subject company that was operating in the same line of business, or merely the turnover of the Group of companies operating in Finland.

In its statement, the Department found that, according to the wording of Article 11 b, Paragraph 5 of the Competition Act, only the turnovers of the previously acquired subsidiaries operating in *Finland* were added to the turnover of the subject. Thus, the turnovers of the parent company's subsidiaries operating in other countries were not added to the turnover of the company. However, the turnover accrued abroad will be added, for example, in situations where a previously acquired subsidiary, operating in Finland, had business operations abroad that were not organised into an independent registered company domiciled abroad (see also FCA Decision of 16.6.2001, D. No. 194/81/01, *Lohja Rudus/VV-Pumppaus*).

A frequently encountered interpretation problem related to merger regulations concerns the relation between merger control and the company's outsourcing of business functions.

- *Outsourcing was considered a transfer of business* (Decision of 22.2.2001, D. No. 1204/81/00, *TietoEnator/Rautaruukki*): TietoEnator acquired the entire IT business of the Rautaruukki Group. The acquired business included the operating services produced by the transferred business, most of the development and maintenance services of data systems, the capital assets, service agreements, and approximately 150 employees. Notwithstanding the fact that the operations transferred to TietoEnator through the transaction were largely committed to Rautaruukki's requirements for several years, the FCA took the view that this was a case of a transfer of business resulting in such structural market changes that it should be notified to the Department. This view was especially influenced by the fact that the transferred resources could also be used to serve other customers, not only Rautaruukki. This was also indirectly evidenced by the ancillary restraint attached to the transaction whereby the parties had agreed on Rautaruukki's minimum purchasing obligation, which was reducing year by year.
- *Outsourcing did not lead to a structural change* (514/80/01): The heat generation of a factory was outsourced by a heat supply agreement whereby the factory leased the boiler plant used for heat generation, and the land where it was located, to the power generating company.

In its statement, the FCA took the view that this arrangement did not constitute a transfer of business of which it should be notified. This assessment was influenced by the fact that the arrangement did not involve transferring customers, other than the factory itself, to the power generating company, the fact that the minor supplies of heat to the few other companies within the factory perimeter were still handled by the factory itself, and the fact that the transferred heat generating capacity was not sufficient for supplying energy outside the factory perimeter. Connecting the factory's heat generating plant to an external district heating network would not have been economically viable. The power generating company could not sell heat or energy to customers other than the outsourcing factory. The arrangement did not lead to a structural change in the market which is why the obligation to notify the Department did not arise.

**Matters processed in merger control during 2001
(figures for the previous year in brackets):**

Total no of decisions 11–31.12.01	Pending notifications 31.12.01	Pending prenotifications 31.12.01	Lapsed prenotifications	Other closed matters
104 (114)	8 (9)	5 (10)	21 (27)	23 (35)

**Decisions issued on mergers during 2001 by type of decision
(figures for the previous year in brackets):**

• Proposal for banning the merger	0	(1)
• Approved conditionally	5	(5)
• Approved as applied during Stage II	1	(1)
• Approved as applied during Stage I	98	(103)
• The transaction not caught by the scope of the Act	0	(0)

**The nationality of the parties in the merger decisions of 2001
(figures for the previous year in brackets):**

• All parties Finnish	41	(49)
• All parties foreign	31	(40)
• At least one foreign party	32	(25)

**Procedural decisions in 2001
(figures for the previous year in brackets):**

• Derogation from implementation ban	4	(6)
• Substantially incomplete notification	1	(5)

International Affairs

EU affairs

The majority of international affairs dealt with by the FCA are related to the EU. Of the over 600 international matters that were entered for processing last year, only 2% were non-EU-related.

The number of EU-related matters entered for processing:	1999	2000	2001
Articles 81 and 82	264	168	207
Merger control	295	350	342
Preparatory work for EC Regulations	6	3	5
Expert meetings	8	18	18
Matters related to the European Court of Justice	20	33	16
Total	593	572	588

What was exceptional was the fact that the number of cases related to Articles 81–82 started increasing last year after a long time. Since the new block exemptions have reduced the number of notifications, the increase in the number of cases is probably due to an increase in the number of complaints lodged with the Commission.

In 2001, Finnish companies were involved with the mergers of, e.g., *Metso/Svedala*, *SCA/Metsä Tissue*, *Metsäliitto/Vapo* and *UPM-Kymmene/Haindl*. In June 2001, the Commission also approved a merger whereby *Télédiffusion de France* (TDF) acquired control of the Finnish company *Digita*. The transaction is related to the follow-up in the *Sonera/Digita* case that was processed in Finland.

With regard to Finnish companies, in 2001 the FCA took part in a Commission case concerning alleged bank cartels. The Commission suspected that, among others, Finnish banks had operated a price cartel in currency exchange services. The case was concluded in May 2001 when the Commission announced that it had cleared the Finnish banks of the said allegations.

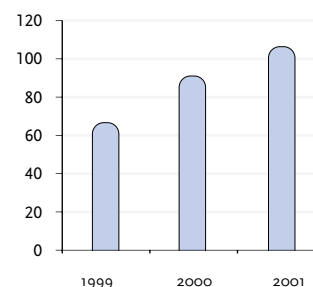
In the financial sector, the Commission granted a negative clearance to an arrangement by which retailers are prohibited from charging a separate fee for credit card payments. However, the FCA has taken the view that, at least in the Finnish market, prohibiting the separate charge can be considered a harmful competition restraint. The case is presently pending a decision of the Supreme Administrative Court⁷.

⁷ For further details, see p. 25.

The number of meetings related to EU affairs has almost doubled in three years. 2001 was the first year when the number of meetings exceeded 100 (106). This development is partly due to the new regulatory incentives of the Commission, and partly to the fact that more and more transactions within the scope of the Merger Regulation are subjected to detailed, i.e. second-stage, processing. The project for modernising the EC competition rules was in itself responsible for 20 days of meetings last year. The modernisation project, including the preparatory work for meetings and reports, took more than two person-months worth of FCA working hours.

The Commission has started to hear the Member States more and more even in matters that are not necessarily related to individual cases, but rather to establishing the competitive conditions of a certain industry. In 2001, such workshop meetings were organised in connection with the liquid fuel markets, the telecom industry and sports-related markets.

Number of EU-meetings 1999–2001



Number of EU meetings:	1999	2000	2001
Hearings	19	31	27
Advisory Committees	27	38	42
Preparation of EU regulations (excl. the Council)	13	16	15
Meetings of Director-Generals	2	2	2
The European Council of Ministers	8	4	20
Total	67	91	106

Other international co-operation

- The *Nordic* competition authorities have, during the previous years, discussed the possibility of exchanging confidential information between the competition authorities of the said countries. Iceland, Norway and Denmark signed an agreement on this in early 2001. Because joining the agreement would have required changes in the Finnish legislation, it was agreed that co-operation with Finland will be enhanced through the existing co-operation agreement between the authorities.

The annual meeting of the Nordic competition authorities was held in autumn 2001 in Skagen, Denmark. Following the incentive by the FCA, the main topic of the meeting was market definition in the New Economy. Other topics included banking and the optimal sanctions against competition restraints. The FCA also took part in the working group studying the measurement of competition intensity on the Nordic markets, which concluded in autumn 2001.

- The on-going co-operation of over 10 years' standing with *Eesti Konkurentsiamet*, the Estonian Competition Board, intensified after Estonia applied for EU membership. Technical assistance has been provided in accordance with the programme jointly drawn up by the two countries' competition authorities and using the funds allocated by the Ministry of Trade and Industry. Three seminars and two training periods were implemented last year under the co-operation scheme. The topics of the seminars included the stocks and securities markets, particular problems in agriculture, and the networking trend of the economy. In addition, *the Workshop on Market Definition* seminar held in Helsinki in October 2001 had ten Estonian participants. The Estonian Competition Act was amended to comply with EU requirements on 1.10.2001.
- The co-operation between the FCA and the competition authority of *the Russian Federation* is based on the co-operation agreement signed in 1994 between the FCA and the State Commission of the Federation, in favour of anti-monopolistic policies and new economic structures. Every year, the competition authorities of both countries draw up a detailed plan as the basis for co-operation. In 2001, the co-operation consisted of a trip to Finland by the Russian representatives and a trip to Russia by the Finnish representatives.
- Matti Purasjoki, the Director General of the FCA, acts as the Vice Chairman of the *OECD Competition Committee*. For the February 2001 meeting, the FCA prepared a report on technical assistance to countries still in the process of developing their competition policy, such as Estonia and Russia. A report on the connection between public subsidy and the markets was also prepared for the same meeting. For the June 2001 meeting, the Department prepared a report on the telecom industry. For the October 2001 meeting, the Department prepared reports on the portfolio effects of mergers and on the co-operation between authorities on cartels. In addition, the representatives of the FCA attended as experts the competition policy seminars organised by the OECD last year in Tallinn and Moscow.
- The participation of the FCA in the competition-related matters handled by the *WTO* and *Unctad* is limited, in practice, to issuing statements to the Ministry of Trade and Industry (on *WTO* matters) and to the Ministry of Foreign Affairs (on *Unctad* matters).

Communications

The objective of the external communications of the FCA is to increase knowledge on the significance of viable competition among companies, public sector decision-makers, the media, citizens, and other interest groups of the Department. The communications is thus aimed to support the objectives of the Department. The objective is to convey the significance of competition to the economy, and the competition policy-related grounds for individual decisions, to all interest groups using the different methods of communication. The aim is to ensure that the business community is familiar with the contents of national and EU competition regulations and has the ability to weigh the competition aspect when planning its business operations.

The FCA offers information on its activities e.g. on its Website at www.kilpailuvirasto.fi where all its decisions are available. In addition to this, it issues out a news bulletin called *Kilpailuviraston uutisia* five times a year, and a host of other publications. The department also regularly organises seminars as well as information and discussion meetings for representatives of different interest groups. The FCA also seeks to participate in the scientific debate on competition and to otherwise develop its contacts with the research institutions in the field. In 2001, the representatives of the Department presented competition-related papers at approximately 40 seminars and training events outside the Department.

The image of the FCA was surveyed last year in a world-wide comparison of competition authorities carried out by the British journal *Global Competition Review*, where economists and lawyers rated the authorities of 25 different countries. Finland was rated fifth in the comparison. The USA was first, the previous year's winner Germany was second, Italy was third and Australia fourth.

In the comparison, Finland scored the maximum of five points for confidentiality and four points for processing and conducting merger cases. Adherence to deadlines and, particularly, deciding the majority of cases at Stage I were considered to be the assets of Finnish merger control. The attitude of merger control was also considered flexible, and the preliminary advice provided excellent.

The experts taking part in the survey also pointed out that the decision-making of the FCA has become more transparent. The fact that most decisions can be seen on the Department's Internet site was considered particularly laudable. There was also general satisfaction in the processing of cartel cases, despite a slight decline in this sense from the previous year. The survey also commended the independence of the Department, and its Director General was particularly applauded for increasing the public's awareness of the FCA.



Jaana Hautala

On Competition-related Tests Used in Merger Control

– Comments on the debate initiated by the Green Paper

Introduction

The Commission has initiated a debate on competition-related tests with the Green Paper⁸ on reviewing the control on concentrations between undertakings. The objective is to discuss the merits of the dominance test, applied by the Commission and based on the concept of dominant position, and of the SLC (substantial lessening of competition)⁹ test, applied, *inter alia*, in US merger control and based on the measuring of lessening of competition. In the Green Paper the Commission states that, particularly in view of the increasingly international scope of merger activity, the time is right for initiating a comprehensive debate. At the same time, the Commission also concludes that experience in applying the dominance test has not revealed major loopholes in the scope of the test, nor has it frequently led to different results from the SLC test.¹⁰ With reference to the debate initiative, a few comments are presented below on the structure of the tests, the appraisal criteria used in them, and the suitability of the tests for appraising certain types of effects on competition. In this paper the SLC test has been discussed from the point of the US merger control.

On the structure of the tests and the history of the structure

The dominance test applied in the merger control by the EU is included in Council Regulation 4064/89¹¹ on the control of concentrations between undertakings (hereinafter Merger Regulation). According to Article 2(3) of the Merger Regulation, a

8 Green Paper on the Review of Council Regulation (EEC) No. 4064/89. COM (2001) 745 final. Commission of the European Communities. Brussels.

9 In addition to the USA, the test is in use in, i.a., Canada and Australia. Ireland and the United Kingdom intend to change their current tests for SLC test.

10 See *supra* note 1, p. 39–40.

11 Council Regulation (EEC) No. 4064/89 of 21 December 1989 on the control of concentrations between undertakings OJ L 395, 30.12.1989, p. 1; corrigendum in OJ L 257, 21.9.1990, p. 13; the Regulation as last amended by Council Regulation (EC) No. 1310/97 (OJ L 180, 9.7.1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17).

concentration will be prohibited, if it "... creates or strengthens a dominant position as result of which effective competition would be significantly impeded...".¹² The prerequisite, then, for interfering with a business acquisition is the creation or strengthening of a dominant position that fulfils certain criteria. However, the concept of dominant position was not included in the first proposals for the Merger Regulation; instead, it was constructed in the Merger Regulation at a rather late stage, in the April 1988 proposal.¹³

The test according to the 1973 proposal,¹⁴ which also remained unaltered in the 1981 and 1984 proposals,¹⁵ was based on acquiring or enhancing the power to hinder effective competition. In the April 1988 proposal for the Merger Regulation, a concentration was deemed incompatible with the common market if it resulted in giving rise to or strengthening of a dominant position. However, the concept of dominant position was at that time not coupled with the criterion of significant impediment of effective competition. The November 1988 proposal¹⁶ did not mention the concept of dominant position, but the proposal made reference to creating or strengthening a position as a result of which the maintenance or development of effective competition would be impeded. We can therefore say that the wording of the competition test in the final Merger Regulation combines the wordings of the 1988 proposals.

The Commission's earlier reports on competition very clearly illustrate the evolution of the Merger Regulation. The

creation of the Merger Regulation was affected *inter alia* by factors associated with the completion of the internal market, the restructuring process of the European industry and securing the benefits brought by the common market.¹⁷ In addition, certain judgements by the European Court of Justice contributed to the creation of the Merger Regulation.¹⁸

The SLC test applied in merger control in the USA is included in Section 7 of the 1914 Clayton Act¹⁹. According to the said Section, a merger will be prohibited if it "...substantially lessens competition, or to tend to create a monopoly".²⁰ In practice, only substantial lessening of competition is mentioned in connection with the test. The original wording of the law seemed to infer that only acquisitions of shares between competitors would be prohibited if they would substantially lessen the competition. In 1950, the law was amended to cover the acquisition of business assets.²¹ In addition, the law was amended so that it would be clear that it could also be applied to such vertical and conglomerate mergers as would result in substantial lessening of competition. The changes were affected by the concerns of the Congress about the increase of concentrations in the USA. The intention was that mergers and acquisitions could be interfered with at a stage where the lessening of competition was at an early stage. The legislative history of Section 7 of the Clayton Act, and the evolution of the wording of the test, has been exhaustively discussed in, *inter alia*, the US Supreme Court decision in the matter *Brown Shoe Co. v. United States*²².

