Welfare through sound and effective competition
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To the reader

The FCA’s former Director General retired at the end of 2004 and steering the office became my responsibility from 1 January 2005. The task has proved to be challenging and rewarding. The measures aimed at improving the productivity of the public administration have increased concern about the sufficiency of the FCA’s resources where the staff turnover is also felt. The significance of the new payment system in improving the FCA’s competitiveness in this sense will be attested in the future. The rules on competition restraints have become “more European” and the community competition law formerly commonly only used as a guide to interpretation has changed into applicable law. And cooperation between the Member States authorities based on the new implementing regulation (1/2003) has enabled intervention with cross-border restraints.

The operations of the ECN network, set up to ensure the uniform application of the EC competition rules, has been established as a mechanism for information exchange and case allocation and as a forum for sectoral subgroups. The first experiences of case referral and information procurement from other Member States have been obtained. They are promising. There are no major problems in the investigation of foreign business operations which might restrict competition in Finland. It must be ascertained, however, that the procedural rules concerning legal proceedings and implementation remain up to date. The ECN’s sectoral subgroups which have been set up for almost all sectors of the economy are an important vehicle in forming a common view of the competitive problems in the various fields and in the treatment thereof.
There are other European lines of development which have a bearing on competition policy. In December 2005, the Commission initiated a discussion with its Green Paper on the private enforcement of competition rules. Why are there only some damages claims pending within the EU area if hundreds of decisions are issued each year for competition restraints? The question is justified but caution is merited if the target of protection of competition law would significantly shift from the functioning of the markets to safeguarding the right for damages of an individual entrepreneur or consumer. The common civil law legal protection measures are there for ensuring these interests.

The Commission’s discussion paper of December 2005 on the application of Article 82 of the Treaty to exclusionary abuses aims at major renewals. The economic effects of a restraint play a major role in demonstrating abuse in the future. The Commission’s position will affect the investigation and assessment of the domestic restraints as well. Competition economists attempt to ensure on a deeper level that the decisions involving abuse of dominant position are watertight. The same line of development shows in matters involving vertical distribution restraints and partially also in the assessment of cooperation arrangements between competitors. The more complex economy leads – and for good reason – to a more refined application of competition rules.

In the implementation of the domestic Competition Act, 2005 was a period for establishing the prohibition principle. The FCA’s investigations as regards naked cartels and the ”black list” distribution channel restraints in particular would seem to indicate that the desire for a gross violation of the prohibited competition restraints is surprisingly common. This seems to hold true even if the companies have already been fined for the same violations. There is reason to continue the tight monitoring of the adherence to the prohibition principle by increasing the risk of getting caught and referring all the violations of the prohibitions to the Market Court and increasing the level of fines. It is not a question of a black-and-white ”punishment for a violation” principle but of sending the message that deceiving customers and consumers and obstructing economic progress via gross competition restraints cannot be part of Finnish market economy. We will see during the present year what the establishment of the prohibition principle means in practice when the proceedings of the asphalt and spare parts cartels get underway at the Market Court.

April 2006
Juhani Jokinen
Objectives

The FCA protects sound and effective economic competition by intervening with competition restraints which violate the Competition Act and the EU competition rules and by otherwise promoting competition. The FCA also monitors acquisitions and mergers and attends to the international affairs falling under its jurisdiction. The promotion of competition control and competition advocacy guarantee companies equal competitive conditions in the market.

The FCA’s activities are geared towards increasing welfare in the society. Customers and consumers benefit from well-functioning markets in the form of lower prices, broader selection, innovations and a better quality of products.
When implementing its mission statement, the FCA
• makes efficient use of the tools awarded by the competition legislation
• advises companies and other interest groups in competition issues and offers expert services to back up social decision-making
• promotes and uses competition policy studies conducted in Finland and abroad
• increases the public’s awareness of the significance of competition in improving welfare by means of communications
• increases its sectoral and other knowledge and focuses its activities on key industries
• participates actively in the competition authorities’ international cooperation in a manner best benefiting Finland.

In the implementation of the Competition Act, the FCA
• actively uses its powers of decision to terminate forbidden competition restraints
• refers all grave violations of the prohibitions of the Competition Act to the Market Court for the imposition of an infringement fine
• focuses its resources primarily on restraints which are significant from the viewpoint of the national economy
• emphasises preventive activities initiated by the FCA itself in relation to reactive control
• develops its investigation procedures
• further strengthens its expertise in competition impact assessment.

To promote competition, the FCA
• deepens its expertise on the relationship between competition and overall economic development and communicates this information effectively to the decision-makers
• by the powers available to it, ensures that the institutional framework for economic activities is favourable as regards the functioning of the markets
• develops cooperation with its interest groups particularly within the public administration and strengthens the role of competition policy and the FCA within regulatory reform.
Globalisation and the structural change of the society

The internationalisation of the economy has continued at an accelerating pace in the past few years. Industrial production moves abroad particularly in fields where the share of labour costs of the overall costs is large and where the finished product can be efficiently marketed also from a distant production source. Jobs leave Finland in the service industries where the information and communications technologies facilitate the transfer of production at a distance from the service user.

However, information and knowledge-based service and other production widens correspondingly. E.g. the increase in the demand services resulting from the population’s age structure and the ongoing reform of public service production contribute to this. The enlargement and development of the EU internal market has also promoted the progress of the service industries. The significance of the service sector has steadily increased from the 1970s and nowadays its share of Finnish total production is almost 70 per cent.

Internationalisation also means that more and more foreign firms enter the Finnish market. Some of them set up their own branch office in Finland and some acquire total or partial ownerships in Finnish companies. The share of turnover acquired by Finnish companies from abroad with respect to their total turnover increases as well.

The initiatives of the European Commission to implement the Lisbon strategy require that competition in the Finnish market for services in particular will be boosted. The application of competition legislation is one way of improving productivity in the service sector; in addition, e.g. the business conducted by the government and regulation as an impediment to competition are also in focus.

Increased international cooperation

Since the spring of 2004, the FCA’s activities have been characterised by the practical implementation of the new provisions of the Competition Act and the reform of the EU competition rules. The application of the prohibition principle has been introduced to distribution channel agreements, exemptions have been waived as regards horizontal restraints and the basis of assessment is now formed by the EU competition rules and the case-law based thereon. Articles 81 and 82 of the Treaty are now directly applied to restraints which have an impact on the trade between the Member States.

Set up to ensure the uniform application of the competition rules, the running of the ECN network is now established. In addition to EU cooperation, international cooperation is increasingly conducted in the OECD Competition Committee and with the Nordic countries, the Baltic States and Russia. The EU’s enlargement ambitions and other internationalisation have heavily increased the number of contacts coming from the ascending states and the Far East, for example.

The increased international cooperation ties a large number of the FCA’s scarce resources and imposes demands on the staff’s knowledge. On the other hand, this increased, deeper cooperation add to the professional skills of all parties as well as the opportunities to intervene with competition restraints which breach the competition rules.
Need for reform of competition rules?

The 2004 reform of the Competition Act was successful in itself but because of its partial nature bypassed some important details. It is likely that the functioning of the Act will be reassessed some time in the near future. There is e.g. need to develop the test used in merger control, i.e. the conditions under which the FCA may intervene with a concentration about to arise.

The merger test presently used in Finland differs from the line of EU law, which may in some cases complicate the flexible allocation of powers of investigation between the Commission and the Member States. Some procedural questions such as the scope of the FCA's obligation to investigate and the conditions under which governmental competition restraints will be intervened with are likely to be reassessed in the upcoming years.

Monopoly power in Finland is mainly a result of regulatory and other institutional factors and the problems are not always solved by the means afforded by traditional competition legislation. Intervention with these problems either requires changing the institutional factors so as to make them more favourable to competition or the development of the toolkit of competition legislation.

It also remains to be seen to what extent the new lines of the Commission in the enforcement of the prohibition on abuse of dominant position i.e. Article 82 will affect the application of the competition rules. Investigating the economic effects of the restraints is likely to obtain a greater role in the investigation.
Personnel and organisation

Organisation reform of 2005
The FCA’s staff works divided into six units. The Monopolies Unit, the Cartels Unit and the Advocacy Unit are responsible for competition control and competition advocacy. They are supported by the International Affairs Unit, the Communications and Personnel Development Unit and Administration. The majority, which is less than 40, of the FCA’s research officers work in either the Monopolies or the Cartels Unit. The Advocacy Unit currently employs 8 people and the International Affairs Unit six people.

The activities of the Monopolies and the Cartels Unit were rearranged in 2005 so as to divide the researchers into teams led by the Heads of Research. The teams employ 5-6 research officers. The organisation reform has e.g. had a favourable impact on the quality and uniformity of the decisions when the teams created in the reform have been able to concentrate on specific types of restraints or the characteristics of a particular industry. The FCA’s counselling function has also improved as a result of the new division of work.

- The Monopolies Unit is responsible for cases concerning the abuse of dominant position and merger control.
- The Cartels Unit investigates cartels and other concerted arrangements between competitors and distribution channel restrictions.
- The aim of the Advocacy Unit to influence, proactively, the competition restraints caused by the business and government. The Unit also handles governmental competition restraints.

"Founded in 1988, the Finnish Competition Authority operates under the Ministry of Trade and Industry. Its objective is to protect sound and effective economic competition and to increase economic efficiency by promoting competition and abolishing competition restraints. Located at Siltasaari in Helsinki, the office now employs roughly 70 persons."
The FCA is a popular place of work

The FCA currently has 70 offices. However, the turnover of personnel has been quite heavy recently, e.g. due to leaves of absence and maternal and parental leaves. In 2005, the realised number of man-years was hence 64.8 as regards offices. Open offices and temporary posts were filled as it became possible, and at the end of the year, the number of staff was a good 69.

Roughly 40 per cent of the FCA’s research officers have a basic legal education and 40 per cent an economic education. The remaining 20 per cent also have a university degree. There are several doctors among the research officers as well as those having a post-graduate degree. The average age of personnel has long been relatively low; at the end of 2005, it was 41.5 years.

In addition to permanent and temporary officials, the FCA has, for several years now, used secretary trainees and persons undergoing non-military service as additional resources, particularly when it comes to the support functions. Every summer the FCA also employs roughly ten university trainees. Counting these, the FCA’s number of man-years raised to 71.7 last year.

Judging by the number of people applying for a job at the FCA, it is a popular place of work. Both the permanent and temporary offices are regularly sought
by several dozens of applicants with a good basic education. The same goes for the traineeships. The likely reason for this is that the FCA’s tasks are versatile and challenging and offer a chance of continuous development. Additionally, like the rest of the public administration, the FCA offers its staff good conditions of employment and e.g. the safety brought by a permanent office.

The state provincial offices assist the FCA in the investigation of local competition restraints. In their 2005 target agreements, the state provincial offices had agreed to spend a total of 7.1 man-years for competition control. The realised number of man-years remained five. Altogether 15 officials handled competition issues in the state provincial offices last year, of which 5 were superiors.

### Developments in the number of personnel in 2003 – 2005

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
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</thead>
<tbody>
<tr>
<td>Number of offices 1.1.</td>
<td>67</td>
<td>67</td>
<td>67</td>
</tr>
<tr>
<td>- new offices</td>
<td>-</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Number of offices 31.12.</td>
<td>67</td>
<td>67</td>
<td>70</td>
</tr>
<tr>
<td>Man-years¹</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- realised</td>
<td>67.5</td>
<td>66.4</td>
<td>64.8</td>
</tr>
<tr>
<td>Man-years²</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- realised</td>
<td>75</td>
<td>73</td>
<td>72</td>
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<tr>
<td>Employee turnover / exit, no / %³</td>
<td>6.1</td>
<td>14.7</td>
<td>9.0</td>
</tr>
<tr>
<td>Employee turnover / entry, no / %</td>
<td>9.1</td>
<td>8.8</td>
<td>11.9</td>
</tr>
</tbody>
</table>

1) employees in office plus temporary staff
2) incl. trainees and persons undergoing non-military service
3) employee turnover / exit = total number of leavers
   (persons changing employers, retiring and taking a leave of absence)

### Statistics on personnel in 2003 - 2005

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average age, years</td>
<td>41.4</td>
<td>42.3</td>
<td>41.5</td>
</tr>
<tr>
<td>Researcher training and the share of academic degrees, %</td>
<td>77.9</td>
<td>80.6</td>
<td>78.3</td>
</tr>
<tr>
<td>Temporary staff, %</td>
<td>16.2</td>
<td>7.5</td>
<td>10.1</td>
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<tr>
<td>Part-time staff, %</td>
<td>0</td>
<td>3</td>
<td>2.9</td>
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<tr>
<td>Sickness absence, days / man-year</td>
<td>8.6</td>
<td>6.7</td>
<td>9.2</td>
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<tr>
<td>Cost of occupational health care, EUR / man-year</td>
<td>321</td>
<td>499</td>
<td>442</td>
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<tr>
<td>Costs of promoting physical fitness and job satisfaction, EUR / man-year</td>
<td>238</td>
<td>268</td>
<td>473</td>
</tr>
<tr>
<td>Training costs, EUR / man-year</td>
<td>1 521</td>
<td>1 769</td>
<td>1 519</td>
</tr>
<tr>
<td>Working days spent on training / man-year</td>
<td>13.9</td>
<td>12.0</td>
<td>9.8</td>
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</table>

### Age distribution of personnel in 2005

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Percentage</th>
</tr>
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<tbody>
<tr>
<td>20-29</td>
<td>8.7%</td>
</tr>
<tr>
<td>30-39</td>
<td>17.4%</td>
</tr>
<tr>
<td>40-49</td>
<td>21.7%</td>
</tr>
<tr>
<td>50-59</td>
<td>30.5%</td>
</tr>
<tr>
<td>60-64</td>
<td>21.7%</td>
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</table>
Work requires versatile skills

Following the implementation reform of EU competition rules, even stricter criteria is set on the FCA’s decisions to ensure a uniform application within the entire union. The degree of difficulty of the cases brought before the Market Court and the Supreme Administrative Court has also increased during recent years.

In addition to mastering competition legislation, FCA’s research officers are expected to know business and social mechanisms and to be capable of economic analysis. They must also command investigation techniques and the administrative and publicity legislation as well as the procedural legislation. The maintenance and increase of sectoral knowledge is a continuous challenge.

The FCA seeks to ensure the know-how of its personnel by efficient induction and other training and by distributing tasks so as enable the staff to develop in their work. The interaction within the international community and the cooperation with universities and research centres is also expected to add to the personnel’s expertise.

Training which supports the management of tasks is provided for the entire staff, not just those employed in research activities. The staff is also encouraged to actively build up knowledge of their specific sectors. The improvement of interactive and cooperation skills and language proficiency is also supported.

A newcomer training package was designed for new employees in the spring of 2005, which consisted of specific induction materials and taped lectures on the FCA’s main functions. These contain all the different types of competition restraints, the institution of proceedings, appeals, court processes and the ECN cooperation network.

In 2005, the whole staff was also trained in the application of Finnish administrative legislation. The themes of this administrative training included the scope of investigation obligation, evidence issues, rights of information, content requirements, appealability of decisions, appeal directions and procedure in the administration of administrative law.

The Heads of Research also received leadership training due to the organisation reform and in December the whole staff participated in a day-long job satisfaction training. In addition to internal training, the staff also regularly participate in external training events and seminars both in Finland and abroad.

The agreement on the implementation of a new salary system at the FCA was signed in February 2006. It is hoped that the reform will improve the FCA’s chances to compete on salaries and that it will encourage the staff to good results and to continuous development of their expertise.
## General review of results

In 2005, 469 domestic and 374 EU cases were opened at the FCA. The number of domestic cases decreased when the legislative reforms of 1 May 2004 entered into force. This followed e.g. from the waiving of exemptions and negative clearance decisions and the rise of the turnover thresholds in merger control. The freed resources have been transferred to cartel control and the control of other contractual restraints and abuse of dominant position.

As a rule, grave competition restraints lead to making a proposal to the Market Court. Three proposals to the Market Court were made in 2005 as regards contractual restraints (Competition Act, Art. 4 / Art. 81). In the control of abuse of dominant position (Competition Act, Art. 6 / Art. 82), the FCA made one decision on the termination of the restraints and a subsequent proposal for an infringement fine. In addition to these, the FCA solved roughly 30 other major competition restraints cases.

Following from the legislative reforms of 2004, the mergers and acquisitions notified to the FCA had a clearer connection to the functioning of the Finnish markets. Conditions were imposed on deals in two instances.