12 According to the wording of Article 2(3) of the Merger Regulation, "A concentration which creates or strengthens a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it shall be declared incompatible with the common market." (emphasis added)

13 See Amended proposal for a Council Regulation (EEC) on the control of concentrations between undertakings. COM (88) 97 final. OJ C 130, 19.5.1988, p. 6.

14 See Proposition de règlement (CEE) du Conseil sur le contrôle des concentrations, OJ C 92, 31.10.1973, p. 2.

15 See Amended proposal for a Council Regulation on the control of concentrations between undertakings, OJ C 36, 12.2.1982, p. 5 and Amendment to the proposal for a Council Regulation on the control of concentrations between undertakings. COM(84) 59 final. OJ C 51, 23.2.1984, p. 8.

16 See Amended proposal for a Council Regulation (EEC) on the control of concentrations between undertakings. COM(88) 734 final – revised version, OJ C 22, 28.1.1989, p. 16.

17 See, e.g., the Nineteenth Report on Competition (1990), p. 33–34.

18 See, e.g., the *Continental Can v Commission* (Case No. 6/72) and *United Brands v Commission* (Case No. 27/76) cases.

19 15 U.S.C. § 18. Clayton Act (38 Stat. 730 et seq.).

20 According to Section 7 of the Clayton Act: "No person in commerce or in an activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." [15 U.S.C. § 18] (emphasis added)

21 Cellar-Kefauver Act, December 29, 1950.

22 *Brown Shoe Co v. U.S.*, 370 U.S. 294 (1962).

When studying the wording of the tests, it is probably fair to say that the creation or strengthening of a dominant position can be considered as a sub-concept of lessening of competition: competition is reduced to such a substantial extent that the said market position is created. Therefore, the inherent scope of the SLC test exceeds that of the dominance test. Introducing counteracting factors into the test criteria therefore seems a natural solution. Due to its wording, the SLC test can also be considered to be a very flexible test for measuring the effects on competition. Reduced competition indicated by the test may, in addition to price competition, also apply to lessening future competition or competition on innovation.

A single dominant position can be deemed to be the starting point for appraisals, according to the dominance test. If such a position is not created or strengthened, an appraisal as to whether the concentration would lead to the creation or strengthening of a joint dominant position is carried out. Another approach is applied in the SLC test. The test is primarily used to assess the concentration of markets. The starting point is the coordinated use of market power. However, in certain cases concentration may even lead to the unilateral use of market power. The dominance test can therefore be said to be biased towards determining the market position of the concentration whereas the appraisal by the SLC test can be deemed to take into account the competitive market situation as a whole.

The basic starting points for applying the tests

In spite of different historical starting points and differences in procedures, one can nevertheless say that both tests make the assumption that a certain degree of market

power will have a negative effect on competition. This is mainly due to the fact that the same basic postulates of economic theory on the effects of concentration of markets on competition lie behind both tests.

As such, neither test defines the dominant market position or substantial lessening of competition to be regulated; support for interpretation must be sought from outside the tests. At the time of the adoption of the Merger Regulation the concept of dominant market position was already defined in the cases specified in Article 82 of the EC Treaty. Dominant position was defined as the possibility to behave to an appreciable extent independently of other market players, and to have a substantial effect on the market forces, thereby preventing the maintenance of effective competition in the relevant markets.²³ Therefore, dominant position can, when studying the matter from a structural point of view, be defined as control of price level.²⁴ With the SLC test, the market power to be regulated has been defined, *inter alia*, in the application guidelines on merger control. For example, in the 1992 Horizontal Merger Guidelines²⁵, market power is seen as an ability to keep the price of the offered product above the so-called competitive price level for a sufficient time. In turn, the buyer's market power is illustrated as an ability to keep the price of the purchased product below the said level.

Market power has therefore been defined as an ability to behave in a manner independent of other market players. In practice, independent behaviour is expected to be reflected primarily in pricing.

The criteria used in the tests

In its Green Paper, the Commission has stated that there are many similarities between the dominance test and the

²³ See i.a. the decisions by the European Court of Justice in the *United Brands v Commission* (Case No. 27/76), *Hoffman-La Roche v Commission* (Case No 85/76) and *Michelin v Commission* (Case No 322/81) cases.

²⁴ See Martti Virtanen: An Eclectic Theory and Analyses of Policy Evolution. Publications of the Turku School of Economics and Business Administration, Series A-1:1998, i.a. p. 315–320, where dominant position has been studied from the structural viewpoint and from the viewpoint of competitive advantage associated with the dynamic market process, as well as from the viewpoint of strategic behaviour and systematic approach, and finally all these approaches have been combined as an eclectic point of view.

²⁵ 1992 Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission. Issued April 2, 1992. Revised April 8, 1997.

SLC test. Both tests include the definition of relevant markets and an appraisal of how the proposed concentration would affect the market, and the kind of competitive pressures to which the concentration is subjected.²⁶

Therefore, both tests compare the potential market power of the concentration to the competitive constraints or counteracting factors. As a result, the criteria used in the test are very similar. The effects of the concentration on competition are assessed by studying, *inter alia*, the market shares of the parties to the merger, the level of concentration in the market, the market position of competitors, the structure of the markets, and the potential competition and barriers to entry.

For the dominance test, the factors to be taken into account in appraising the competitive effects of the concentration are shown in Articles 2(1)(a) and 2(1)(b) of the Merger Regulation. The so-called four-step analysis mentioned in the 1992 Commission Report on Competition Policy²⁷, taking the market position of the concentration as the starting point, can be considered as the framework of the appraisal. In assessing the market position, the first assumption of market power is brought about by a large market share. This assumption is either made stronger or weaker by the existence or absence of possible company- or industry-specific competitive advantages. Competitive advantages may include strong financial position, capacity, resources, vertical integration, product portfolio and technological expertise. The market position of the concentration is then compared with the factors constraining the possible market power, such as the position of competitors, the purchasing power of customers, and potential competition. The assessment of entry barriers is also relevant to the last item. As far as the

dominance test is concerned, one must bear in mind that it is based on the concepts of dominant position and significant impediment of effective competition. Therefore, only dominant positions of a certain type can be seen to have negative effects on competition. Such positions are most likely to be created in situations where the concentration has very wide-ranging or long-lasting effects on competition.

For the SLC test, the factors to be taken into account in appraising mergers have been discussed, *inter alia*, in the 1992 Horizontal Merger Guidelines. The starting point is the concentration of markets and the increasing trend of concentration, which is measured using the so-called Herfindahl-Hirschman Index (HHI). Mergers where certain HHI values are exceeded give rise to an assumption of the existence of possible competition-inhibiting factors.²⁸ Also other factors that characterise the market are relevant in giving rise to this assumption. The competition-inhibiting factors may manifest themselves as co-ordinated interaction between the companies or as unilateral effects of the concentration. The assumption created by the HHI is compared to the so-called counteracting factors, which include entry into market, efficiency considerations and the situation of a company in financial difficulties, i.e. the so-called failing firm scenario. The consideration for entering the market is whether it can be deemed timely, likely and sufficient enough to deter or to counteract the possible threats to competition. When assessing the efficiency factors, the considerations are whether they materialise with the required probability, are they significant, and is forming the concentration the only means of achieving them. The failing firm scenario, a factor counteracting the adverse effects on competition, can be

²⁶ See *supra* note 1, p. 39.

²⁷ XXIIInd Report on Competition Policy 1992, p. 138.

²⁸ Doubts about the existence of factors preventing competition are raised, if HHI is between 1000 and 1800 and the increase of concentration exceeds 100, or if HHI is over 1800 and the increase of concentration exceeds 50. The HHI is calculated by summing the squares of the market shares of companies. For practical calculations it is sufficient to include only the market shares of the major companies. The market shares of small companies are of little significance when measuring the concentration of markets. See *supra* note 18, p. 15. The limit values are based on the assumption that the markets are concentrated if $CR_4 > 75$.

created when the possibilities for a restructuring in accordance with Chapter 11 of the US Bankruptcy Act²⁹ are limited, when there is no buyer candidate that would lead to lesser limitation of competition, or the assets of the targets would otherwise exit the relevant markets. The 1992 Horizontal Merger Guidelines are supplemented by the 1984 Merger Guidelines³⁰, which clarify certain factors to be taken into account when assessing the effects on competition brought about by vertical and conglomerate mergers.

Another comment to be added for the said criteria used in the tests is that, with both tests, the criteria are tools for establishing whether a certain amount of market power – a dominant position when the dominance test is concerned – is created as a result of the merger, or whether using the market power becomes easier.

On applying the tests

The Commission has stated in its Green Paper that the SLC test has been argued to better correspond to analysis based on scientific economics. It has further been argued that the SLC test is a more flexible test than the dominance test for controlling mergers, and that it would be better suited to monitoring the rate of increase of concentration in the markets. The Commission gives as an example a situation where the *second- and third-largest companies* in the market, both having a product range that would pass as a close substitute for the other's, merge without the merged entity becoming the market leader in a dominant

position. In such a situation, the lessening of competition could perhaps be easily determined using the SLC test, whereas applying the dominance test would normally require that a dominant position is created between the concentration and the market leader.³¹

In a Discussion Paper³² published by the German competition authority, the Bundeskartellamt, the tests have also been compared with respect to appraising joint dominant positions, vertical effects and conglomerate effects. These situations are briefly discussed below.

Applying the dominance test in situations where the markets are jointly dominated by two or more companies always requires that a dominant position is constructed, i.e. it must be shown that a dominant position, in accordance with Article 2(3) of the Merger Regulation, is created as a result of the merger.³³ Conversely, when the SLC test is applied, it is sufficient to prove the probability of co-ordinated behaviour. Therefore, one can probably say about the SLC test that it is a more flexible tool than the dominance test for interfering with, e.g., a succession of mergers where the risk of co-ordination only exists in its early stages, but which, when materialising, would finally lead to the creation of a competition-inhibiting market structure. However, no significant differences are seen between the tests when studying cases of interfering with mergers that would have significantly increased the possibilities of co-ordination.³⁴

The characteristic features of a joint dominant position are very similar with both tests. The assumption that companies are aware of each others' actions and recognise their inter-dependency can be taken as the basis.³⁵ Co-

29 11 U.S.C. §§ 1101–1174 (1988).

30 1984 Merger Guidelines, U.S. Department of Justice. Revised and reissued 14 June, 1984.

31 See *supra* note 1, p. 39.

32 Bundeskartellamt. Prohibition Criteria in Merger Control – Dominant Position versus Substantial Lessening of Competition. Discussion Paper, 2001.

33 See, e.g. the Commission decisions in the *Nestlé/Perrier* (Case No. IV/M.190), *Gencor/Lonrho* (Case No. IV/M.619) and *Airtours/FirstChoice* (Case No. IV/M.1524) cases, as well as the decision by the European Court of Justice in the *Kali und Salz* (Joined Cases C–68/94 and C–30/95) case and the ruling by a Court of First Instance in the *Gencor v Commission* case (Case No. T–102/96).

34 OECD Journal of Competition Law and Policy. Vol. 3, No. 3, 2001. Executive Summary by the Secretariat, p. 142.

35 Each company must take into account the actions of its competitors and the counter-measures that would probably result. OECD Journal of Competition Law and Policy, Vol. 3, No. 3, 2001. Background Note by Gary Hewitt, p. 144.

ordination must also be profitable, and the companies must be able to detect and punish a deviation from the uniform behaviour. In both tests, the presence of the basic starting points is assessed using the same criteria. With both tests, issues such as homogenous product ranges, symmetry of market shares and transparency of markets can be deemed as factors increasing the probability of co-ordinating behaviour³⁶. Further factors increasing the probability of co-ordination are concentrated markets, considerable barriers to entry or expanding operations in the market, significant economies-of-scale and sunk costs, lack of customers' purchasing power, multi-market contacts between leading companies (product-specific or geographically defined markets)³⁷ and low elasticity of demand. The list is not exhaustive, nor do all factors have to apply at the same time. However, the absence of the above factors is generally considered to reduce the probability of co-ordination.

For assessing vertical effects, there are no significant differences between the tests, according to the Discussion Paper published by the Bundeskartellamt. Both tests use the basic assumption that having better access than competitors to sources of supply or distribution channels can restrict competition by excluding competitors or increasing their costs. The creation of competition problems normally also requires that market power exists on some vertical level.³⁸

For conglomerate effects, the Discussion Paper states that both tests cover the effects of conglomerate mergers on competition, and that these effects can be flexibly assessed by taking into account the overall situation. The Discussion Paper does, however, state that the Commission is more inclined to take into account the future behaviour of the parties of the merger, and the possibly associated bundling strategies.³⁹ The legal case

history applied in these decisions gives rise to the comment that, e.g., the portfolio effects associated with conglomerate mergers, and the leverage to close the markets associated with market power, are assessed more often when applying the dominance test than when applying the SLC test. Regarding the SLC test, it is probably correct to say that the legal case history has been placing more emphasis on the efficiency gains derived from portfolio effects than on the adverse effects on competition. However, both tests have been applied in the same manner, e.g. in situations of losing a potential competitor.

In addition to the above examples, we can ultimately look at a situation where the effects on competition do not occur in the existing markets but instead in markets materialising in the future as a result of R&D activities. An example of this could be taken from the mergers in the pharmaceutical industry where the effects on competition have to be determined both for present products and for products still being developed. Assumptions on the launching dates and the probability of success of the R&D efforts can be made on the basis of the different phases of clinical tests for the new products. In a situation where the threats to competition would seem to appear solely for future products, the creation of a dominant position in accordance with the dominance test is difficult to establish. In order for the dominant position to be identified in such a situation, the R&D operations would first have to form separate relevant markets. Secondly, those markets would probably be of a global nature, making the creation of a dominant position less probable than in the case of geographically limited markets. The assessment of effects on competition is further hampered by the said uncertainty factors associated with testing. However, the possible future adverse effects on competition should not be excluded from the appraisal, even if they cannot be seen

36 See Mario Monti, *Antitrust in the US and Europe: a History of Convergence*. General Counsel Roundtable, American Bar Association. Washington DC, 14 November 2001. Press Releases by the Commission, Speech/01/540.

37 See *supra* note 27, p. 141, stating that the said factors affect the companies' possibilities and incentives for entering co-operation, and detecting and penalising behaviour that deviates from the co-operation.