In competition advocacy, the emphasis was in the marketization of public service production and on the issues were the FCA participates in official preparation of statutes and enactments. There were a total of 15 working group memberships relating to the preparation of statutes. The FCA also issued a total of 55 opinions and participated in the development and establishment of competition policy studies in the manner agreed with the Ministry of Trade and Industry.

The work of a supervisory authority such as the FCA can only be productive if it focuses its resources on the investigation of major cases. The line of development may be considered successful in this respect: issues of minor importance are solved quickly and inputs are allocated to the handling of major cases.

However, e.g. by the demands of administrative law pose limitations on focusing on major cases from the viewpoint of the total welfare of the society in providing on the scope of the authorities’ investigation obligation, as do the occasionally expressed demands that the FCA should protect the interests of individual companies instead of safeguarding the competition process.

## Inputs and costs

In 2005, there were 700 domestic competition restraints cases pending at the FCA. There were 479 closed domestic cases, i.e. 10 cases per researcher-year. There were 221 unsolved cases including merger issues.

Incoming cases are classified into three categories according to their impact and degree of difficulty. In 2003–2005, roughly 7 per cent of the cases solved have belonged to the category (1) with the gravest impacts and the highest degree of difficulty. Roughly two-thirds of the issues have had a minor impact.

Much work is done at the FCA which does not show in the case handling statistics. Such work relates to competition advocacy in particular where the emphasis lies in working group and other interest group...
Domestic competition restraints cases in 2003–2005, no

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
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</thead>
<tbody>
<tr>
<td><strong>Opened</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Closed cases</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- decisions</td>
<td>24</td>
<td>46</td>
<td>31</td>
</tr>
<tr>
<td>- exemptions and negative clearances</td>
<td>22</td>
<td>18</td>
<td>0</td>
</tr>
<tr>
<td>- cases solved by letter</td>
<td>191</td>
<td>283</td>
<td>230</td>
</tr>
<tr>
<td>- opinions and initiatives</td>
<td>47</td>
<td>68</td>
<td>55</td>
</tr>
<tr>
<td>- cases closed in other ways, e.g. through negotiations</td>
<td>102</td>
<td>124</td>
<td>112</td>
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<tr>
<td><strong>Closed cases, total</strong></td>
<td>386</td>
<td>539</td>
<td>428</td>
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<tr>
<td><strong>Unsolved cases 31.12.2005</strong></td>
<td>264</td>
<td>231</td>
<td>217</td>
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Merger cases in 2003–2005, no

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<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
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</thead>
<tbody>
<tr>
<td><strong>Opened</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Closed</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- merger decisions</td>
<td>93</td>
<td>63</td>
<td>33</td>
</tr>
<tr>
<td>- other closed cases</td>
<td>44</td>
<td>27</td>
<td>18</td>
</tr>
<tr>
<td><strong>Closed, total</strong></td>
<td>137</td>
<td>90</td>
<td>51</td>
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EU cases and meetings in 2003–2005, no

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
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</thead>
<tbody>
<tr>
<td><strong>EU cases</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>No of EU meetings</strong></td>
<td>90</td>
<td>72</td>
<td>71</td>
</tr>
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</table>
cooperation. In 2005, the FCA was represented in roughly 50 working groups and the FCA experts gave roughly 30 lectures in different events.

The FCA’s costs amounted to EUR 4 695 088 last year, which is roughly one per cent less than in 2004. The decrease was due to personnel costs which were lower than budgeted because of employee turnover.

**Processing times and quality control**

The median processing times of domestic competition restraints cases were longer last year than the year before. As regards cases solved by letter, the average processing times neared the 30 days deadline set as a goal but other decisions were prepared for 1.6 years on the average.

Even though the processing of cases may sometimes be prolonged due to reasons outside the FCA’s control, the situation cannot be regarded satisfactory in this respect. Attempts have been made to speed up the investigations e.g. by clarifying the tutelage powers of the Heads of Research and increasing the amount of team work at the FCA.

In merger control, the average processing time of stage I cases extended by just two days despite the more complex nature of the cases. In 2003-2004, the proceedings lasted 18 days on the average, and now 20 days.

The need for counselling related to the application of competition legislation has increased e.g. because business undertakings no longer have the right to obtain an exemption or negative clearance for their activities. The situation has led to companies frequently asking for the FCA’s advice to determine the lawfulness of their actions. This new consultative role of the FCA may be said to have succeeded fairly well on the basis of customer feedback received.

The FCA’s merger control also provides written and oral advice when requested, e.g. on the interpretation of the obligation to notify. Some of the advice is provided in the negotiations preceding the notification of a deal.

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**Case processing times in 2003-2005**

<table>
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<tr>
<th>- Decisions, years</th>
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<tbody>
<tr>
<td>2003: 3 years</td>
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<tr>
<td>2004: 2 years</td>
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<tr>
<td>2005: 1.6 years</td>
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</tbody>
</table>

<table>
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<tr>
<th>- Solved by letter, days</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003: 50 days</td>
</tr>
<tr>
<td>2004: 32 days</td>
</tr>
<tr>
<td>2005: 32 days</td>
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Competition advocacy

Competition advocacy refers to such activities by the competition authorities which seek to influence restrictive institutions - structures, statutes and practices. The objective is that market actors and those making relevant decisions on market activities know competition rules and what they stand for, and in their own actions and decisions, commit to promoting effective competition. Competition advocacy is most efficient when it is possible to prevent potential competition problems before they even arise.

Influencing governmental decision-making forms a major part of competition advocacy. The aim is that statutes or governmental bodies would not impede or distort competition but would rather increase the potential for effective competition. In practice, the competition angle is highlighted through participation in the work of different committees, working groups or other preparatory bodies. Initiatives to dismantle rules and regulations restricting competition and opinions on law bills related to the economy are also important tools of competition advocacy.

Regarding public production, the emphasis in recent years has been on the marketization of public service production. The FCA has e.g. participated in two working groups set up by the Ministry of Trade and Industry and one set up by the Ministry of Finance. In the Ministry of Trade and Industry, the FCA was a member of a steering group investigating the scope and nature of municipal business, and in the Ministry of Finance the FCA was represented in a group discussing the development of private service production, which was connected to the government’s productivity programme.

The other MTI working group investigates the problems involved at the interface between public and private services. The FCA seeks to ensure for its part that consumers could trust public as well as private service production from the consumer protection angle. At the same time, it should be ensured that the functioning of the markets is not unduly limited through regulation.

The FCA also participated in a regulatory impact assessment project set up by the Ministry of Trade and Industry. It seeks to promote the consideration of regulatory impacts of legislative drafting on business, and to develop the methods of assessment of regulatory impacts on business. The FCA considers there to be three main competitive issues involved: the administrative costs of companies, distortion of competition and how companies – in influencing the content of legal drafting – seek to protect the position of incumbents from new competing companies. The creation of markets is an important angle in the marketization of public service production.

In other respects, competition advocacy focuses on cases where the FCA’s representative has participated in official legal drafting. The administrative fields of the Ministry of Transport and Communications and the Ministry of the Environment have been the focus of attention. Both sectors have prepared reforms which largely correspond to the FCA’s views.
Regarding the Ministry of Transport and Communications, the FCA’s activities have concerned the maintenance of public roads, aviation, railway traffic and shipping. Additionally, the FCA has issued statements to the Ministry e.g. on bus and taxi traffic and the development of the organisation of the Finnish Road Administration. The FCA is also represented in the working group preparing the implementation of the national broadband strategy.

As regards the administration of the Ministry of the Environment, the FCA participated in the working group investigating the issues of responsibility and competition in municipal waste management. The working group finished its work in 2005. The FCA also participates in the work of the construction policy follow-up group. Other main representations include participation in two working groups set up by the Ministry of Trade and Industry, one within trade and the other within emission allowance trading.

In the field of administration of the Ministry of Social Affairs and Health, the FCA’s major concerns have been with the price and distribution system of medicines and employment pension and other insurance business. The FCA has issued several opinions and appeared before Parliament Committees several times in these contexts.

In recent times, the FCA has sought to develop the cooperation between itself and other authorities, organisations and the media. For example the meetings arranged with the Association of Finnish Local and Regional Authorities have covered issues such as public procurements and the transparency of the business activities of the municipal operators.