38 See *supra* note 25, p. 24, 28.

39 *Id.*, p. 33. See, e.g., the Commission decisions in the *Guinness/Grand Metropolitan* (Case No. IV/M.938) and *GE/Honeywell* (Case No. COMP/M.2220) cases.

concretely at present. When the dominance test is applied in practice, the assessment of competition effects of future products is part of the overall appraisal of the concentration. However, the SLC test could be said to be more flexible than the dominance test in situations where the threats to competition are created solely with respect to future products. In such a situation it is easier to prove the lessening of future competition, for instance by showing that innovative competition is reduced because the companies who earlier developed possible future competing products, are now only developing one of them as a result of the concentration.

In its Green Paper, the Commission states that the vast majority of cases dealt with by the Commission and other major jurisdictions, using the SLC test, have revealed a significant degree of convergence in the approach to merger analysis. Article 2 of the Merger Regulation has so far proven sufficiently flexible to adapt itself to effects analysis that is based on sophisticated micro-economic tools and models that are developed by econometric and industrial organisation research. As an example of this trend, the Commission mentions the interpretations of the European Court of Justice and the Court of First Instance on the applicability of the Merger Regulation on controlling dominant positions.⁴⁰

Finally

In its Green Paper, the Commission has studied the argument that the SLC test is, in certain situations, considered more flexible than the dominance test, and is

a more comprehensive tool for tackling the effects of mergers on competition. However, the legal case history associated with the relevant cases has shown that the dominance test is sufficiently flexible and extensive, and the experience gained on its application does not indicate that the test would exclude any such substantial restrictions to competition that the Commission should be able to act upon. The evolution of the concept of dominant position, both after the Merger Regulation was adopted and in the legal practice of both the Commission and the Community Courts, has for its part increased the flexibility of the test and therefore also its scope. The essential point of applying the tests is how the content of the tests is shaped by case practice.

In its Green Paper, the Commission, commenting on the similarity between the dominance test and SLC test, states that in most cases the analyses of mergers are considerably convergent. The legal case history supports this view. The Commission and the US antitrust agencies have reached very similar conclusions in cases where the effects on competition have appeared to be the same in the EU and US markets.⁴¹ The result of reaching similar conclusions can be studied by looking at certain types of effects on competition in general and by drawing conclusions, based on the legal case history, on the correlation of the tests with these effects, or by looking exclusively at such mergers that have been investigated simultaneously by both the Commission and the US antitrust agencies. The existence of a uniform legal case history can be verified for both types of cases. In cases where the authorities have reached different conclusions, the reason has normally been the fact that mergers have caused different threats to

⁴⁰ See *supra* note 1, p. 39. See the decision by the European Court of Justice in the *Kali und Salz* (Joined Cases C-68/94 and C-30/95) case and the ruling by the Court of First Instance in the *Gencor v Commission* (Case No. T-102/96) case.

⁴¹ Of recent cases, see Monti, *supra* note 29, mentioning, i.a. the following decisions: *Alcoa/Reynolds* (Case No. COMP/M.1693); *Alcoa Inc. and Reynolds Metal Company*, Civ. No. 00-CV-954(RMU), *BP Amoco/ARCO* (Case No. IV/M.1532); *BP Amoco p.l.c. and Atlantic Richfield Company* (FTC Docket No. C-3938), *Exxon/Mobile* (Case No. IV/M.1383); *Exxon Corporation and Mobil Corporation* (FTC Docket No. C-3907), *Metso/Svedala* (Case No. COMP/M.2033); *Metso Oyj, and Svedala Industri AB* (FTC Docket No. C-4024).

competition in different geographical areas.⁴² Only very rarely have the authorities reached different conclusions in a situation where the markets are deemed global and the effects on competition appear to be the same.⁴³ Even in those situations the different conclusions derive more from the different emphasis put on the assessment of certain factors than from the tests themselves. Therefore, judging by legal case history, there does not appear to be a substantial difference in applying the different tests. A similar conclusion is supported by the similarities associated with identifying the sources of market power and with the latest development in economics that lies in the background of appraisals.

In its Green Paper, the Commission has stated that the dominance test is sufficiently flexible for assessing the effects of mergers on competition. As a factor in favour of keeping the test, it has also pointed out that the existing legal practice, based on the dominance test, would be lost if the test was changed. An important reason for keeping the test is also said to be the fact that most of the Member

States and Candidate Countries have based their legislation on mergers on the assessment of dominant position.⁴⁴

In its comment on the Green Paper, Finland has supported the view of the Commission, in that the dominance test in its present form has so far proved to be sufficiently flexible and extensive for assessing the effects of mergers on competition. The Finnish view is supported, *inter alia*, by the linkage of dominant position and its appraisals to the theories of economics, and the constantly developing legal case history of the Commission and the Community Courts. In addition, Finland has, in its comments, stated that issues in favour of keeping the test include the maintenance of the extensive legal case history, and safeguarding the predictability of the system, which is important for businesses.⁴⁵ The future comments of the Court of First Instance in the *Airtours v Commission case*⁴⁶ concerning joint dominant position, may, however, give rise for reevaluation of the matter.

42 Of recent cases, see *id.*, i.a. the following decisions: *Astra/Zeneca/Novartis* (Case No. COMP/M.1806); *Novartis AG, AstraZeneca, PLC, and Syngenta AG* (FTC Docket No. C-3079); *Dow Chemical/UCC* (Case No. COMP/M.1671); *The Dow Chemical Company, and Union Carbide Corporation* (FTC Docket No. C-3999).

43 See *Boeing/McDonnell Douglas* (Case No. IV/M.877) and *GE/Honeywell* (Case No. COMP/M.2220).

44 See *supra* note 1, p. 39.

45 See the Finnish comments on the Green Paper on the Review of Council Regulation (EEC) No. 4064/89, p. 5.

46 Case No. T-342/99.

An Introduction to Cartels

The concept and make-up of a cartel

Horizontal competition restrictions refer to competition restraints between business enterprises that operate at the same stage of production or distribution. A cartel is a horizontal arrangement where business enterprises deliberately, and by mutual understanding, restrict competition between them or prevent new companies from entering the market.

Since cartels are considered to always have harmful effects for the functioning of the markets, they have, as a rule, been banned in all market economies. Horizontal co-operation can occur as a specific agreement between companies, or as an understanding comparable to an agreement. The forbidden actions also include decisions or similar arrangements for restricting and controlling the competitive behaviour of companies along the horizontal level. Agreements between companies can be either oral or written, legally binding contracts, or comparable silent, so-called gentleman's agreements. The understanding resulting from such a silent agreement can for instance manifest itself as concerted action on the market⁴⁷. The arrangements restricting and controlling the competitive behaviour of companies may be created for instance on the initiative of trade associations.

Cartels can be implemented in different forms, depending on the objectives and the structure of the industry. The types mentioned in the Competition Act and most commonly occurring are collusive bidding (Article 5), price cartel (Article 6, Paragraph 1), production curbs and division of markets or sources of supply (Article 6, Paragraph 2) and exchange of information. These forms of cartel are common world-wide, and they are recognised in the legislation of other countries and the EU competition law.

Collusive bidding is an agreement or similar arrangement whereby the bidders in a tender for selling or buying goods or for providing a service act in co-operation with each other. The definition requires that there must be a tender, i.e. the buyer or the seller has requested several businesses to submit a bid, but such request can be made at different times.

In a *price cartel*, the sellers or buyers of the commodity either directly agree between themselves on the prices of products (buying and selling cartels) or on other factors affecting the pricing, such as discounts, commissions, payment terms or guarantees (term-fixing cartels). The parties of a price cartel may also agree that a certain price is not to be exceeded or undercut. It is also forbidden to issue recommendations concerning pricing. The price

⁴⁷ Concerted action on the market may, however, also be the result of an oligopolistic market structure in a situation where few companies are capable of quickly following their competitors' behaviour. This is, as such, not forbidden if there are no operations involved that could be classified as a cartel.

collusion can be aimed at preventing price competition or achieving market power and thus at controlling the market in other respects besides prices.

Production curbs are arrangements that are often used in situations of excess production to resist the downward pressure on prices or the pressures for adapting the production profiles to suit the prevailing situation. The members of the cartel influence the balance of supply and demand in such a way that the rational adjustment of production according to demand is prevented in order to maintain an unnecessary capacity. This usually results in reduced efficiency.

Division of markets refers to the members of the cartel agreeing on geographical areas of operation, market shares, the commodities to be produced or on customers in a way that aims to secure all cartel members their own protected area of operation where they can operate without the competitive pressure of other cartel members and thus price their products freely.

With a *division of sources of supply*, the members of the cartel divide supplies and suppliers of goods between them, thus restricting the operating conditions of the suppliers and allowing the market power to be increased in relation to the suppliers.

A *collective boycott* is when the business enterprises at the same stage of production or distribution refuse to do business with a third enterprise. The aim is normally to prevent an external competitor's entry into the field, to expel an existing competitor from the business, or to pressurise a competitor to join a cartel. The boycott may also be used as a punitive or pressurising means against cartel members.

Exchange of information is one method for achieving cartel-like results between competitors. However, it is not quite as clearly identifiable as a cartel as the other forms discussed above. With an exchange of information, the competing companies divulge to each other such information on their operations which, in normal competitive circumstances, would be classified as trade secrets, or at least which the companies would not have any reason to

divulge to their competitors. Such information may include up-to-date information on production and sales, price information, customer data, future strategies, planned investments, market shares, progress in achieving sales or procurement targets, etc. In some cases, such information exchange may even be organised through trade associations, but that does not make it any more acceptable.

Companies can use the exchange of information to forecast their competitors' actions on the market and adjust their own operations to avoid competitive pressures. The objective is, therefore, to achieve an understanding with regard to market behaviour. However, one must bear in mind that exchanging commonly available information is not forbidden, nor is divulging general price and cost indices.

Forming cartels is lucrative for companies, because they can use cartels to avoid intense mutual competition and are thus normally able to increase their profits and gain other benefits easier than without the cartel. The more intense the competition, the bigger the temptation to establish a cartel. The factors that are present in competitive situations and may contribute towards the tendency to form a cartel include a centralised market structure, similar products being produced by competitors, customers possessing market power, high entry barriers and a well-established market structure, as well as the large investments required for improving efficiency.

Several extensive international cartels and substantial domestic cartels have been revealed during the last few years. There have also been cartel cases in Finland, even in key industries of the national economy. The increase in numbers of detected cases is probably due to both the cartels becoming more commonplace and the investigative methods of the authorities becoming more efficient.

The larger the turnover of the company, the more substantial the benefits gained through a cartel. Therefore, the temptation to form cartels on global markets is great. Globalisation also encourages more cartels through another mechanism. Since trade barriers have been

reduced on the international markets, and it is easier for companies to expand to new markets, the companies controlling regional markets now have an incentive to form cartels to exclude new competitors from the market. Besides the more efficient methods at the authorities' disposal, the increase in the number of detected cases is also due to the increased awareness of the harmfulness of cartels and, particularly in the EU and USA, the threat of severe penalties.

Cartel prohibitions in legislation

So-called naked cartels

The Competition Act prohibits horizontal competition restrictions, including collusive bidding and price agreements. Collusive bidding is prohibited under Article 5 of the Competition Act:

When business is conducted, it shall be prohibited to apply an agreement or other concerted arrangement under which, in the sale or purchase of goods or rendering of services in tendering:

a party shall waive from making a tender;

a party shall submit a higher or lower tender than another party; or

the price of tender, an advance or credit term shall otherwise be based on co-operation among the tenderers.

What is provided under paragraph (1) shall not apply to an agreement or other arrangement whereby the tenderers have combined to make a joint tender for a joint performance.

The reason for the prohibition on collusive bidding is to protect the party requesting the bid against a situation where the bidders mutually agree on their bids with the result that the party requesting the bid normally receives less attractive offers than in a healthy situation of competitive bidding.

Article 6, Paragraph 1 of the Competition Act covers other naked competition restraints:

A business undertaking or an association of business undertakings operating on the same production or distribution level shall not, by virtue of an agreement, a decision or a corresponding practice:

fix or recommend the prices or compensations to be collected when business is conducted.

The prohibition of price cartels is one of the most central regulations of the Competition Act, not least because of the well-founded economic analysis that is its basis. In a market economy, the price of a commodity is the key factor governing production and consumption decisions. If price competition is prevented, the self-regulating process of the markets is disturbed and consumer choice becomes more restricted. The existence of a cartel probably means that the consumer usually has to pay a higher price for the commodity than if free competition prevailed. Since business enterprises have different cost structures, and the prices charged in cartels are normally determined according to the enterprises with the highest costs, some members of the cartel may accrue unreasonably large profits. These companies could sell their products at lower prices, but there is no pressure to do so because of the price cartel. At the same time, the absence of price competition eliminates the need for boosting the efficiency, and the efficiency of the entire national economy is degraded.⁴⁸

In its case-law, the FCA has crystallised the harmful effects of price-fixing cartels as follows:

1. customer choice becomes restricted;
2. uniform prices favour certain cartel members at the cost of others, because the cost structures of different businesses vary;
3. production or distribution are ill-targeted because the market price mechanism does not function;

⁴⁸ Kuoppamäki, Petri, *The Fundamentals of Competition Law (in Finnish)* "Kilpailuoikeuden perusteet", Vantaa 2000, p. 69.

4. lack of competition between business enterprises results in a lack of incentive to boost efficiency.

Inefficient operations cause many drawbacks, such as the wasteful consumption of raw materials and energy, or the lessening and finally cessation of research and development. This, in turn, will result in reducing the competitiveness of companies and limiting their possibilities to expand their operations outside their existing market areas. At the same time, they become more vulnerable to external competition.

The adverse effects of the price collusion are not a prerequisite for making a price cartel illegal. This means that competition authorities do not have to produce evidence on the actual effects of the arrangement or even on factual adherence to the forbidden system. A mere agreement on establishing a cartel, without actually implementing it, is a sufficient element of the offence. The Supreme Administrative Court has, however, stated in its case-law that the evidence on the damage caused has an effect on the amount of fines imposed.

Naked restrictions on competition are, however, not always absolutely forbidden. Business enterprises have the option of applying for an exemption from the FCA to implement such a competition restriction. Since the naked competition restraints always have adverse effects on the market as discussed above, the applicant must be able to show in detail that the arrangement brings more benefits than harmful effects, and that the customer or the consumer is the main beneficiary.

Other horizontal competition restraints

The prohibition of Article 6, Paragraph 2 is more limited than the prohibition on price cartels in Article 6, Paragraph 1. It prohibits such horizontal competition restrictions that

are not essential additional restrictions for arrangements that can be considered beneficial as a whole.

A business undertaking or an association of business undertakings operating on the same production or distribution level shall not, by virtue of an agreement, a decision or a corresponding practice:

.....

limit production or divide the market or sources of supply unless this is essential for an arrangement which will boost production or distribution or promote technical or economic development and as a result of which the benefit will primarily accrue to customers or consumers.

This means that limiting production or dividing markets or sources of supply is only forbidden when they

- cannot be shown to have any beneficial effects; or
- are not necessary for achieving benefits; or
- the achieved benefits are not conveyed to consumers or customers, therefore benefiting the companies only.