The FCA has also promoted competition by making proposals to the Ministry of Trade and Industry on new commissioned studies and by acting in the steering groups of several studies. The activities of the Institute for Competition Policy Studies, created on the FCA’s initiative, may already be considered established.
Room for competition in municipal waste management

Set up by the Ministry of Environment on the FCA’s initiative, the working group examining the issues of responsibility and competition in municipal waste management finished its work in the spring of 2005. Upon fulfilment, the proposals and recommendations would mean that a third of municipal waste management would be totally opened up for competition. The waste from the industry, trade and accommodation and restaurant services would be left outside the municipal organising responsibility.

However, within their capacity, municipal waste plants are recommended to continue the provision of handling and utilisation services of municipal waste produced by the economy. When in a dominant position, they cannot refuse to do so without a reasonable cause. This way, the availability of waste management services previously part of a legal monopoly will be secured. The municipalities shall also consider the extent to which they should be responsible for arranging the waste management services in the future.

The working group recommended that the transparency of the activities of the municipal waste plants should be improved. The municipalities should keep the supervisory and implementation functions separate from each other. Municipalities forming a waste management company should set up a common board or a federation of municipalities for the supervisory duties and to implement the municipalities’ ownership policy.

Reform needed in price and distribution system of medicines

In the spring of 2005, the FCA issued an opinion on the amendments proposed by the Ministry of Social Affairs and Health to the Drug Act. There were several partial reforms of the Drug Act pending at the Ministry e.g. concerning the substitution of medicines, the distribution agreements between pharmacies and pharmaceutical companies, the pharmacy licence system and the sales of nicotine substitution products.

In the FCA’s assessment, Finland would need a total reform of the price and distribution system of pharmaceuticals instead of partial reforms. On implementing such a total reform, attention should be paid to the reorganisation of the entire public health care system and the development of the EU internal market as regards pharmaceuticals. The FCA proposed that the preparation of such a total reform be initiated.

The FCA finds it probable that a new kind of special legislation prescribing on the prices of pharmaceuticals and the distribution thereof could be created in Finland. Without jeopardising health-policy aims, this would effectively curb the rise of public medical expenses, improve the availability of pharmaceuticals and increase consumer choice by lowering the consumer prices of the medicines. At the same time, new business serving health policy aims could be promoted.

In the beginning of 2006, the Parliament approved a statement, when passing the amendments of the Drug Act, according to which the Parliament requires a comprehensive inquiry by the government on the measures needed to curb down the rising medical expenses. This shall be done in cooperation with the authorities and other actors in the field and be followed by a preparation of the necessary amendments to the Drug Act and the drug substitution system (Government Proposal no 107/2005). This corresponds to the FCA’s views.

Competition law in practice for university students

In May 2006, at the request of the University of Helsinki, the FCA arranged a study course called “Practical competition law” as part of their Law of the European Union module. Several of the FCA’s officials lectured during the course.

Nearing the end of their studies, the law students immersed themselves in the daily life of the competition authorities. The course highlighted both competition law issues and the code of procedure.

The students also learnt about the economics of competition. The scope of the course was 7 credits and the students also prepared a written paper.

The course stirred up such an interest that the number of participants originally planned was exceeded. A similar course will be held in 2007.
Competition advocacy
Merger control

Merger control seeks to protect the benefit of consumers and customers from concentrations as a result of which a dominant position shall arise or be strengthened which significantly impedes competition. The objective is to secure the competitive structure of the market by intervening in advance, with mergers and acquisitions significantly impeding competition and resulting in or strengthening a dominant position.

Finnish merger control has had a clear preventive impact as regards restrictive mergers and acquisitions. In 2005, 33 merger decisions were made, which is 30 decisions less than the year before. The decrease in the number of cases was a result of the 2004 law reform where the turnover thresholds were considerably raised. Deals having a minor impact on competition have not been notified to the office nearly as much as before since the reform.

In two merger cases, the FCA imposed conditions on the approval of the deal. One case was also transferred to stage two where it was approved as such, without conditions. Eight other notifications spawned extensive investigations but the FCA was able to make a decision at stage I one already.

The conditional merger decision made at the start of the year concerned a deal whereby Vapo Oy, with the state as a majority owner, moved to the joint control of Metsäliitto Osuuskunta and the Finnish state. The competitive concerns of the deal were related to energy peat and wood-based fuels which are partially competing fuels. As a result of the conditions imposed, Biowatti was divested from the concentration and the parties’ overlapping activities in the wood-based fuel market were eliminated.

The other conditional decision concerned a deal whereby Elisa Oyj acquired control in Saunalahti Group Oyj. The conditions imposed called that Elisa divest, on its traditional operating areas, the SaunaVerkko for broadband services and sell it to a third party approved by the FCA. In some areas, the sales were ordered to cover the customers of SaunaVerkko as well.

Other cases which required the Merger Control Unit’s resources in 2006 included the Sok/Spar acquisition approved as conditional in January 2006 and the Rautaruukki/PPTH deal approved at stage II in December 2005.
In 2005, the FCA handled the following merger cases (figures for 2004 in brackets):

<table>
<thead>
<tr>
<th>Decisions 1.1.-31.12.2005</th>
<th>33 (65)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pending notifications 31.12.2005</td>
<td>3 (1)</td>
</tr>
<tr>
<td>Pending pre-notifications 31.12.2005</td>
<td>3 (0)</td>
</tr>
<tr>
<td>Lapsed pre-notifications</td>
<td>5 (8)</td>
</tr>
<tr>
<td>Other closed cases</td>
<td>9 (16)</td>
</tr>
</tbody>
</table>

Merger decisions according to type of decision (figures for 2004 in brackets):

<table>
<thead>
<tr>
<th>Proposal to ban a deal</th>
<th>0 (0)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditional approval</td>
<td>2 (1)</td>
</tr>
<tr>
<td>Approved as such during stage II</td>
<td>1 (0)</td>
</tr>
<tr>
<td>Approved as such during stage I</td>
<td>30 (64)</td>
</tr>
<tr>
<td>Legislation does not apply</td>
<td>0 (0)</td>
</tr>
<tr>
<td>Total number of decisions</td>
<td>33 (65)</td>
</tr>
</tbody>
</table>

**Fortum’s acquisition of E.On approved as conditional in June 2006**

On 2 June, the FCA approved an acquisition whereby Fortum Oyj’s subsidiary Fortum Power and Heat Oy acquires control in E.ON Finland Oyj. The approval was conditional on Fortum divesting some of its production capacity.

According to the conditions, Fortum shall lease its share in the Meri-Pori coal-fired power plant until 30 June 2010 and to offer to the Finnish market an annual 1 TWh of so-called virtual capacity until 31 March 2011. The conditions are temporary because the situation in the Finnish electricity market will change by the end of the decade e.g. when the new Olkiluoto nuclear power plant and the new transmission connection between the Finnish and Swedish electricity networks will be completed.

Additionally, Fortum shall sell its peat condensate power plant at Haapavesi and the combined power and heat production plant and gas turbine power plant in Hämeenlinna. The capacity named in the conditions is larger than the capacity of the target of the acquisition, E.ON Finland. It is also required in the conditions that the FCA shall approve the parties to whom Fortum will sell and lease its capacity.

The competitive problems resulting from the deal are related to the electricity production and wholesale market, according to the FCA’s investigations. The Nordic electricity markets have largely integrated and the wholesale price of electricity is effectively determined at the Nordic Nord Pool electricity exchange. Due to the scarcity of the electricity transmission capacity, however, the electricity production and wholesale market is national part of the time which is when Fortum holds a dominant position therein.

Without the conditions imposed by the FCA, Fortum’s dominant position would have been further strengthened because both parties to the deal operate in the Finnish electricity production and wholesaling market.
**Metsäliitto/Vapo acquisition cleared, subject to conditions**

At the start of 2005, the FCA conditionally cleared the arrangement whereby Vapo Ltd with the Finnish state as its majority shareholder transfers to the joint control of Metsäliitto Osuuskunta and the Finnish state. The competitive problems of the concentration are related to energy peat and wood-based fuels, which are partially competing fuels.

The starting point of the investigation was that Vapo has a significant market position in the energy peat market and both Vapo and the national bioenergy company Biowatti part of Metsäliitto also operate in the wood-based fuel market. The conditions imposed on the approval of the concentration include e.g. the dissolving of nearly all of Biowatti’s wood-based fuel businesses from the concentration and selling them to Biowatti’s operative management. Additionally, some behavioural conditions were imposed on the concentration formed by Metsäliitto Osuuskunta and Vapo, the aim of which was to secure Biowatti's business prospects during the transition period.

The FCA had reviewed the same arrangement and conditionally approved the deal in early 2001 as regards energy peat and wood-based fuels. However, following the issue of the previous decision, the deal was cancelled.

**Conditions also imposed for Elisa’s Saunalahti deal**

In October 2005, the FCA cleared an acquisition whereby Elisa Oyj acquires control in the Saunalahti Group Oyj. However, the approval was subject to the condition that Elisa divest Saunalahti’s own SaunaVerkko network for broadband services on certain traditional operating areas and sell it to a third party approved by the FCA. The operating areas were the capital city area, Tampere, Jyväskylä and Riihimäki. In the latter three cities, the customers of the SaunaVerkko were ordered to be sold as well. Some other conditions were also imposed on Elisa with the purpose of securing, for the transitional period, the business opportunities of the entities to be divested from the group.

The FCA holds that competition in the broadband market is regional. Without the conditions imposed, Elisa’s dominant position in the retail and wholesale broadband service markets in the said areas would have strengthened to the extent that competition would have been significantly prevented.

The transfer of Saunalahti to Elisa’s ownership also decreased competition in the mobile telephony services. It did not lead to the creation of a dominant position, however, which should have been intervened with by means of merger control.

**Rautaruukki’s PPTH deal cleared without conditions**

At the end of 2005, the FCA approved a deal whereby Rautaruukki Oyj acquired control in PPTH Steelmanagement oyj, of which it had formerly owned 21.9 per cent. The deal had previously been transferred to Stage two.

PPTH offers industrial and office turnkey deliveries and produces structural steel frames for builders of bridges and machines. Rautaruukki is a major supplier of raw material for steel constructors in Finland. As a result of the acquisition, Rautaruukki will expand its operations in the steel construction market where it is a major supplier itself.

The main problem examined at stage II was whether Rautaruukki, as a prominent material supplier, is able to reduce competition in the steel construction market by placing PPTH’s competitors at a competitive disadvantage compared to itself as regards raw material deliveries.

The FCA investigations showed, however, that the deal does not create competitive problems which may be intervened with by means of merger control. Since steel can be replaced by alternative building materials in the majority of the building sites, in addition to the steel construction market, the FCA also examined the competitive effects of the deal in the entire market of industrial and office construction deliveries.

In the majority of the cases, building developers may choose e.g. a structure made of concrete instead of steel and may hence choose to work with other than steel contractors. The FCA’s
investigations also show that Finnish steel constructors are able to purchase steel products from other manufacturers than Rautaruukki; several European steelworks, in particular.

The FCA may intervene with a concentration if, as a result of it, a dominant position shall arise or be strengthened which significantly impedes competition in the Finnish markets or a substantial part thereof. Rautaruukki’s PPTH acquisition was approved as such, without conditions, since the legal threshold for intervention was not exceeded in this case.

SOK’s Spar acquisition sparked vigorous public discussion

At the start of January 2006, the FCA cleared an acquisition whereby the SOK Corporation acquired control in Spar Finland Plc. The deal was subject to both structural and behavioural remedies.

Spar Finland has a network of roughly 280 retail outlets, e.g. 14 Eurospar stores. Some of the retail outlets are owned by Spar Finland, some by the Spar retailers and others are outlets rented by the Spar retailers from Spar Finland. The market share of Spar Finland of the Finnish daily consumers goods trade was approximately 6.8 per cent in 2004 and the corresponding market share of the S Group was approximately 35 per cent. In practice, the S Group was interested in attaching less than 100 stores to its network.

The threshold for intervention in merger control, the creation or strengthening of a market position significantly impeding competition, was exceeded in roughly 30 Finnish localities. The deal was subject to the condition that SOK/the S Group offer the business of roughly 30 Spar stores to actual or potential competitors in the daily consumer goods trade. This alleviates the competition concerns resulting from the deal to the daily consumer goods market. The retailers’ possibilities to disengage themselves from the Spar cooperation agreements were facilitated by a commitment package.

In the procurement market of the daily consumer goods retail trade, the 35 per cent’s ownership of Tuko Logistics Oy (a procurement and logistics company owned e.g. by Wihuri, Stockmann Oyj Abp and Heinon Tukku Oy) would have enabled a situation where significant market information could have been passed to the S Group on the purchases of competing daily consumer goods chains, specifically on procurement volumes and prices. The FCA ordered that SOK/Spar Finland Oyj renounce the ownership of Tuko Logistics Oy shares during a transition period. During that period, representatives of Spar Finland Oyj/SOK shall not participate in the meetings of the board of directors of Tuko Logistics Oy.

The FCA has investigated the competition concerns of the deal on the national, regional and local level. The examination which focused on storespecific sales, market shares and the structure of the retail outlet network showed that the S Group is a market leader in several municipalities. In several instances, the pressure of competition caused by other consumer goods stores was so severe however, that the likelihood of competition concerns was minimal despite of the relatively high market shares within specific municipalities. The conditions imposed by the FCA therefore concern municipalities in which or in the vicinity of which the consumers do not have a sufficient number of or alternative purchasing places for daily consumer products.
Control of abuse of dominant position

In the control of abuse of dominant position, particularly such restraints have been intervened with which prevent the development of new operating models or prevent entry into the field. These include different practices which exclude competitors.

Even though the FCA was able, at the end of 2004, to finish its investigations of the broadband market – a project commenced in 2002 - a large number of complaints relating to the broadband market have followed. The cases concern the abuse of so-called bottleneck product, here the local telecom network, to defend a dominant position. Through its activities, the FCA has been able to open up competition in this strongly developing market - is a central market for promoting the information society. The competition infringement proposal concerning Lännen Puhelin made in 2004 is still pending at the Market Court.

Another important exclusionary decision concerned Suomen Numeropalvelu Oy (SNOY), which is the only national provider of telephone subscriber information. SNOY had restricted, without a justifiable cause, the provision of subscriber information to a company offering free directory services over the Internet. In May 2005, the FCA prohibited the application of the restraint and made a proposal to the Market Court for imposition of an infringement fine. The application of the abuse prohibition in SNOY’s case illustrates the aim of competition policy to consistently punish companies for restraints which aim at or result in reducing consumer choice. In June 2006, the Market Court prohibited the enforcement of the decision issued by the FCA insofar as SNOY had been ordered, under a running conditional fine, to terminate the conduct where SNOY demanded that, as regards the personal data of private citizens, the customer company offering its directory services cannot offer its services to the end customers for free and without a prior registration on the Internet.

The investigations on the alleged abuse of dominant position by Paperinkeräys Oy is an example of a case where the office has been able to prevent potential competition problems before they arise. Having heard the allegations against it, Paperinkeräys Oy had informed the office that it would take measures to redress the potential problems with which the abuse of dominant position could be prevented, and the FCA had no need for further measures from the viewpoint of securing sound and effective competition.

During 2005, the investigations concerning the market for machinery and systems used for recycling beer and beverage bottles were brought to conclusion. The potential problems detected during the investigations vanished when Oy Tomra Ab amended its service contracts so as to eliminate features which pointed to the exclusion of competing equipment and spare part manufacturers as well as servicing companies.

On its own initiative, the FCA commenced an investigation last year in which the competitive scene in the mobile telephony market will be investigated. The FCA is also reviewing some alleged abuses in the industrial and transport sectors.

Attempts are made to eliminate the impediments in the telecom and energy market also by participating actively in the working groups discussing the prob-
lems in the market and the regulatory reforms affecting the structure of the market. In 2005, the FCA was represented in 21 such groups. A main aim of the cooperation conducted with the regulatory authorities is to boost the activities of the bodies by preventing overlapping tasks, coordinating functions and exchanging know-how.

The FCA has been an active member of the energy and telecom market subgroups founded under the ECN network in 2005. The subgroups discuss and exchange information on the competitive problems found in the different countries and the tangible solutions which have been obtained in the different competition restraints cases.

The subgroups on other sectors include the joint Nordic group investigating the foodstuff industry, whose report was published in December 2005.