The companies can themselves assess whether the stipulations of this point of law are fulfilled by their arrangement. Even in that case, it is possible to apply for an exemption if the companies think that there is room for interpretation, and they wish to make sure that their arrangements are within the law.

The EC ban on cartels

The EC competition rules are to be found in Articles 81–86 of the Treaty for establishing the European Community⁴⁹, and Articles 81 and 82 apply to the rules of competition for enterprises. They can be applied to all trade of goods and services. Article 81 of the Treaty prohibits

⁴⁹ When the Treaty of Amsterdam came into force on 1.5.1999, the numbering of the Articles of the Treaty for establishing the European Community was changed; previously these Articles were numbers 85–90.

“...all agreements between undertakings, decisions by associations between undertakings and concerted practices which may affect trade between member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market...”.

The Article not only applies to horizontal competition restrictions between present and potential competitors, but it can also be applied to vertical arrangements. Article 81 (2) stipulates that the prohibited arrangements and decisions are null and void, but under Article 81 (3), they can be notified to the Commission and an exemption may be applied for their application. In addition to individual exemptions, the Commission has issued so-called Block Exemption Regulations specifying criteria for agreements on which the stipulations of Article 81 (1) are not applied.

A wide interpretation is applied on the ban on cartels stipulated in Article 81, and it covers both legally binding and other arrangements between business enterprises. The regulation aims to ensure that each company operating on the common market independently decides on its business operations and market behaviour. However, the regulation does not prevent the companies from adjusting their operations according to the behaviour of competitors, as long as such an adjustment is not based on direct or indirect contacts made with competitors.

The competition matters in the EC are the responsibility of the European Commission Competition Directorate General (DG IV) that investigates the suspected cartels that can be considered to have a so-called community dimension, i.e. arrangements that affect trade between Member States. In its own actions, the Commission has taken a strict attitude towards cartels and emphasised their detrimental effects on the common market.

The work for detecting cartels

Particularly in the USA and the EC, considerable emphasis is put on the detection of cartels and penalising their

members. The latest trend has been to take an even stricter attitude and increase the penalties: in 2001, a new record was set in the total amount of fines imposed on companies taking part in cartels.

Nowadays, business enterprises are well aware of the forbidden nature of cartels and the large fines that result on detection. The cartel arrangements are, therefore, kept well under cover, and often the decisions are made by the very top level of management only. The number of people knowing about the arrangements is, therefore, normally quite small, and even if other employees or business partners may have their suspicions about the agreed competition restraints, the fear of losing employment or a business relationship often prevents the assertion of these suspicions publicly. In a small country, such as Finland, the person or party that could potentially report the offence may also be apprehensive of being branded a “tell-tale” and of the business difficulties that might result.

Because cartel allegations and the possible sanctions are serious matters, authorities must have conclusive evidence when an enterprise is charged with participation in a cartel. In practice, this means that the authorities must have reliable witnesses or written evidence about the companies’ infringements. Since awareness has increased of the nature of cartels as being serious offences and major cases concerning cartels have attracted much publicity in the media, the companies taking part in cartels are more wary than ever about their actions and make sure that no written evidence is found on cartel agreements or similar actions. One can assume that finding written evidence on companies will continue to become more difficult.

On the other hand, the increasing public awareness means that the customers and business partners of cartel companies may more readily note the signs that imply the existence of a cartel and report their suspicions to the authorities. This is made easier by the fact that in most cases the authorities try not to divulge the identity of the reporting party, and cartel investigations are officially undertaken on the initiative of the authorities.

Different methods are applied to detecting cartels. The investigative process may be totally in the hands of the competition authorities (as is the case in Finland⁵⁰), or, as in the other extreme, the Police may carry out criminal investigations on the matter. In the USA, for example, the FBI may be involved with major cartel investigations. The most important investigation method is to carry out surprise inspections into suspect companies. In Finland, the FCA has the powers to perform such inspections when reasonable grounds for suspecting an infringement of the Competition Act exist. The EU Commission has similar, even somewhat more extensive, powers to carry out inspections. The Commission can also request the official assistance of national competition authorities for carrying out the inspections.

The Commission notice on Immunity from fines and the reduction of fines in cartel cases, the so-called leniency notice, has proven an effective tool in cartel investigations within the EC. According to the notice, the cartel member to first submit such evidence to the EU Commission that is essential for the detection of the cartel is granted total or partial immunity to fines. This “carrot” has brought many cartels to the Commission’s attention, and often, when the Commission has already initiated its investigations on the basis of tip-offs by other parties, one of the cartel members decides to utilise the opportunity provided by the notice as it fears the risk of large fines. The Commission’s investigations into cartels have become much easier due to the practice of imposing heavy fines and due to the leniency scheme.

Different penal practices

The efficiency of anti-cartel work is also largely dependent on how efficient the penalties are. Because the objective of cartels is to accrue financial benefits for its participants, the

penalty resulting from getting caught must both eliminate the financial benefits possibly accrued through the cartel and act as a preventive factor for future operations. The level of penalties must also be such that it works as a deterrent to other companies. The most common penalty is a fine-type penal payment, but the personal legal responsibility of management, with possible jail sentences, is in use in certain countries.

The criminal law sanctions were abolished in Finland when the 1992 Competition Act came into force. The FCA, nowadays, is able to propose that the Market Court imposes a fine for an infringement of the Competition Act when the infringement cannot be considered minor, or imposing the fine cannot be considered otherwise unfounded from the point of view of safeguarding competition. The amount of the fine can range from FIM 5,000 to FIM 4 million, i.e. from about 841 euros to 673,000 euros. If the competition restriction and circumstances so justify, the maximum amount may be exceeded. This situation may arise for instance in cases of obviously extensive scope of restrictions or their continued repetition or particular harmfulness to other businesses. However, the fine may not exceed 10 per cent of the previous year’s turnover of the enterprise or association of enterprises taking part in the competition restriction.

Considering that the basic amounts stipulated by law apply to all companies operating in Finland, the maximum amount is far too low to be effective in practice and to have a preventive effect. The too low maximum also causes inequality between companies because small- and medium-sized companies can be effectively penalised with fines that are considerable in comparison to their turnovers, but the significance of fines reduces with the size of company. Since a large corporation is unlikely to stake its reputation and risk detection by taking part in a cartel for minor financial gains, it normally also derives considerable financial gains from a cartel, adding to the

50 However, the Finnish competition authorities do have the option of using police assistance for inspections.

inequality between different-sized companies with regard to the significance of the penalties.

The possibility allowed by law to exceed the maximum penalty has practically remained a dead letter in Finland. Only on a few occasions⁵¹ has the Competition Council imposed a competition infringement fine in excess of the maximum stipulated in the law, and in one of these cases the Supreme Administrative Court took the view that there were no grounds for exceeding the maximum. The practical implications for the work of the competition authorities are that there are no sufficiently powerful tools for affecting the competition restrictions practised by really large companies, even though they are the most harmful for the free functioning of the economy and, therefore, for the whole of society. Competition restrictions practised by companies with multi-billion turnovers can easily accrue financial benefits that total tens of millions, but the penal practice is not – as yet, at least – anywhere near the level where it would act as a sufficient penalty and deterrent for large companies.

The aforesaid only applies to the application of the Finnish Competition Act. Competition restrictions that are supranational or have a community dimension are primarily investigated by the Commission, which can apply a totally different penal policy. The fines imposed by the Commission are often extremely large, tens and hundreds of millions of euros, and the European Court of Justice has sanctioned the Commission's policy with regard to the amounts of fines. If a cartel extends its scope to the USA, it falls within the jurisdiction of the U.S. authorities, and then the penal practices follow the U.S. legislation with personal criminal prosecution and large fines.

In addition to a fine, the companies taking part in a cartel in Finland may have to pay compensation for the damages they have caused. On the basis of Article 18a of the Competition Act, a company may become liable for

paying compensation for damages caused to contracting parties or third parties by collusive bidding or other restrictions within the scope of the regulations banning cartels. The liability for compensation includes both consequential and direct losses.

More efficient cartel control

The FCA is also aiming to carry out more efficient and stronger interventions into cartels. In the autumn of 2001, the so-called Cartel Group was revitalised within the FCA to act as an internal group of experts on cartel-related matters and to support the investigators in cartel investigations. Another task of the Cartel Group is to follow the international developments in cartel investigations and to select the most useful methods for use in Finland. Members of the Cartel Group are also taking part in a co-operation body established by the Nordic competition authorities for the purpose of promoting co-operation and exchange of experience on cartel investigations between Nordic authorities.

One of the most important tools in cartel investigations is surprise inspections of companies. In many cases, a surprise investigation is the only way to produce enough evidence in support of cartel allegations. The FCA aims to increase the number of inspections and to act quickly on well-grounded allegations so that the suspect companies do not find out about the investigations and, therefore, have no time to prepare for them.

As discussed above, the Commission has achieved extremely good results in its cartel investigations using the leniency scheme. This naturally leads to the question whether there is a need for a similar arrangement in Finland, and whether it would have a favourable effect on the investigation and detection of cartels.

⁵¹ FIM 5 million for an abuse of a dominant position by Valio, FIM 10 million to each of the three large forestry corporations, Metsäliitto Oyj, Stora-Enso Oyj and UPM-Kymmene Oyj, for taking part in a cartel (but the Supreme Administrative Court reduced the fines to FIM 3 million each) and FIM 25 million to Elisa Communications Oyj for an abuse of dominant position.

The effectiveness of the leniency scheme is based on the fact that fines pose a real and considerable threat to companies, i.e. getting caught for participating in a cartel will cause considerable financial damage. This is necessary for providing sufficient incentive to reveal the cartel or to submit information voluntarily.

When considering the applicability of the scheme to Finnish conditions, it is easy to see that the first prerequisite for operating the scheme effectively is absent. The fines imposed in Finland for infringements of the Competition Act are so small that they do not act as a deterrent to companies at all. It makes sense to companies to deny participation in a cartel to the very end because the possible fine will not exceed the potential financial gains of the cartel, let alone contain a punitive element.

Another matter altogether is the effect that getting caught has on the company's image and customer relationships, but one can argue that the diminutive "penalties" imply that even society takes a disinterested – if not belittling – attitude towards such offences. Therefore, it would be desirable that the maximum limit of fines stipulated in the Competition Act would be quickly amended to correspond to the damaging effect to society of the cartel offences, or that the possibility for exceeding the maximum, as provided by the Act, would become an option that is put to genuine use.

Small and Medium-sized Enterprises and Competition Legislation

1. Competition legislation as the safeguard and regulator of small and medium-sized enterprises

Small and medium-sized enterprises (SMEs) are not only significant to the national economy but also a central point of focus for modern competition legislation and policy. Competition policy can really only be understood by taking the existence of SMEs into account. Modern competition legislation was originally formed in response to the competition restrictions, created by the so-called second industrial revolution, that the small and medium sector faced⁵².

SMEs have also had a central role in the application and development of competition legislation and policies. Competition law has been used to regulate practices that impede, restrict, distort and lessen competition as regards both competitive and cooperative market relations, on one hand between SMEs, and between SMEs and large enterprises, on the other. When assessing the arrangements between large corporations, close attention is also paid to the effects that these arrangements have on SMEs as competitors or trading partners.

An important area of activity for the competition

authorities, in view of the very impact of competition policy, is the creation of initiatives for amending special legislation that have the effect of inhibiting, restricting or distorting competition. Such legislation or the resulting regulations and administrative practices often weaken operating conditions, particularly of SMEs, so in this sense, too, the SMEs have a significant role in the practical work of competition policy.

Competition legislation is like a constitution for business, protecting SMEs against the artificial destruction of their operating potential, and against coercive or arbitrary acts. These dangers would be especially present in the industries where companies with particularly strong market power operate. Competition legislation has made the operating conditions of SMEs considerably more predictable.

When the modern competition legislation was being created, SMEs were highlighted as being particularly in need of protection. Competition policy expands the room for business by SMEs by intervening with legislation and administrative practices that restrict business opportunities. At the same time, it has always been clear that SMEs are also capable of creating competition restrictions that breach the competition legislation; the size of the

⁵² The most important forces of the anti-trust movement, particularly in the USA, were the farmers and "crossroads merchants" whose livelihoods were threatened by the operation of trusts and other new monopolistic combinations. The resulting strong political pressure led to the enactment of the State and Federal anti-trust laws in the USA.

enterprise is no guarantee that this could not happen.

There have also been cases where competition legislation has had to be applied to remove competition restrictions that were created by SMEs. The purpose of competition policy is not to protect the financial interests of a certain enterprise just for the sake of these interests. The reasons for an intervention must always be well founded for the sake of public interest, i.e. for safeguarding competition and the competitive process. Therefore, any protection received by an individual enterprise through a competition policy-based intervention is always as a result of safeguarding public interest.

Safeguarding the competitive process aims to attain workable competition, i.e. the best possible combination of allocative, productive and dynamic efficiency. The restrictions that have harmful effects on the workability of competition are avoided regardless of who is creating them.

Competition policy is in fact trying to increase the speed of the natural market process. Ineffective market power does not last, because ineffective operations have always caused monopolies to lose their monopolistic position or exit from the market, in spite of their attempts to restrict competition. The competitive advantages of businesses are never permanent; each has its own life cycle.

The same applies to SMEs: ineffective operations cannot long rely on restricting competition, even if legal protection is given to the practices. Amending the competition legislation to become more lenient and allow exemptions to its stipulations could not even in principle aid the operations of SMEs for good. Competition policy is an ally of SMEs, but does not give them an open proxy to restrict competition.

2. Enhancing the operation of competition authorities and the small- and medium-sized sector

The competition authorities in Finland, as in most countries, have limited resources for carrying out their duties. This has led to the authorities prioritising their activities, either by changing the contents of the competition legislation or at least its rules of application. In Finland, the Competition Act was amended in 1998 so that the FCA can choose not to take action “if the competition restriction only has a minor effect on economic competition” (Article 12 of the Act).

A competition restriction can be considered to be minor if it does not significantly jeopardise the competitive process through the extent of its economic effects or through the reprehensible nature of the practice in question. Choosing not to take action on minor competition restrictions can affect SMEs both as the party seeking protection against the restrictions and as the party causing them.

As a summary of the treatment of SMEs with respect to competition law, it may be stated that

- SMEs are protected against competition restrictions that are created by others and that fulfil the criteria stipulated in the Competition Act if they have significant, harmful economic effects in view of the public interest, or if the said restrictions are naked restrictions that are in conflict with the fundamental principles of a market economy (i.e. the use and spread of such restrictions must be prevented as a matter of principle);
- competition restrictions that are created by the SMEs are dealt with if they have significant, harmful economic effects in view of the public interest, or if the restrictions are naked restrictions as discussed above;
- the competition restrictions that are created by the SMEs can, on the other hand, be deemed to enhance competition in many cases. This type of situation arises when such restrictions improve the competitiveness of the

products offered by the SMEs vis-à-vis to the commodities offered by large competitors. The prohibitions laid down in the competition legislation are not applied in these cases.⁵³

3. The definition of the small- and medium-sized sector from the viewpoint of competition legislation

SMEs can be defined in many different ways depending on the context in which they are assessed. The essential aspect in terms of competition legislation and policy is the market position of the business, i.e. what competitive advantages it holds relative to competing companies and to what extent it has trading partners with whom it has latitude in deciding its pricing and delivery terms. The deciding factor, then, is the market power of the company and not its size as such.

In mass production, increasing the size of a company (measured using certain applicable economic criteria) has traditionally been assumed to also increase its market power, i.e. a clear positive correlation has been assumed to exist between company size and market power. In spite of this, there have been large companies involved in mass production without substantial market power, and SMEs with substantial market power. Due to the spread of the New Economy and its associated flexible production methods, the correlation between company size and market power is likely to continue to weaken.

4. Competition legislation: a problem for developing the small- and medium-sized sector?

There have been critical comments in Finland, too, that the competition legislation and policy no longer give adequate protection to the small- and medium-sized sector, but instead prevent SMEs from engaging in such co-operation that could enhance their operations and protect them against the abuse of market power. Demands have, therefore, been made that the competition legislation be amended so that co-operation allowing SMEs to improve their collective market power would become easier.⁵⁴

The potential problems in applying the competition legislation are only related to a limited group of SMEs, and the gist of the problem is not actually competition law. Such SMEs are often responsible for one productive input in a vertical refining chain which requires that their owner invests in production capacity that is specialised, single-purpose and involves sunk costs. This category includes forest harvester operators and entrepreneurs providing transport services for industries that require specialised, single-purpose transport equipment.

For the industry, dealing with independent entrepreneurs is an alternative to vertical integration. The operations of such business enterprises are specialised on serving the specific industry to such a degree that their business relationship with the buyer is similar to an ordinary contract of employment. In addition, the business enterprise is dependent on the work provided by the industry due to the specialised capital stock and sunk costs. The industry, on the other hand, is also dependent

⁵³ The discussion mainly revolves around whether these competition restrictions can be exempted from closer scrutiny by the authorities (exemption procedures, granting negative clearances, case-specific processing of competition restrictions) by applying certain criteria, even in cases where they do not fall within the definition of minor restrictions.

⁵⁴ See e.g.: Pertti Virtanen 2002, pp. 19–20. “Pk-yritykset haluavat lieventää kilpailunrajoituslakia” (Small and medium-sized enterprises want to make the Act on competition restrictions more lenient; in Finnish) (2002).

on the services of the business enterprise, because an interruption of these services will bring the entire refining chain of the industry to a halt.⁵⁵

The FCA has concluded that transacting through markets in such market conditions is problematic.⁵⁶ However, up to now, no one has presented co-operation models for SMEs that would increase the efficiency of markets in such situations, or convincing evidence of the abuse of market power by the buyers. However, the competition authorities are always prepared to carefully assess all proposals concerning co-operation between SMEs, and to consider the potential need for taking action against the buyers' practices based on the Competition Act.⁵⁷

The problem of market exchange is caused by the financial cost of the capital stock required by the business entrepreneur, and the importance of his input to the buyer's refining process. The basic constellation cannot be altered by means of the competition law, and intervening with the awkward negotiating position of one party can also easily act as an incentive for increasing vertical integration and for completely eliminating independent business enterprise.

5. The diversity of the small- and medium-sized sector vs. the competition legislation

In addition to the group of the small- and medium-sized sector that was described in the previous chapter, at least six other groups⁵⁸ can be identified whose connections with competition law are different:

- SMEs that operate in labour-intensive areas of service business where substantial economics of scale do not apply (for example barbers, hairdressers, and shoemakers);
- free professions (for example doctors and solicitors);
- SMEs that are engaged in broker-type activities (for example insurance brokers and brokers operating on the financial markets);
- SMEs that are engaged in small-scale industrial production in areas where the advantages of large-scale production are not the only important competition factor (for example furniture manufacturing and the construction industry);
- SMEs that are engaged in the distribution of various consumer goods (for example retailers of consumer electronics and independent daily consumer goods retailers);
- the knowledge and skill-intensive SMEs of the New Economy (for example the businesses engaged in network co-operation for pharmaceutical R&D, and Nokia's network partners).

In general, the basic conditions for competition in the traditional, labour-intensive areas of business are good, and application of the competition legislation is not problematic. However, in a sparsely populated country, the supply of services and the competitive situation may vary by region, but a supply situation that is unfavourable for the consumer is generally rare.

During the price control era in Finland, the above business sectors became accustomed to national co-operation on pricing, which artificially increased and unified the price levels of services. When price control was

55 According to Oliver E. Williamson (1981, pp. 1546–1548), in such conditions, considerable transaction costs are associated with market exchange, and there is significant pressure for vertical integration with such production chains. The pressure can also be intensified by the complexity of the agreement between the entrepreneur and the buyer. In qualitatively similar situations, the market power of the parties may vary considerably by sector and also by period of time, depending on the number of alternative trading partners each party has, at least in principle. Employment-like business relations with the buyer can be found in other segments of the small and medium-sized sector as well (for example self-employed professionals), but they do not have similar single-purpose investments or a similar dependency on the buyer.

56 This case involved forest harvester contracting. See the Report by a Ministry of Trade and Industry working group on the functioning of domestic markets and on international competitiveness, 3/2002 (in Finnish): "Kotimarkkinoiden toimivuus ja kansainvälinen kilpailukyky" (2002, p. 44.)

57 An application for exemption and a request for action are pending in the FCA in relation to this matter..

58 The list is not exhaustive, and the borderlines between different groups are not necessarily entirely clear. However, the list is illustrative of the relationship between competition legislation and policy and the small- and medium-sized sector, as well as of the general position and development prospects of the small- and medium-sized sector.

abolished and the FCA was established in 1988, one of the first major tasks of the FCA was to persuade these sectors to end their price fixing.⁵⁹

Businesses run by self-employed professionals form a rather traditional and significant part of the small- and medium-sized sector. The businesses are based on professional skills and a right to operate in the market, usually obtained through education and often confirmed by licenses. Organisations that require such professional skills often partly employ experts and partly use the services of experts who act as independent business enterprises. Increased outsourcing of such expert services is the clear trend.

The business operations of self-employed professionals have traditionally been typified by extensive horizontal co-operation within the trade. The development of common values and operational standards in relation to professional ethics is an important part of this type of co-operation. However, restrictions related to pricing have also been traditionally associated with this type of co-operation. Competition law has been applied to abolish such pricing restrictions in Finland and other OECD countries.

A type of business enterprise has evolved that engages in enhancing the co-ordination of transactions between suppliers and buyers in certain markets with the objective of helping each supplier or buyer to find the most suitable trading partners. Brokers have been involved in fields where the operating conditions have changed rapidly as a result of deregulation or rapid technological changes. Brokerage is also associated with the New Economy, since the Internet has created a significant new channel of information for market players. Companies have emerged with the intention of creating a new trading place on the Internet for exchanging certain types of products.

From the point of view of competition law, the key issue regarding brokerage has been the development of market rules for brokerage activities, and this has given the FCA a reason to take the initiative in the matter. Even the brokerage business has witnessed attempts to achieve horizontal price co-operation, which has been counteracted under competition law.⁶⁰ The key issues regarding Internet trading include the manufacturers' possibilities to sell their products online and possible attempts to exclude other similar Websites.⁶¹

In the manufacture of goods, the small- and medium-sized sector is extensively operative in sectors where the competition parameters, in addition to economics of scale, can include individual or traditional design, craftsmanship, concentration on the special needs of certain market segments, or operational flexibility and agility. In these cases, the profile of the sector becomes bipolar: on one hand, there are large corporations utilising the advantages of mass production and mass markets, and on the other, specialised small companies.

In markets like these, competition law is mainly concentrated on ensuring the legality and functioning of the competition of large corporations and SMEs. The co-operation between SMEs, which may include supplementing the product range or organising distribution channels, has its own natural role in such markets.

The retail distribution of consumer goods has also traditionally been a typical area for SMEs. This has been associated with the need to place the distribution and service points near the end-consumers, and to ensure expert presentation and user guidance for the product, which are necessary for maintaining the quality and reputation of branded products. The competition law practice has factually ensured the preservation of this model of distribution by allowing, with certain limitations,

⁵⁹ In 1988, the FCA started a specific cartel project. The project involved over 110 cases where the horizontal co-operation was abolished following actions taken by the FCA; Hagman 1990, pp. 22–23. Co-operation arrangements existed within several groups of the small and medium-scale sector discussed in this article.

⁶⁰ See the FCA decision on the fee recommendation of shipbrokers (D. No. 19/359/1993, 24.8.1994).

⁶¹ See Stroud 2001, pp. 134–136, Kircher 2001, p. 1032. An Internet trading place that is run by an independent broker is clearly less problematic as regards competition law than one that is run by the buyer or supplier side of a market.

the selective and exclusive distribution of products. Even though the use of selective distribution is decreasing in certain sectors, the distribution model that relies on the SMEs will continue to play a central role in the distribution of branded products.

The daily consumer goods trade constitutes its own particular area of operations where the traditional operating model, based on the independent retailer, has gradually lost ground in Finland (unlike several other countries) under the pressures of increased efficiency. Safeguarding the adequate operating conditions of independent retailers that are operating as SMEs - and also those of the local small- and medium-sized industries supplying them with products - in the context of the efficiency campaigns of trade and commerce has always been, and will always remain, a guiding star for the national competition policy.

In this context, the New Economy can be defined as a structure of the economy, created as a result of two forces of change that are present in the world economy. One of these forces is the globalisation of business operations. The other is the IT revolution which can be seen in the increasing computing capacity and reduced prices of computers, the convergence of information and communication technologies with advancing digitalisation, and the networking of IT systems through the Internet.⁶² At the core of the New Economy are the key industries that are developing and marketing the new technologies⁶³, but the new technologies are also introducing new and more flexible production methods ("the IT paradigm") to the so-called Old Economy to replace earlier mass production systems.⁶⁴ In another context, I have described the new production method as follows.⁶⁵

"The key factor of production in the new production paradigm is the information capital. The time dimension of the production process is much more compressed than in traditional mass production. Instead of the mass standardisation required by mass production, the new production technology allows the simultaneous utilisation of full economies of scale and customer-specific tailoring. When the typical commodity of the mass production era was a physical industrial product, the typical commodity of the new industrial era is a product combining both physical goods and related services. While the control of operations in traditional mass production may have been based on textbook-style strategic planning, the new production paradigm relies on the visionary abilities of individuals and organisations with supreme knowledge for discovering the major developments in the turbulent operating environment of the future, as well as the opportunities for controlling the future in a profitable manner. This cannot be formalised into a rigid organisational structure. The competitiveness of both production and R&D relies on largely informal, flexible and network-style co-operation, based on mutual trust and interactivity between several organisations."

Over 60% of the SMEs that replied to a survey undertaken by the Confederation of Finnish Industry and Employers⁶⁶ were engaged in network co-operation and the companies that replied were generally satisfied with the results of the co-operation with respect to capacity utilisation, cost control, production flexibility, more extensive product ranges and the creation of innovations.⁶⁷

The spreading of the new production methods has already provided, and will increasingly provide, extensive business opportunities for specialised and skills- and

62 Pohjola 2001, p. 41

63 Ahlborn, Evans and Padilla (2001, p. 156) list the following: "—computer software and hardware, the internet, mobile telephony, biotechnology and others that are based primarily on the creation of intellectual property and that are undergoing rapid technological change."

64 See Virtanen 2001, pp. 228–229 and the sources referred to therein.

65 Ibid., p. 229.

66 The network model of operation is aptly defined using the frame of reference shown in the report by the Confederation of Finnish Industry and Employers. See "Kohti strategisia yritysverkostoja" (in Finnish) (2001, p. 14).

67 Ibid., pp. 18, 28–30.

knowledge-intensive SMEs. As knowledge and skills are the key parameters of competition, a company's market power will also be determined on the basis of these factors. A company in the small- and medium-sized sector can also possess key knowledge and thus achieve a very strong position in relation to its network partners in the several networks to which that company belongs.

Large companies can no longer possess all relevant production-related information; the efficiency of the entire industrial production is now largely dependent on companies that develop and sell specialised knowledge and skills. Therefore, the financial size of the company is no longer the factor that determines the relationship between the companies, at least not in the new production model.⁶⁸

The New Economy and the new production paradigm will create complex systems of co-operation for enhancing production; creating new and better products, groups of products or production processes; or for creating knowledge for achieving these goals. Co-operation will exclude certain operational models, and, for example, the standards created as a result of co-operation may cause considerable obstacles for companies that produce certain individual components related to various systems.⁶⁹ The classic problems of competition law (cartels, artificial exclusion from competition and unreasonable use of market power) still possibly arise⁷⁰, but one must be able to quickly apply competition law and be a visionary in the new circumstances, understanding the innovative characteristics of network co-operation, and yet averting the pitfalls of competition law.

This is an important challenge for competition authorities, but it applies to all operations that are typical of the new production paradigm. In the competition policy for

the New Economy, the difference between SMEs and large companies will further evaporate.

6. Conclusions

With respect to their operating conditions, competitive behaviour and competitive environment, the SMEs are a rather heterogenous group. A significant part of SMEs do not even operate in the same area of business as large companies, and are, therefore, not threatened by the immediate competition of larger enterprises. The main emphasis of the application of competition law has resided on eliminating arrangements created by the SMEs themselves that resulted in artificial monopolistic effects, thus protecting their often atomistic trading partners (typically households).

Generally speaking, the position of SMEs as a group needing the protection of competition legislation on one hand, and as operators in an economy controlled by competition regulations on the other, is analogous with other types of businesses. The competition legislation and policy do not pose a threat to the development of SMEs; instead, their presence allows companies in the small- and medium-sized sector to realise their development potential.

Competition legislation and policy will face considerable challenges in the future, particularly with respect to the New Economy and the new production paradigm. The SMEs will have a pivotal role in the flexible and network-like production model of the New Economy. However, the challenge of the New Economy, or the new production paradigm, not only applies to the small- and medium-sized sector, but to all business sectors in general.

⁶⁸ The Chairman of the small and medium-scale sector committee of the Confederation of Finnish Industry and Employers was, to be sure, correct in saying that it will only be during a severe downturn of economic activity that we will see how the relations between different sized companies have changed with the new production method. An article in Finnish: "Verkostotalouden toimintakyky mitataan" (The functionality of network economy to be measured) (2001). However, there is no denying the importance of the new production method for strengthening the operating environment of the SMEs.

⁶⁹ See e.g. Stenbacka 2001, pp. 90–94, Virtanen 2001 (op. cit., pp. 239–249).