One of the subgroups founded under the ECN network in 2004 handled the application procedure of Article 82 of the Treaty on the abuse of dominant position in the Member States. The work was done in connection with the reform began by the European Commission and its purpose is to increase the significance of the economic aspects of the abuse in case assessment, and to ensure the uniform application of the Article in the Member States.

**Control of Abuse of Dominant Position**

**Article 82 application procedure to be reformed**

The application procedure regarding Article 82 of the Treaty on abuse of dominant position will be reformed. The aim is to increase the significance of the economic aspects of abuse in case assessment and to ensure the uniform application of the Article in the different Member States. The Commission published a discussion paper on the matter in 2005. The FCA also participated in the preparation of the reform in the relevant subgroup of the ECN network.

The FCA estimates that if the reform will be implemented as proposed its investigation obligation and burden of proof will become heavier. It is a question of a logical continuum for consolidating the modern economic theoretic basis of EU competition policy and law, which has already had an impact on the application of Article 81 and merger control, says Director Martti Virtanen who is one of the FCA’s representatives in the Article 82 subgroup.
Gramex fined for abuse of dominant position

The Supreme Administrative Court decided in October 2005 that the copyright society Gramex abused its dominant position in 2000 when determining the tariffs applied to the copyrights of the musical arts. The Supreme Administrative Court confirmed the Market Court's previous decision in the matter, also with respect to the EUR 250,000 competition infringement fine. The FCA had proposed that the fine would be three million marks, i.e. roughly EUR 505,000.

Gramex was the Copyright Society of Performing Artists and Phonogram Producers in Finland, and it has a monopoly for these copyrights in Finland. The abuse of dominant position took place when Gramex applied to the national commercial radio station Radio Nova a different performance tariff than to the local radio stations and also made exceptional offers on remunerations to some other special stations.

The Supreme Administrative Court found that the Finnish commercial radios had operated in the same market for sales of national radio commercials at least from such a point onward that it should be taken into account from 2000. The Court held that Gramex had breached the Competition Act when it had collected a 5 million mark minimum compensation from Radio Nova and applied a different tariff to Nova than the rest of the commercial radio business. Gramex had not presented a justifiable reason for the differentiation. The making of offers differing from each other and the general practice of the field was also considered to be a violation of the Competition Act.

Suomen Numeropalvelu also abused its position

In May 2005, the FCA found that Suomen Numeropalvelu Ltd (Finnish Telephone Number Service, SNOY) had committed an abuse of dominant position prohibited by the Competition Act. The case involved a procedure whereby SNOY demanded that its customer companies offering telephone directory services should not offer their services to end customers for free and without prior registration on the Internet.

SNOY is a joint company of the Fonecta Group Ltd and Finnet-Media Ltd, which maintains a national database of telephone subscriber information and resells the information to companies offering telephone directory services. SNOY has no competitors at the moment. SNOY's owners compete with the complainant, Eniro Finland Ltd, as providers of telephone directory services.

Based on its investigations, the FCA found that SNOY's conduct was ultimately an attempt to prevent the entry of competitors offering a new type of service. At the same time, SNOY's conduct slowed down the development of directory services which exploit new technology and which are more user-friendly, versatile and cost-effective. SNOY's conduct hence conflicted with the legislator's aim to increase the supply of new kinds of telephone directory services and to promote the use thereof.

The FCA prohibited SNOY's conduct as a breach of the Competition Act. The decision also imposed a supply obligation on SNOY regarding the telephone subscriber information. To enforce the decision, a running conditional fine was imposed. In addition to the prohibition decision, the FCA made a EUR 150'000 competition infringement fine proposal on SNOY to the Market Court.

However, the Market Court prohibited the enforcement of the FCA's decision insofar as SNOY had been ordered, under the threat of a running conditional fine, to terminate the practice whereby SNOY demanded, as regarded the personal data of private citizens, that its customer company offering telephone directory services should not offer their services to end customers for free and without prior registration on the Internet. The prohibition stands until the appeal lodged by SNOY with the Market Court has been solved or is otherwise prescribed.
Nordic foodstuff trade still contains problems

Supported by the Nordic Council, the Nordic competition authorities examined, in 2005, the circumstances of the foodstuff industry and trade in the Nordic countries. It appeared that problem areas included the high rate of concentration in the field, expensive prices and difficulties in shelf space entry. The working group’s recommendations are attempts to redress the situation.

Price level still high
In Norway and Island, who are not members of the EU, food is, according to statistics, considerably more expensive than in the other Nordic countries. The price levels in Finland, Sweden and Denmark correspond closely. For Finland, the difference to the EU15, i.e. the old EU countries, is still approximately 10 per cent in tax-free prices.

Statistics show, however, that food prices in the Nordic countries slowly start to resemble the old EU prices. In the EU15 countries, prices have risen by 12 per cent from 1999 and in the Nordic countries only 9 per cent on the average.

The food assortment offered by the grocery stores also seems to be narrower in the Nordic countries than in the benchmark country France. The variety of food is particularly narrow in Norway and Island.

In Finland, the food assortment seems to be markedly wider than in the other Nordic countries. This may be partially due to the instances where the FCA has intervened with agreements between the industry and the trading groups which have limited the direct business contacts between the industry and retail trade.

Competition does not function
The rate of concentration of the foodstuff industry and trade is alarmingly high in the Nordic countries, notes the report. In Finland, the joint market share of the two biggest operators is approximately 70 per cent, and concentration is high in the industry, too, whether it be a question of meat, dairy or brewing industry products.

The concentrated market structure may weaken competition. The working group points out that the Nordic competition authorities shall carefully analyse the competitive effects of concentrations in the field and intervene with those which result in a significant reduction of competition.

As regards shelf space entry, the report urges that operators be particularly observant when they estimate e.g. the lawfulness of loyalty rebates, slotting allowances and other corresponding arrangements. The name or form of the arrangement does not matter as such; the key issue is to assess the de facto effects of the arrangement in the market, emphasises the report.

Zoning may increase competition
New operators need good shop sites, above all. Planning authorities should acknowledge consumer needs and the benefits of competition to the consumers and take these into consideration in their own activities. In Finland, zoning problems are related to the large retail units of the trade, in particular.

The report also contains recommendations on recycling systems, border protection issues, and better consumer information. As regards e.g. border protection, it emphasises that regulation aiming at the protection of consumers should not unduly limit competition. The regulatory conditions in the Internal Market should also be as similar as possible.
Cartel control

The objective of cartel control is to expose e.g. price fixing and market allocation cartels and to attend to the legal actions to punish the cartels. The leniency system and international cooperation are among the tools used in cartel control.

In 2005, the number of cases involving forbidden cooperation between competitors was greater than before. Some of the pending suspicions of cartel activities are not yet public. The pending public cases include the alleged cooperation between the wholesale dealers of spare parts of cars, the alleged market allocation cartel in the ventilation duct market, the alleged price cooperation in the maintenance services of household appliances and the alleged price cooperation in the procurement of raw wood.

In addition, suspicions of a national boycott in the photo trade market are also investigated and in the roofing felt market, the exchange of information which the incumbents are suspected to have carried out for the purpose of restricting competition.

The 2004 proposal to the Market Court concerning the asphalt market is still pending at the Market Court. The FCA has supplied the Court with further statements and rejoinders where the counter claims of the alleged offenders have been commented.

In some cases, the cartel investigations have involved differences of opinion between the FCA and the alleged offenders in the interpretation of the publicity legislation. The FCA is involved in several legal proceedings concerning the interpretation of the Act at the Supreme Administrative Court and the various administrative courts.

In February 2005, the FCA made a proposal to the Market Court on imposing a competition infringement fine to Kesko Oyj and the K-Food Retailer Association for forbidden price fixing cooperation. This was carried out, although the FCA had previously dismissed the relevant exemption application. The FCA proposed an infringement fine of EUR 100'000 to Kesko and an infringement fine of EUR 10'000 to the K-Food Retailer Association.

In the spring of 2005, the FCA proposed an infringement fine to the taxi cars operating in the northern Enontekiö region for conduct violating the ban on bidding cartels. This cartel suspicion was brought to the FCA’s attention by the municipality of Enontekiö.

In the spring of 2006, the FCA proposed to the Market Court that it would impose a total fine of EUR 276 240 on the Association of Finnish Household Appliance Maintenance and the member companies in its Board for price-fixing committed for several years. The aim of the cooperation was to raise the price level of service and repair maintenance, and the conduct had at least an indirect effect on the prices of products with a maintenance guarantee.