⁷⁰ See Määttä & Virtanen 2001, pp. 8–9.

There will be plenty of new opportunities for the small- and medium-sized sector, both in the skills and knowledge-intensive New Economy, and in the various high standard and leisure-related services. The marketization of municipal service production may create particularly significant development opportunities for the small- and medium-sized enterprise sector. Ensuring these opportunities both through proposing reforms to specific regulations and by fighting competition restrictions that artificially exclude new business models will be one of the priorities of competition policy in the future. Close cooperation between SMEs and competition authorities is important for developing fully marketized competition in the present development stage of the economy, but this will not require new special stipulations of competition law for the small- and medium-sized enterprise sector.

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marketing

FCA's decisions in 2001

1. Merger Control

1.1 Concentrations approved without changes

Insurance company Sampo-Leonia Oyj, Mandatum Pankki Oyj	1173/81/2000	3 January
KSP Yhtiöt Oyj, Acta Systems Oy	1169/81/2000	5 January
Terca Bricks N.V., Optiroc Ejendomme A/S	1085/81/2000	5 January
Compass Partners European Equity Fund, L.P., Woods conglomerate	1209/81/2000	9 January
CapMan Capital Management Oy, SB Europe Capital LP, LPG Innovations Oy	1225/81/2000	11 January
Flextronics International Limited, Ojala-Yhtymä Oy	1197/81/2000	11 January
Lohja Rudus Oy Ab, Iisbetoni Oy	1164/81/2000	16 January
Kuntien Asuntoluotto Oyj, Kuntarahoitus Oyj	1020/81/2000	12 February
Lohja Rudus Ympäristöteknologia Oy Ab, Greensoil Oy	40/81/2001	16 February
Taylor Nelson Sofres plc, MDC Research Group Oy	126/81/2001	20 February
Leiras Oy, Suomen itsenäisyyden juhlarahasto (the Finnish National Fund for Research and Development, Sitra), Bio Fund Management Oy, Focus Inhalation Oy	89/81/2001	20 February
Emerson Sweden AB, Saab Marine Holding AB	86/81/2001	22 February
Tietoenator Oyj, Rautaruukki Oyj, IT business	1204/81/2000	22 February
Oy Sinebrychoff Ab (Carlsberg A/S), Coca-Cola Juomat Oy's business	9/81/2001	28 February
Ecolab Inc., Henkel-Ecolab Inc.	1205/81/2000	28 February
Elisa Communications Oyj, Kaukoverkko Ysi Oy, intelligent network business	24/81/2001	1 March
Oy Rettig Ab, V & S Vin & Sprit Ab, Oy Marli Group Ab	127/81/2001	5 March
CapMan Capital Management Oy and Fidelity Ventures II, L.P., Intrasecure Networks Oy	199/81/2001	8 March

Oy Datatie Ab, Openlink Oy Finland	184/81/2001	13 March
Indutrade group, subgroups of Hexagon AB	159/81/2001	15 March
Ashland Inc., Neste Chemicals Oy, polyester business	226/81/2001	19 March
Tyco International Ltd., Scott Technologies Inc.	158/81/2001	19 March
Omya AG, Mondo Minerals Oy	99/81/2001	28 March
First Reserve Corporation, Odyssey Investment Partners, LCC, Dresser Equipment Group Inc	156/81/2001	30 March
Elisa Communications Oyj, Riihimäen Puhelin Oy	83/81/2001	30 March
Elisa Communications Oyj, Joensuun Puhelin Oy	202/81/2001	6 April
Finalim III S.A. (Groupe Danone S.A.), Fazer Keksit Oy	592/81/2000	18 April
Göran Sundholm, Nordic Capital IV Limited, Marioff Corporation Oy	306/81/2001	19 April
Resonia Leasing AB, Xerox Credit AB	300/81/2001	19 April
Biowatti Oy, Kankaanpää pulp chip plant	273/81/2001	20 April
Eastman Chemical Company, Hercules Incorporated, resin business	263/81/2001	20 April
United Parcel Service, Inc., Fritz Companies, Inc.	338/81/2001	23 April
Royal Bank Private Equity Limited, Expamet International PLC	305/81/2001	23 April
Varma-Sampo, Novo Group Oyj, Eläkepalvelu Oy, State Treasury payroll administration services	1228/81/2000	24 April
InWear Group A/S, Carli Gry International A/S	368/81/2001	2 May
CapMan Oyj, Nordic Private Equity Investment Advisers ApS and NPE General Partner II Limited (jointly NPE)	294/81/2001	4 May
YIT-Yhtymä Oyj, Calor AB	1025/81/2000	7 May
Travel agency Oy Matka-Vekka, Porin Matkatoimisto Oy	374/81/2001	11 May
3i Group plc, Reijo Heiskanen, Waphouse Oy	380/81/2001	17 May
3i Group plc, Miotec Oy	361/81/2001	17 May
Agfa-Gevaert N.V., Agfa Finance N.V.	431/81/2001	29 May
Lohja Rudus Oy Ab, Betoni-Kärjä Oy	476/81/2001	4 June
Lohja Rudus Oy Ab, JT-Betoni Oy	475/81/2001	4 June

3i Group plc, Fathammer Oy	510/81/2001	5 June
3i Finland Oy, Popsystems Oy	490/81/2001	5 June
3i Group plc, Stratos Ventures Ltd Oy, CRF Box Oy	484/81/2001	5 June
Lohja Rudus Oy Ab, equipment of T. Vanninen Oy construction company	481/81/2001	11 June
CapMan Capital Management Oy, IVO Transmission Engineering Oy	446/81/2001	11 June
BioMérieux S.A., Organon Teknika Holding B.V.	416/81/2001	12 June
Lohja Rudus Oy Ab, VV-Pumppaus Oy	194/81/2001	12 June
Atkos Oy, Postlink Oy	454/81/2001	15 June
Finnlines Oyj, Team Lines GmbH & Co KG and Verwaltungsgesellschaft Team Lines GmbH	402/81/2001	15 June
3i Finland Oy, Necsom Oy	528/81/2001	18 June
3i Finland Oy, Midinvest Oy, Sakari Laitinen, Liquim Oy	511/81/2001	18 June
3i Finland Oy, Mitron Oy	526/81/2001	21 June
J.M. Huber Corporation, Noviant Oy	499/81/2001	21 June
Andritz AG, Andritz-Ahlstrom Oy	587/81/2001	26 June
Sandvik Invest AB, Metso/Svedala	594/81/2001	2 July
Pohjola-Yhtymä Vakuutus Oyj, Conventum Oyj	577/81/2001	3 July
Espe Oy, Isku Oy, Unilon Oy	256/81/2001	5 July
Berkshire Hathaway Inc., MiTek division of Rexam plc	612/81/2001	11 July
3i Finland Oy, Sitra, Oy Arbonaut Ltd.	611/81/2001	11 July
Helsingin Energia, Vantaan Energia Oy, Espoon Sähkö Oyj, Suomen Energia-Urakointi Oy	458/81/2001	11 July
Danzas ASG Eurocargo Oy, Kelpo Kuljetus Fi Oy	600/81/2001	17 July
European Aeronautic, Defence and Space Company N.V., State of Finland, Patria Industries Oyj	260/81/2001	18 July
Falck Security Oy, PS Protection & Security Oy	663/81/2001	24 July
Turun Puhelin Oy, Turun Konemyynti Oy's business	469/81/2001	25 July

3i Group plc, Micsom Oy	629/81/2001	26 July
Powest Oy, Vattenfall Oy, Empower Oy	77/81/2001	27 July
Rexam plc, Danapak Plast A/S, Plastics, plastic packaging business	676/81/2001	1 August
Leiras Oy, Produits Chimiques Auxiliaires de Synthèse SA, Leiras Fine Chemicals Oy	650/81/2001	1 August
Medtronic Inc., Minimed Inc.	570/81/2001	6 August
Technip S.A., Isis S.A., Coflexip S.A.	694/81/2001	8 August
Telenor Broadband Services AS, Canal Digital AS	703/81/2001	17 August
Alimarc Sweden Ab, Consiva Gruppen Ab	729/81/2001	24 August
Savon Voima Oyj, Kuopion Puhelin Oyj, Eltel Networks Oy, Voimatel Oy	695/81/2001	31 August
3i Group plc, Cardinal Information Systems Oy	792/81/2001	7 September
Nordic Capital IV Limited, Anticimex Nordic AB, Terminix B.V, TMX-Schädlingsbekämpfung GmbH	832/81/2001	18 September
Israel Corporation Ltd., Avix Investments Ltd., Rebenja International B.V., Infinity Holdings (Cayman) Ltd., RSL Com Finland Oy	818/81/2001	18 September
Travel agency Oy Matka-Vekka, Kajaani, Imatra and Helsinki Itäkeskus offices of travel agency Oy Area	840/81/2001	25 September
Tietoenator Oyj, Nokia Networks Oy, product development business	779/81/2001	25 September
Falck Security Oy, Vartiokotkat Oy	829/81/2001	9 October
Metsäliitto Osuuskunta, Thomesto Oy	766/81/2001	11 October
BT Ignite Nordics Ltd, Telenor Communications AS, Telenordia AB	665/81/2001	11 October
TPG Media Invest I, AS, Telenor Media Holding AS	852/81/2001	16 October
Hewlett-Packard Company, part of the Nokia group's internal data administration service operations	900/81/2001	18 October
Teradyne, Inc., GenRad, Inc.	883/81/2001	23 October
Remec, Inc., ADC Mersum Oy	935/81/2001	26 October
Eniro AB, Direktia Oy's directory business and Radiolinja Oy's 118 directory enquiry operations	855/81/2001	26 October
E.ON Scandinavia AB, City of Espoo, Espoon Sähkö Oyj	927/81/2001	2 November

Oy Premiere Holding Ab, Palc Mills Oy	1015/81/2001	13 November
Soon Communications Oy, Computec Oy	986/81/2001	14 November
Danzas ASG AB, Scandinavian Garment Services A/S	1151/81/2001	19 November
MasterCard Incorporated, Europay International S.A.	887/81/2001	19 November
Qwest B.V., KPNQwest N.V.	1023/81/2001	22 November
Eckes-Granini International GmbH, Oy Marli Ab	1066/81/2001	27 November
CRH Europe B.V., Thermisol Finland Oy, Thermisol Sweden AB, Thermisol Denmark A/S	1084/81/2001	7 December
Kodak Polychrome Graphics LLC, Kodak Polychrome Graphics Company Ltd, Imation Business operations of Imation Corporation	1036/81/2001	17 December
Capman Capital Management Oy, Helmet Venture Managers Oy, Kultajousi Oy	1141/81/2001	19 December

1.2 Concentrations approved with conditions

Carlsberg AS, Orkla ASA, brewery business	573/81/2000	2 January
Georgia-Pacific Corporation, Fort James Corporation	830/81/2000	30 January
Suomen Posti Oy, Atkos Printmail Oy	2/81/2001	2 February
Metsäliitto Osuuskunta, Vapo Oy	1021/81/2000	8 March
Sonera Oyj, Loimaan Seudun Puhelin Oy	1202/81/2000	3 August

2. Exemptions and negative clearance

Automatia Rahakortit Oy	Renewal of the conditional exemption granted to the cash card co-operation, valid until 30 May 2002	454/67/2000	3 January
Suomen Taksiliitto ry (STL)	Renewal of the conditional exemption granted to the taxi co-operation, valid until 31 December 2005	945/67/2000	24 January
Ruokakesko Oy	Conditional exemption for resale price maintenance granted to the stores of the K-supermarket chain, valid until 31 December 2003	562/67/2000	29 January
Suomen Osuuskauppojen Keskuskunta	Conditional exemption for purchasing, marketing and price co-operation granted to the regional and local co-operative stores of the S Group, valid until 31 December 2003	384/67/2000	29 January

Ruokakesko Oy	Conditional exemption for resale price maintenance granted to the stores of the Citymarket chain, valid until 31 December 2003	954/67/2000	16 February
Ruokakesko Oy	Conditional exemption for resale price maintenance granted to the stores of the K-market chain, valid until 31 December 2003	953/67/2000	16 February
Ruokakesko Oy	Conditional exemption for resale price maintenance granted to the stores of the K-extra chain, valid until 31 December 2003	955/67/2000	30 March
Ruokakesko Oy	Conditional exemption for resale price maintenance granted to the stores of the K-lähikauppa chain, valid until 31 December 2003	952/67/2000	30 March
Kanatalouden tuki ry	Application for negative clearance and an exemption to the horizontal production and marketing co-operation in the egg market. Neither the exemption nor negative clearance was granted.	196/67/1999	3 April
Suomen Osuuskauppojen Keskuskunta (SOK), Osuuskunta Tradeka-yhtymä	Conditional exemption for a purchasing and logistics co-operation granted to Inex Partners Oy, valid until 31 December 2004	56/67/1999	3 April
Inex Partners Oy, Tuko Logistics Oy (formerly Helsingin Keskustukku Oy)	Conditional exemption for a purchasing and logistics co-operation concerning frozen foods and ice cream products granted to Finnrost Oy, valid until 31 December 2004	803/67/1997	3 April
Ruokakesko Oy	Conditional exemption for resale price maintenance granted to the stores of the RIMI chain, valid until 31 December 2003	1196/67/2000	11 May
Ruokakesko Oy	Conditional exemption for resale price maintenance granted to the stores of the Pikколо chain, valid until 31 December 2003	1009/67/2000	11 May
Automatia Pankkiautomaatit Oy	Conditional exemption granted for a money servicing co-operation, valid until 31 May 2006	870/67/2000	20 June
Oy Suomen Tietotoimisto Ab	Exemption for a price co-operation granted to STT Oy, valid until 29 June 2006	594/67/2000	29 June
Keswell Oy	Conditional exemption for resale price maintenance granted to the stores of the Intersport chain, valid until 31 December 2005	1046/67/2000	17 August
Keswell Oy	Conditional exemption for resale price maintenance granted to the stores of the K Shoe chain, valid until 31 December 2005	1045/67/2000	17 August
Keswell Oy	Conditional exemption for resale price maintenance granted to the stores of the Andiamo chain, valid until 31 December 2005	1044/67/2000	17 August
Keswell Oy	Conditional exemption for resale price maintenance granted to the stores of the Musta Pörssi chain, valid until 31 December 2005	941/67/2000	17 August
Suomen Osuuskauppojen Keskuskunta	Conditional exemption for a purchasing, marketing and price co-operation concerning utility goods granted to the regional and local co-operative stores of the S Group, valid until 30 April 2005	135/67/2001	31 August
Maatalouskesko Oy	Conditional exemption for resale price maintenance granted to the stores of the K agricultural chain, valid until 31 December 2005	1240/67/2000	5 October
Rautakesko Oy	Conditional exemption for resale price maintenance granted to the stores of the Rautia chain, valid until 31 December 2005	1239/67/2000	5 October
Rautakesko Oy	Conditional exemption for resale price maintenance granted to the stores of the K hardware chain, valid until 31 December 2005	1238/67/2000	5 October