In October 2005, the FCA concluded the investigations in the malted barley market. The FCA found that the Central Union of Agricultural Producers and Forest Owners and the manufacturers of malt had engaged in forbidden price-fixing during 1995-2004. The matter has been appealed before the Market Court. Also pending at the Market Court are the FCA’s decisions on insurance brokers and the Finnish Association of Architects.
In the spring of 2005, the FCA commenced investigations on the discount systems in the pharmaceutical market. The investigations concerned the procurement and cooperation agreements between some pharmaceutical companies and pharmacies. According to the information received by the FCA from the pharmacies, the pharmaceutical companies commonly provided discounts to the pharmacies from the wholesale prices of medicines. The agreements typically defined a fixed basic discount and a mechanism which determined the amount of the discount. In addition to fixed discount terms, the agreements contained so-called target and loyalty rebate conditions in which the pharmacy, in order to obtain the discount, had committed to seeking to obtain a specific sales volume. The agreements also contained conditions based on which the pharmacies were granted discounts which were tied to the previous year’s purchases or the attainment of separately defined purchasing goals counted from the total procurement volume.

Agreements had an impact on the selection

The agreements spurred the pharmacies to increase the sales volumes of the medicinal products of a specific pharmaceutical company against the financial reimbursements granted to them. The pharmacy typically obtained the bigger reimbursement, the higher the sales of the medicinal products of the pharmaceutical company compared to the previous agreement period.

Some pharmaceutical companies had also concluded agreements with the pharmacies under which the pharmacy, in exchange for an additional discount, had committed to offering to the patient the medicinal products of the said pharmaceutical company as a first choice or otherwise keep the products in a “special position”, although alternative and substitutive products would have been available on the market.

The replies received from the pharmacies indicated that the agreements under investigation had restrictive effects on competition in the field. They limited or otherwise totally prevented the entry of the products of competing pharmaceutical companies into the market and to the reach of customers, since no alternative distribution channels were available. Although the exact content of the agreements varied, the common feature was that the pharmacies, when favouring the medicinal products of specific pharmaceutical companies and hence limiting customer choice, obtained compensation in the form of additional discounts. Since it was not possible, on the basis of the Drug Act, to transfer the rebates to the retail prices, they did not appear to contain features which would promote the functioning of the market or the pharmacies’ customers.

Request for action to pharmaceutical companies

In December 2005, the FCA sent a request for action to roughly 30 pharmaceutical companies with which the pharmacies had concluded the above-mentioned agreements. The companies were asked to announce what measures they would take with respect to the restrictive agreements or alternatively to explain to what extent the agreements were in the interest of the customers or otherwise allowed from a competition law viewpoint. In their replies and as a result of subsequent contacts, the pharmaceutical companies announced that the discount agreements between them and the pharmacies would end at the end of 2005 or that the companies would otherwise waive their discount practice.

Reformed Drug Act

The situation in the pharmaceutical market changed when the amendments of the Drug Act came into force on 1 February 2006. The wholesale price of a medicine shall be the same for all pharmacies and branch pharmacies as regards the medicinal products not sold elsewhere than at the pharmacies. The discounts and rebates shall be the same for all pharmacies. Since on the basis of the Drug Act it is no longer possible to grant restrictive rebates such as the ones described above the FCA closed the case in March 2006.
**Commission fined 16 firms for industrial bags cartel**

In November 2005, the Commission fined 16 firms EUR 290 million for operating a cartel in the plastic industrial bags market. The Finnish UPM-Kymmene Oyj was fined 56 million for its share in the cartel.

In fixing the amount of the fines, the Commission took account of the size of the market in the countries where the cartel operated, the length of time the cartel had been operating, the relative weight of the firms involved and the size of the firms. According to the investigations, the producers had agreed amongst themselves on sales prices in the Benelux countries, Spain, France and Germany – in some instances, for over 20 years.

Some of the firms cooperated with the Commission and supplied it with information which allowed it to confirm the violation. As a result, they were rewarded in accordance with the Commission’s leniency notice.

Being the first to provide information, the British Polythene Industries enjoyed full immunity. Several other firms had their fines reduced in return for the information they provided. According to the Commission’s press release, UPM-Kymmene was not among the companies whose fines were reduced. The Commission’s decision has been appealed to the EC Court of First Instance.

**Commission initiated discussion on damages**

In many countries, persons who have been subject to competition restraints are allowed to file an action for damages for losses incurred from a competition restraint. The Finnish Competition Act also has a separate provision on this, in addition to which it is possible to seek compensation for damages on the basis of the Damages Act.

In December 2005, the European Commission published a so-called Green Paper on Damages actions for breach of the EC antitrust rules. The Green Paper and the preparatory materials are aimed at initiating discussion on why so few actions are brought on the damages caused by competition restraints in Europe. According to the Commission, this may be due to impediments in the legislation.

The damages claims related to competition restraints are filed at national courts, and the Commission has no jurisdiction in damages issues in this regard. The Green Paper does not contain such legislative proposals either which would alter the existing situation in this sense.

According to the Commission, the national laws of the EU Member States contain restrictions to the filing of damages claims, when the breach of the community competition rules has caused damage to the targets of the restraints.

The Commission finds that those who have suffered from damage do not necessarily have genuine possibilities to file for damages and that the enforcement of the competition rules is hence not sufficiently efficient in Europe.

The Commission aims at removing these restrictions from the damages claims and the Green Paper is a discussion opener in this sense.

**Competition fines non-deductible**

The parliament approved a law bill in December according to which bribes and sanctions, such as fines imposed for competition restraints, are non-deductible in taxation. The motion was justified e.g. by the argument that if the fines were deductible, it would undermine their deterrent effect. The Act is applied for the first time in the taxation carried out in 2006.
The FCA has systematically intervened, as required by the prohibitive provisions, with all the grave competition restraints contained in distribution agreements. Such competition violations have also been referred to the Market Court for the imposition of an infringement fine. For example resale price maintenance (RPM) has been prohibited in Finland for dozens of years. It is considered one of the most serious forms of restraint, since dealers shall be able to compete for customers via prices as well.

In December 2005, the FCA proposed to the Market Court that a EUR 20'000 competition infringement fine for a violation of the RPM ban be imposed on Greendoor Oy importing camping equipment. In this case, the camping equipment sold by the Internet service Varuste.net were the object of RPM. The FCA’s investigations proved that Greendoor claimed that Varuste.net should apply the recommended prices set by Greendoor for the camping equipment supplied by it.

The FCA found that the aim of the competition restraint was to hinder the entry of the new inexpensive Internet distribution option to the market and hence to narrow down customer choice when they select a place of purchase.

In March 2006, the FCA proposed to the Market Court that it impose a competition infringement fine of EUR 120'000 for a violation of an RPM ban by Oy Tecalemit Ab. In this case, Tecalemit had included in the service authorization agreement made by it with Pohjolan Laitehuolto Oy a section under which Pohjolan Laitehuolto could not compete with Tecalemit on the prices of products and services. The conditions violated the RPM ban contained in the Competition Act and prevented Pohjolan Laitehuolto from pricing its maintenance services independently.

As a result of the RPM, Pohjolan Laitehuolto could not freely compete with Tecalemit or any other dealer authorised by Tecalemit. E.g. the firms who owned Tecalemit’s machinery and equipment suffered from the lack of price competition.

In May 2006, the FCA proposed a competition infringement fine of EUR 300'000 to Nikon Nordic Ab for a violation of the competition rules in the digital camera market. According to the proposal, Nikon’s practice complicated the parallel imports of Nikon cameras into Finland and hence decreased competition in the digital camera market.
International affairs

The FCA's international operations seek to secure that the more tighter collaboration commenced in the spring of 2004 between the EU authorities would function as efficiently and flexibly as possible. The cooperation in the ECN-network is off to a good start.

In the investigation of competition restraints, it is now possible to benefit from the expertise of the entire network and assistance in the investigations may be requested from the authorities of other Member States. There are 16 sectoral subgroups which have been set up under the network and the FCA participates in the work of all of them. The most important groups from Finland's point of view are the leniency working group, the subgroup discussing the competitive problems in the telecom market and the subgroup preparing the new guidelines for Article 82.

There is tighter cooperation between the Commission and the Member States in merger control as well where the EU Merger Regulation provides new possibilities to refer cases between the Member States and the Commission.