3. Other decisions

Pilkington Lamino Oy	Alleged abuse of its dominant position in bus windscreen transactions	546/61/2000	2 January
Helsingin Arvopaperi- ja johdannaispörssi, Selvitysyhtiö Oy (Helsinki Stock Exchange)	Alleged abuse of its dominant position in the pricing of stock exchange fees	756/61/2000	8 January
Raahe Municipal Federation for Education	Alleged governmental competition restriction when the municipal federation hired facilities for a driving school business	810/68/2000	16 January
Suomen Arvopaperikeskus Oy	Abuse of its dominant position in the pricing of securities settlement services	553/61/2000	19 January
Avena Siilot Oy	Abuse of its dominant position in the pricing of grain reserve stock services	385/61/1998	19 January
Elisa Communications Oyj	Alleged abuse of its dominant position in the sales campaigns for ISDN subscriptions	17/61/2001	1 March
Uutisvuoksi Oy	Abuse of its dominant position in the pricing of newspaper advertisements	510/61/2000	15 March
Metsäliitto Osuuskunta	Alleged abuse of its dominant position as a buyer of wood	699/61/1998	23 March
Eurosport Television Ab	Alleged abuse of its dominant position when selecting operator partners	942/61/2000	28 March
Suomen Posti Oy (Finland Post Ltd)	Alleged abuse of its dominant position in the termination of service agreements	320/61/2001	23 April
Sonera Oyj	Alleged abuse of its dominant position concerning international calls made from Sonera's GSM subscriptions	46/61/2001	24 April
Sonera Oyj	Alleged abuse of its dominant position in the mobile contact service	1167/61/1999	2 May
Suomen Posti Oy (Finland Post Ltd)	Alleged abuse of its dominant position in pricing during the service reform	309/61/2000	21 May
Nokia Matkapuhelimet Oy	Alleged abuse of its dominant position in the distribution of mobile phones	206/61/1997	28 May
Metsähallitus (Forest and Park Service)	Alleged abuse of its dominant position in the forest tree seed and plant market	557/61/1998	29 May
Joensuun Puhelin Oy	Alleged abuse of its dominant position in the connection of subscriptions	38/61/2001	5 June
Oy Suomen Tietotoimisto Ab	Abuse of its dominant position in the pricing of basic news services	129/61/2000	20 June
Suomen Hammaslääkäriliitto ry (Finnish Dental Association)	Bidding cartel of private dentists in the competitive bidding arranged by the City of Helsinki	351/61/2001	21 June
Elisa Communications Oyj	Abuse of its dominant position in the pricing of the Nettitaksa service	570/61/2000	26 June
Elisa Communications Oyj	Alleged abuse of its dominant position in the terms of delivery for leased lines	327/61/2001	11 July
Municipality of Reisjärvi	Alleged violation of the Competition Act in the sale of gravel	282/68/1999	30 July
Kone Oyj, Otis Oy, Schindler Oy	Alleged bidding cartel in the pricing of lift servicing jobs in Tampere	1118/61/1998	24 October
Suomen Osuuskauppojen Keskuskunta (SOK), regional co-operative stores of SOK	Market distribution in the S Group	804/61/2001	1 November

Mikkelin Ulataksi Oy	Alleged abuse of its dominant position concerning the taxi reservation system	228/61/1999	7 November
Lakeuden Jätekeskus Oy	Possible competition restrictions relating to waste treatment fees	915/61/1999	5 December
Sucros Oy	Competition restrictions in sugar beet cultivation due to the necessity of owning shares in the sugar company	766/61/2001	17 December
Inarin Taksit	Alleged bidding cartel in the school transport tendering process of the municipality of Inari	517/61/2001	18 December
Oy AGA Ab, Messer Suomi Oy	Alleged abuse of their dominant position in the leasing of gas bottles	821/61/2000	21 December
Semel Oy, Helsingin Taksidata	Alleged abuse of dominant position in the taximeter market, and Helsingin Taksidata Oy's purchasing co-operation	870/61/1999	21 December

FCA's proposals to the Competition Council in 2001

Imatra Test Driving Track Foundation, Driving School Association of Lappeenranta – Imatra	Proposal to forbid the abuse of dominant position and to impose a competition infringement fine	1030/61/98	29 March
Kuopion Taksiautoilijat ry	Proposal to forbid the renewal of the bidding cartel and price co-operation, and to impose a competition infringement fine	12/61/99	5 April
Skanska Pohjanmaa Oy YIT-Yhtymä Oy Pohjansepot	Proposal to forbid the renewal of the bidding cartel and to impose a competition infringement fine	923/61/98	29 May
Gramex Oy	Proposal to forbid the abuse of dominant position and to impose a competition infringement fine	1018 and 1061/61/00	18 December

FCA's initiatives and statements in 2001

1. Initiatives

Ministry of Transport and Communications	Incorporation of the commercial weather services of the Finnish Meteorological Institute into a separate company	267/71/2001	13 March
Ministry of Social Affairs and Health	Competition distortion in laboratory services caused by customer fee regulations	391/71/2001	23 April
Ministry of the Environment	Type approval of water fittings	622/71/2001	29 June
Ministry of Education	Training professional pilots in Finland	1088/71/2001	16 November

2. Statements

Ministry of Transport and Communications	Government proposal for a Radio Act	8/72/01	26 January
Insurance Control Authority	Statutory accident insurance	48/72/01	29 January
Ministry of Transport and Communications	.eu regional domain name	71/72/01	9 February
Ministry of Agriculture and Forestry	Government proposal to amend the Animal Feed Act and the Decree of the Ministry of Agriculture and Forestry on practising the animal feed business	62/72/01 136/72/01	16 February
Ministry of Finance	Memorandum by the banking service working group	33/72/01	15 March
Ministry of Justice	Draft for a Government proposal on a Market Justice Act and related legislation	228/72/01	15 March
Ministry of Finance	Memorandum by the working group on VAT for municipal acquisitions	210/72/01	23 March
Ministry of Transport and Communications	Act on electronic signatures	223/72/01	23 March
Ministry of the Environment	Regulations and guidelines for Finland's Code of Building Regulations A2	299/72/01	2 April
Energy Market Authority	Draft regulations on submitting the financial statements of natural gas business operations to the Energy Market Authority and on publishing the key figures of natural gas network operations	274/72/01	12 April
Ministry of Justice	Report by the electricity business working group	261/72/01	23 April
Ministry of Transport and Communications	The Commission's report on improving the quality of sea port services and a proposal concerning access to the port service market	316/72/01	24 April

Ministry of Education	Report by the religious freedom committee	375/72/01	24 April
Telecommunications Administration Centre	Amendment of the regulations on the power feed in telecommunications networks	344/72/01	4 May
Ministry of Transport and Communications	Definition of telecommunications companies with substantial market powers	404/72/01	7 May
Ministry of Transport and Communications	Establishment of the certification unit	451/72/01	15 May
Finnish Water and Waste Water Works Association	Building of site water pipes and site sewers for real estate projects	477/72/01	17 May
Ministry of Transport and Communications	Reform of the communications legislation	464/72/01	8 June
Parliament, Economy Committee	Proposals for amendments to the electricity and natural gas market Directives of the European Parliament and Council, and for a Decree on the conditions for accessing networks in cross-border electricity business	551/72/01	12 June
Parliament, Transport and Communications Committee	The Commission's proposal for a Directive on accessing the port service market	568/72/01	13 June
Uusimaa Regional Council Tuomas Santasalo Ky	Investigation into Uusimaa's commercial service network	549/72/01	14 June
Ministry of Transport and Communications	Railway Act, the Act on the Finnish Rail Administration and the Act to amend the Railway Transport Act	555/72/01	14 June
Ministry of Finance	Draft for a Government proposal on the legislation concerning tonnage taxation	560/72/01	15 June
Ministry of Trade and Industry	Reform of the legislation on guest houses and restaurants	165/72/01	18 June
Ministry of Trade and Industry	Amendment of the statutes on electricity security	563/72/01	18 June
Ministry of Finance	Government proposal to the Parliament to amend the Securities Market Act and some other related acts	519/72/01	4 July
Social Services Department of the City of Helsinki	Tendering the medicine purchases of pharmacies' major customers	658/72/01	3 August
Ministry of Transport and Communications	Working group report on "Market-based taxi services of high quality"	623/72/01	8 August
Ministry of Finance	Working group report on the control of financing and insurance groups	609/72/01	9 August
Ministry of Social Affairs and Health	Draft for a Government proposal to amend the Pension Fund Act and Insurance Fund Act	657/72/01	14 August
Telecommunications Administration Centre	The amendment of the regulations on the call restriction classes in telecommunications	628/72/01	15 August
Ministry of Social Affairs and Health	Consideration of competition aspects in the reform of medical legislation	741/72/01	15 August
Ministry of the Environment	Proposal for reviewing the national waste plan until 2005	639/72/01	28 August
Association of Finnish Local and Regional Authorities	The separation of municipal business	669/72/01	29 August
Ministry of Trade and Industry	Draft of proposed amendments to the Electricity Market Act	698/72/01	31 August
Ministry of Trade and Industry	Final report on the development project for the procurement function of the Finnish State	770/72/01	5 September
Ministry of Trade and Industry	Memorandum by the trademark legislation working group	561/72/01	6 September

Parliament, Economy Committee	Government proposal for a Market Justice Act and related legislation	228/72/01	13 September
Ministry of Social Affairs and Health	Final report by the medicine compensation working group 2000	651/72/01	14 September
Ministry of Agriculture and Forestry	Draft proposal on charges for the outputs of forestry centres and the forest economy development centre, Tapio	811/72/01	17 September
Ministry of Labour	Draft proposal on employee leasing of the Labour Administration	531/72/01	18 September
Ministry of the Environment	Reform of Finland's Code of Building Regulations, parts C3, C4 and D2	824/72/01	25 September
Ministry of Trade and Industry	Government proposal to reform credit institution legislation	248/72/00	8 October
Ministry of Transport and Communications	Reform of all communications legislation	871/72/01	12 October
Parliament, Law Committee	Government proposal for a Legal Aid Act and some other related acts	996/72/01	2 November
Ministry of Social Affairs and Health	Draft for a Government proposal to amend the Pension Fund Act and Insurance Fund Act	657/72/01	12 November
Ministry of Social Affairs and Health	Report on laboratory business drawn up by investigators	990/72/01	13 November
Ministry of Justice	Government proposal to the Parliament for an Administration Act and an amendment to the Administrative Jurisdiction Act	880/72/01	19 November
Finnish Communications Regulatory Authority	Amendment of the regulations on the power feed in telecommunications networks	1103/72/01	12 December
Ministry of Trade and Industry	Finergy's and Sener's initiative to develop methods for assessing the amount of suitable profit in the networks business	1067/72/01	14 December
Finnish Communications Regulatory Authority	Regulations of the Finnish Communications Regulatory Authority to be issued in conjunction with the Act on electronic signatures	1083/72/01	19 December
Ministry of Transport and Communications	Report by the working group that inquired into the possibilities of incorporating the commercial activities of the Finnish Meteorological Institute into a separate company	1152/72/01	20 December

Competition Council's decisions within the field of the FCA in 2001

MTV Networks Europe (826/61/95)	The FCA's proposal to forbid harmful competition restrictions in the distribution of TV programmes. The Competition Council rejected the proposal.	71/690/99	26 January
Skanska Pohjanmaa Oy YIT-Yhtymä Oy Pohjanseppo Aarne Hakoranta (23/61/98)	Appeals against the FCA's decision on the bidding cartel. The Competition Council rejected the appeals but overruled the FCA's decision where the case was regarded as being of minor importance and referred back the case to the FCA.	9138/690/1999 139/690/1999	16 February
American Express Finland Oy Diners Club Finland Oy Merita Asiakassuhteiden Oy Osuuskunta Luottokunta/ Eurocard Oy (183/61/91)	The FCA's proposal to forbid competition restrictions related to the contractual terms of the credit card companies. The Competition Council rejected the proposal.	25/359/97	4 May
Salon Seudun Puhelin Oy (483/61/96)	The FCA's proposal to forbid the abuse of SSP's dominant position in the pricing of subscriber lines and to impose an infringement fine of FIM 1 million. The Competition Council ordered SSP to discontinue the competition restrictions or face a FIM 1 million fine and imposed an infringement fine of FIM 1 million.	14/690/2000	18 May
Elisa Communications Oyj (703/61/96, 894/61/98)	The FCA's proposal to forbid the abuse of the dominant position of Helsingin Puhelin Oyj (later Elisa Communications Oyj) in the pricing of subscriber lines and to impose an infringement fine of FIM 30 million. The Competition Council affirmed the abuse and imposed an infringement fine of FIM 25 million.	150/690/1999	18 May
Turun Puhelin Oy (482/61/96)	The FCA's proposal to forbid the abuse of the dominant position of Turun Puhelin Oyj in the pricing of subscriber lines and to impose an infringement fine of FIM 5 million. The Competition Council affirmed the abuse and imposed an infringement fine of FIM 3.5 million.	15/690/2000	18 May
Pielis-Pusku Ky (694/68/98)	Appeal against the FCA's decision to revoke the handling of a case concerning the alleged abuse of the dominant position of Fortum Energialato Oy in the pricing of diesel oil for ships. The Competition Council rejected the appeal.	111/690/2000	18 June
City of Kuopio/Kuopion Energia (517/61/96)	The FCA's proposal to forbid the abuse of the dominant position of the City of Kuopio/Kuopion Energia and to impose an infringement fine of FIM 5 million. The Competition Council rejected the proposal.	173/690/2000	18 June
City of Helsinki/ Helsingin Energia (537/61/96)	The FCA's proposal to forbid the abuse of the dominant position of the City of Helsinki/Helsingin Energia and to impose an infringement fine of FIM 30 million. The Competition Council rejected the proposal.	151/61/1999	18 June
Kai Lindström (439/61/00)	Appeal against the FCA's decision on the practices of the City of Helsinki in the leasing of ice cream kiosk lots. The Competition Council dismissed the appeal.	162/690/2000	13 August

Olostunturin asukasyhdistys ry (307/61/00)	Appeal against the FCA's decision to revoke the handling of a case concerning the alleged abuse of the dominant position of the municipality of Muonio. The Competition Council rejected the appeal.	147/690/2000	28 August
Liha-alan Kuljetusvaliokunta LIHAVA (126/61/97)	Appeal against the FCA's decision not to grant an exemption for horizontal co-operation in defining transport costs. The Competition Council did not grant an exemption.	158/690/2000	17 September
Mirka Riekkö (844/61/01)	Appeal against the FCA's decision to revoke the handling of a case concerning the alleged abuse of a dominant position in publishing textbooks. The Competition Council rejected the appeal.	181/690/2001	25 October
Telia Mobile AB, Finnish subsidiary (formerly Telia Finland Oy) (817/61/98)	Appeal against the FCA's decision on the alleged abuse of the dominant position of Sonera and Radiolinja. The Competition Council referred back the case to the FCA.	22/690/2000	11 December
Lännen Puhelin Oy Salon Seudun Puhelin Oy Suomen 2G DNA Finland Oy (1202/81/00)	Appeals against the FCA's decision to conditionally approve the acquisition of Loimaan Seudun Puhelin Oy by Sonera Oyj. The Competition Council overruled the FCA's decision and forbade the acquisition.	167/690/2001 168/690/2001	18 December

Supreme Administrative Court's decisions within the field of the FCA in 2001

Päijät-Hämeen Puhelinosuuskunta. (615/61/98)	Päijät-Hämeen Puhelinosuuskunta petitioned to suspend the implementation of the Competition Council's decision until the Supreme Administrative Court decides the case concerning the abuse of dominant positions related to the granting of ownership discounts. The Supreme Administrative Court rejected the petition.	240/2/01 file copy 258	13 February
Jakob Lehto (575/61/99)	Jakob Lehto appealed against the Competition Council's decision to reject Lehto's appeal against the FCA's decision. The FCA had revoked the handling of Lehto's complaint concerning the winter maintenance of streets in the City of Helsinki. The Supreme Administrative Court rejected the appeal.	1191/1/00 file copy 389	6 March
Inkeri Kostiainen (963/61/97)	Inkeri Kostiainen appealed against the Competition Council's decision to dismiss her appeal against the FCA's decision concerning the lawfulness of the agreement between the municipality of Tuusula and Asuntosäätiö. The Supreme Administrative Court rejected the appeal.	3220/2/00 file copy 390	6 March
Salon Seudun Puhelin Oy (483/61/96)	SSP petitioned to suspend the implementation of the Competition Council's decision (on the abuse of the dominant position of SSP in the pricing of subscriber lines) until the Supreme Administrative Court decides the appeal. The Supreme Administrative Court rejected the petition.	1817/2/01 file copy 1602	5 July

Päijät Hämeen Puhelinosuuskunta (615/61/98)	Päijät-Hämeen Puhelinosuuskunta appealed against the Competition Council's decision to order it to discontinue the abuse of its dominant position related to the granting of ownership discounts or face a FIM 2 million fine. The Supreme Administrative Court rejected the appeal.	240/2/01 file copy 1851	15 August
Ajasto Oy (160/61/96)	Ajasto Oy appealed against the Competition Council's decision to impose an infringement fine of FIM 2 million for the abuse of its dominant position in the calendar market. The Supreme Administrative Court rejected the appeal.	3590/1/99 file copy 1909	22 August
Esko Laine (373/61/98)	Esko Laine appealed against the Competition Council's decision, which stated that Lounais-Suomen Taxiauto Oy and Turun Ula-Taksi Oy have not abused their dominant positions. The Supreme Administrative Court rejected the appeal.	1200/1/00 file copy 2461	12 October
LK-Lukiolaisten Kirjakauppa Oy (246/61/94)	The FCA and Lukiolaisten Kirjakauppa appealed against the Competition Council's decision, which stated that Otava has not been engaged in harmful competition restrictions/abuse of its dominant position in the textbook market for upper secondary schools. The Supreme Administrative Court overruled the Competition Council's decision and referred back the case to the FCA for an investigation into whether Otava has abused its dominant position.	2221/1/99 2270/1/99 file copy 2540	19 October
YIT Yhtymä Oy Pohjansepot Skanska Pohjanmaa Oy (923/61/98)	YIT-Yhtymä Oy and Skanska Pohjanmaa Oy appealed against the Competition Council's decision, which stated that the two companies have been involved in a bidding cartel. The Supreme Administrative Court rejected the appeals.	904/2/01 905/2/01 file copy 3131	14 December
Metsäliitto Osuuskunta Stora Enso Oyj UPM Kymmene Oyj (196/61/97)	The forestry companies appealed against the Competition Council's decision on forbidden price co-operation and allocation of sources of supply in the wood trade. The Supreme Administrative Court rejected the appeals, but reduced the fine from FIM 10 million to FIM 3 million per company.	367, 3684, 3685/2/00 file copy 3179	20 December

Presentations by FCA experts 2001

22.1.2001	Director General Mr Matti Purasjoki	The Challenges of Competition Policy, Kajaani Chamber of Commerce, Kajaani
30.1.2001	Director General Mr Matti Purasjoki	The New Economy and Competition Policy, OKO Bank Association, Helsinki
2.2.2001	Assistant Director Ms Riitta Ryhänen	The Functioning of the Wood Market from the Competition Perspective, Lapland Forestry Seminar, Rovaniemi
14.2.2001	Assistant Director Ms Johanna Juusela	Horizontal and Vertical Competition Restrictions, Seminar on the New Guidelines of EU, Kuusamo

16.2.2001	Assistant Director Mr Martti Virtanen	The Development of Welfare Services From the Perspective of Competition Legislation, Sitra, Helsinki
5.3.2001	Director General Mr Matti Purasjoki	The Challenges of Competition Policy, Pörssiklubi, Helsinki
8.3.2001	Assistant Director Ms Johanna Juusela	Immaterial Rights and Competition Law, Kontakti.net, Helsinki
14.3.2001	Assistant Director Mr Martti Virtanen	The Prerequisites of Competition in the Production of Services, Parliament Committee of Social Affairs and Health: How to secure social services that are sufficient, reasonably priced and of good quality?, Helsinki
19.3.2001	Senior Research Officer Ms Henriikka Piekkala	Competition and Regulation in the Telecommunications Sector, OECD: Seminar on Competition Policy and Regulatory Reform in Telecommunications, Moscow
23.3.2001	Head of Research Ms Leena Passi	The Horizontal Reform in EU from the Perspective of the Finnish Competition Authority, The Association of Finnish Lawyers: Reform of Competition Law, Helsinki
24.3.2001	Assistant Director Mr Martti Virtanen	Tampere Laboratory Centre -issue, Procurement legislation in the Finnish Competition Authority's view, Symposium of Medical Centre Managers, Pyhänturi
23.4.2001	Director General Mr Matti Purasjoki	Annual meeting presentation, Forest Industries Finland, Helsinki
3.5.2001	Head of Research Mr Juhani Pennanen	Payment Policy and Pricing in the Public Sector, HAUS, Helsinki
7.5.2001	Assistant Director Ms Johanna Juusela	Competition Law in the EU – the Main Concepts and Development Trends, HAUS, Helsinki
10.5.2001	Director General Mr Matti Purasjoki	The Dilemma of Small Markets, Spring Seminar of Hannes Snellman Attorneys at Law Ltd, Helsinki
10.5.2001	Head of Research Mr Juhani Pennanen	Payment Policy and Pricing in the Public Sector, HAUS, Helsinki
14.5.2001	Director General Mr Matti Purasjoki	EU Experiences of Finland, Hungarian Lawyers Association, Budapest
18.5.2001	Director Mr Juhani Jokinen	The Latest Practices in Merger Decisions and the Requirements for Reform in Merger Regulations, The Association of Finnish Lawyers: Seminar on Merger Control and Abuse of Dominant Position, Helsinki
28.5.2001	Assistant Director Ms Riitta Ryhänen	Competition in Wood Markets, The Association of the Forest Owners in the district of Helsinki: Panel discussion with competition theme, Helsinki
4.6.2001	Assistant Director Ms Riitta Ryhänen	The Relation of the Act on Competition Restrictions with Chain-like Trade, IIR: Seminar on Successful Chain Operations, Helsinki
8.6.2001	Senior Research Officer Mr Mikko Pirttilä	Competition Restrictions in the Media Sector, Turku School of Economics, Turku
18.6.2001	Senior Research Officer Mr Jan Nybondas	Regulatory Reform of Motor Vehicle Distribution, Seminar of Autotuoajat ry, Tampere
27.8.2001	Assistant Director Mr Martti Virtanen	Reform of Municipal Production from the Perspective of the Government and Markets Project, Seminar on Reforming Municipal Production, Tampere
7.9.2001	Assistant Director Mr Martti Virtanen	Regulation/Self-regulation -the Role of the Public Sector, Ministry of Trade and Industry, Helsinki
7.9.2001	Senior Research Officer Ms Liisa Leinonen, Senior Research Officer Mr Antti Norkela	Competition Policy Faced With the New Economy, Network Economy and Globalisation, Meeting of the Competition Authorities of Nordic Countries, Skagen
17.9.2001	Assistant Director Mr Martti Virtanen	Marketisation of Municipality Owned Business, Yrittäjien koulutuskeskus Oy: Outsourcing Service Agreements of Municipalities, Helsinki
19.9.2001	Assistant Director Mr Martti Virtanen	Assessment of Market Power in practise, IIR, Helsinki
20.9.2001	Director Ms Kirsi Leivo	The Modernisation of EC Competition Regulation, IIR, Helsinki
21.9.2001	Assistant Director Ms Riitta Ryhänen	Competition Legislation, Basics of Organisational Activities -course, Finnish Taxi Association, Nastola

4.10.2001	Director Mr Juhani Jokinen	Joint Venture and Merger Agreements – Finnish Competition Authority's Perspective, The Association of Finnish Lawyers: Agreements and Competition Law, Helsinki
4.10.2001	Senior Research Officer Mr Arttu Juuti	The Act on Competition Restraints and the Latest Telecommunications Issues, Helsinki University of Technology: Architecture of Telecommunication Networks Course, Otaniemi
9.10.2001	Director General Mr Matti Purasjoki	"New Economy – a Challenge for Competition Policy", 10th Anniversary of Russian Competition Authorities' Regional Administration, St. Petersburg
11.10.2001	Senior Research Officer Mr Mikko Pirttilä	Immaterial Rights and Competition Law, Kontakti.net, Helsinki
12.10.2001	Senior Research Officer Ms Maarit Järvinen	Finnish Merger Control on Mergers and Acquisitions, KHT-Media Oy: Mergers and Acquisitions – Practical Aspects, Helsinki
15.10.2001	Director General Mr Matti Purasjoki	The Condition of Competition in Leasehold Markets, Government Institute for Economic Research (VATT), Helsinki
25.10.2001	Senior Research Officer Mr Kaarlo Helkamo	The Functioning of Competition in Building Trade in Finland, The Electrical Contractors' Association of Finland (STULL): Electrical Contractor seminar, Hämeenlinna
29.10.2001	Head of Research Mr Juhani Pennanen	Competition Legislation and Pricing in the Public Sector, HAUS: Payment Policy and Pricing Seminar, Helsinki
31.10.2001	Senior Research Officer Mr Mikko Pirttilä	Immaterial Rights and Competition Law, Ernst & Young Academy, Helsinki
5.11.2001	Director General Mr Matti Purasjoki	The views of Finnish competition authorities on the cooperation of the public and private sectors in the production of energy and water supply and sewerage, Cooperation Seminar of Energy and Water Supply and Sewerage Providers, Kotka
15.11.2001	Director Mr Juhani Jokinen	The Latest Practice in Merger Control, Ernst & Young Academy: Competition Law Seminar, Helsinki
21.11.2001	Assistant Director Mr Martti Virtanen	Reform of Municipal Production from the Perspective of the Government and Markets Project, Seminar on Reforming Municipal Production, Lahti
21.11.2001	Director Ms Kirsi Leivo	Cooperation of Competition Authorities in the New System, Ministry of Trade and Industry, Helsinki
22.11.2001	Head of Research Mr Juhani Pennanen	Finnish Competition Authority's View on Competition in Public Procurement and Services, Municipal Sector College, Helsinki
23.11.2001	Assistant Director Mr Martti Virtanen	What Can Competition Bring About, in Good and Bad? Competition and the Role of Competition Legislation, TEPA ry seminar: Turning point of Healthcare: Can health care services be sold? , Helsinki
24.11.2001	Assistant Director Mr Martti Virtanen	Networking and Alliance Capitalism, University of Turku Law Seminar, Turku
27.11.2001	Director General Mr Matti Purasjoki	Challenges of Market Definition, Introduction to a meeting of competition authorities in Brussels
29.11.2001	Director Mr Juhani Jokinen	Planning of a Joint Venture and Competition Law, Seminar of The Association of Finnish Lawyers: International Mergers and Competition Law, Helsinki
30.11.2001	Director General Mr Matti Purasjoki	Municipalities and Competition Policy, Strategy seminar of The Association of Finnish Local and Regional Authorities, Helsinki
30.11.2001	Senior Research Officer Mr Hannu Pohjonen	Chargeable Services of Educational Institutes, Ammatillisen koulutuksen talouspäälliköt ry., Helsinki
1.12.2001	Senior Research Officer Mr Jan Nybondas	The New Block Exemption Regulation of Motor Vehicle Distribution, Finnish Transport Workers' Union: The Future of Automobile Branch Seminar, Teisko
10.12.2001	Director Ms Kirsi Leivo	Development of EC Competition Law, HAUS, Helsinki
19.12.2001	Senior Research Officer Mr Antti Ihämäki	Finland and EU – Cooperation Experiences, Regional Competition Seminar of the Russian Federation, Jekaterinburg

Representation in Working Parties outside the FCA

Adjuster of the working party	Name of the working party	FCA's representative in the working party	Term of the working party
Corporate Advisory Committee functioning in connection with the Ministry of Trade and Industry	Program on Competition Policy working group	Director General Mr Matti Purasjoki and Assistant Director Mr Martti Virtanen as members, Senior Research Officers Ms Liisa Leinonen and Mr Antti Norkela as permanent experts.	The working party handed over its report 28 February 2002 (Working party report of the Ministry of Trade and Industry 3/2002).
Ministry of Trade and Industry	Working group on the assessment of the effects of large retail units on competition	Senior Research Officer Ms Liisa Vuorio	The researcher is LTT-Research Ltd. Work should be completed during spring 2002.
Ministry of the Interior	Permanent working group of the State Provincial Offices on the development and coordination of assessment of basic services.	Senior Research Officer Ms Leena Eerola	The members were appointed for the term of 15 August 2001–15 August 2004.
Ministry of Social Affairs and Health	Competition working group on statutory employment pension scheme	Director Ms Kirsi Leivo (substitute Senior Research Officer Mr Arttu Juuti)	The working group handed over its memorandum 15.2.2002 (Working party memorandum of the Ministry of Social Affairs and Health 2001:35).
Ministry of Finance	Working group studying the environmental control systems of beverage containers	Senior Research Officer Ms Sinikka Loikkanen	The term is from 1 September 2001 to 31 October 2002.
European Competition Authorities (ECA)	Working group on multi-jurisdictional mergers	Head of Research Ms Leena Passi	The working group was set on 20 April 2001.
Competition authorities of Finland, Sweden, Norway and Denmark	Nordic Task Force on Airline Competition working group	Senior Research Officer Mr Antti Norkela	Work will be completed in May 2002.

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