The Commission and the competition authorities of the Member States submit all the competition restraints cases – i.e. the cases to which Articles 81 and 82 of the Treaty are applied - fulfilling the criterion on trade to the ECN's common Interactive database. At the end of 2005, the database contained 505 competition restraint cases investigated by the Member States or the Commission. The FCA uploaded eight cases in the database.

With respect to the cases pending at the Commission, the FCA has focused on cases which are significant from Finland's viewpoint. In 2005, the FCA handled 374 EU cases. The FCA's representative acted as a rapporteur in three meetings of the Advisory Committee organised by the Commission.

The FCA also assists the Ministry of Trade and Industry in the preparation of EU regulations and court cases.

In 2005, the FCA participated in a total of 71 expert meetings arranged by the Commission and handled roughly 900 secured e-mails sent within the network. As a result of the EU enlargement, the number of written queries from the new Member States is still high. The FCA replied to a roughly one hundred such contacts during the year.

In addition to the EU cooperation, the FCA participates in the work of the OECD Competition Committee and its working groups, Nordic cooperation, bilateral cooperation with the Russian competition authorities and also provides transition countries technical support in competition issues upon request.

Nordic cooperation is still important as the com-
petitive problems are the same in all the countries. In 2005, the Nordic countries cooperated e.g. in matters involving the energy market and the daily consumer goods trade. In addition, a joint investigation was commenced in retail banking.

International cooperation has increased the FCA’s know-how and expertise and improved its potential to solve domestic competition restraints. The development ideas, which have come surfaced through increased collaboration and comparison of functions, have been taken into consideration in planning the FCA’s activities are planned.

The FCA published an English-language brochure “Efficiency through Competition” in 2005. The brochure has 20 pages and introduces the contents of the Finnish Competition Act and the FCA’s main functions.
In 2005, competition issues were fairly highly profiled in the Finnish media. The topics most frequently covered included merger and cartel control, the telecoms field, daily consumer goods trade, pharmaceutical companies, the pharmacy field and health care and the insurance sector. Of mergers and acquisitions, the most attention was focused on Elisa’s Saunalahti acquisition and SOK’s Spar acquisition.

The information and communications working group set up in the context of the ECN network had its first meeting in February 2005. The group’s objectives include creating and maintaining the ECN network’s common Internet pages. A new ECN portal designed by the group was opened up on the European Commission’s homepages in April 2006, and it contains information on the enforcement of EU competition rules in the different Member States. The pages also offer links to the homepages of the EU Member States’ competition authorities and their press releases and annual reports.

HTTP://EC.EUROPA.EU/COMM/COMPETITION/ANTITRUST/ECN/ECN_HOME.HTML
Role of competition in increasing welfare

In autumn 2005, the FCA organised a seminar for its interest groups and staff in the auditorium of the National Museum. The theme was the role of competition in the development of the welfare society. Over a thousand guests attended. The keynote speakers included Permanent Under-Secretary Martti Hetemäki from the Ministry of Finance and Professor Matti Pohjola from the Helsinki School of Economics.

In his opening words, Director General Juhani Jokinen stated the impact of competition on the growth of the economy and the increase of welfare to be major issues of economic research and trade policy.

– Competition boosts the use of resources and expedites the adaptation of the economy to changes in the environment. The market mechanism spurs the actors in a competitive economy to the rapid transfer of resources to productive use. The different regulatory mechanisms hinder this process and hence have a slowing effect on the growth of the economy. By promoting competition and dismantling unnecessary regulation the growth of the economy and the welfare of the citizens can thus be truly promoted, stressed Jokinen.
Decisions of the Market Court (MC) in 2005

Suomen Numeropalvelu Oy (SNOY)

The MC prohibited the enforcement of the FCA’s decision insofar as SNOY had been ordered, under a running conditional fine, to terminate the conduct whereby SNOY demanded that, as regards the personal data of private citizens, the customer company offering its directory services cannot offer its services to the end customers for free and without a prior registration on the Internet. The prohibition stands until SNOY’s appeal to the MC is solved or is otherwise prescribed.

KIVI 17.5.2005 (Diary no 1097/61/03)
MD 13.6.2005 (Diary no 293/05/KR)

Säveltäjäin Tekijänoikeustoimisto Teosto ry

The MC repealed the FCA’s decision to close a case involving the alleged abuse of dominant position by Teosto ry and referred the case matter to the FCA. The MC finds that the FCA had not investigated thoroughly enough, whether the tariff applied by Teosto to the accommodation service providers had implied, in the manner referred to in Art. 7(4) of the Competition Act, the application of an unreasonable pricing practice.

KIVI 12.11.2003 (Diary no 439/61/03)
MD 11.10.2005 (Diary no 229/03/KR)

Taxi driver XX

The FCA had decided not to investigate a letter in which it had been asked to take measures on the basis of the Act on improper conduct in business. The MC rejected the appeal on the matter because the application of the Act did not fall within the FCA’s jurisdiction.

KIVI 12.12.2003 (Diary no 790/61/02)
MD 12.9.2005 (Diary no 13/04/KR)

Gramex ry

The MC repealed the FCA’s decision to close a case involving the alleged abuse of dominant position by Gramex ry and referred the case matter to the FCA. The MC finds that the FCA had not investigated, thoroughly enough, whether the tariff applied by Gramex to the accommodation service providers had implied, in the manner referred to in Art. 7(4) of the Competition Act, the application of an unreasonable pricing practice.

KIVI 27.2.2004 (Diary no 1127/61/02)
MD 12.9.2005 (Diary no 78/04/KR)

Carlsberg A/S

The FCA had approved a merger between Carlsberg A/S and Orkla ASA and imposed conditions in 2001. In 2002, the companies requested the removal of certain conditions from the FCA. Since the FCA rejected the application with respect to a certain condition, the matter was first appealed to the MC and later to the SAC which referred the matter back to the MC. The case lapsed when the FCA announced in a statement issued in November 2005 that it had removed the condition subject to appeal.

KIVI 5.7.2002 (Diary no 338/80/02)
MD 3.3.2003 (Diary no 102/02/KR)
HFD 9.9.2005 (Diary no 1011/2/03)
MD 15.12.2005 (Diary no 460/05/KR)

Piscina Oy

The FCA had approved an acquisition in 2004 whereby Keswell, a subsidiary of Kesko Oyj, had acquired control in Indoor Group Oy. Piscina had demanded that the MC repeal the FCA’s decision or prohibit its enforcement based on a procedural fault. The MC did not investigate the appeal and complaint of Piscina Oy.

KIVI 26.11.2004 (Diary no 827/81/04)
MD 21.12.2005 (Diary no 336/04/KR)
## Decisions by the Supreme Administrative Court (SAC) in 2005

### Lasmak Oy

Lasmak Oy had appealed the FCA’s decision not to investigate a complaint on Suomen Yrittäjät ry which concerned the alleged abuse of dominant position in the provision of free commonly available information services. The MC had rejected the appeal made in the matter. The SAC repealed the FCA’s and the MC’s decisions and referred the case back to the FCA in order for the FCA to investigate in more detail whether Suomen Yrittäjät ry may be considered a business undertaking under Art. 3 of the Competition Act as regards its activities in the Internet portal for entrepreneurs.

**KIVI** 9.1.2002 (Diary no 1025/61/01)  
**MD** 31.3.2003 (Diary no 24/690/02)  
**HFD** 31.1.2005 (Diary no 1338/2/03, file copy 208)

### Carlsberg A/S

The SAC referred back the case involving the amendment of the conditions of a concentration case to the MC. See the MC’s decision of 15.12.2005 (Dnro 460/05/KR)

**KIVI** 5.7.2002 (Diary no 338/80/02)  
**MD** 3.3.2003 (Diary no 102/02/KR)  
**HFD** 9.9.2005 (Diary no 1011/2/03 file copy 2264)

### Gramex ry

The SAC rejected the appeal made by Gramex on the MC’s decision and hence confirmed with its decision that Gramex abused its dominant position in 2000 in determining the tariffs applied to the copyrights of musical arts. The SAC also confirmed the MC’s decision as regards the EUR 250 000 competition infringement fine. The FCA had proposed in 2001 that the competition infringement fine would be three million marks, i.e. roughly EUR 505 000.

**KIVI** 18.12.2001 (Diary no 101861/00 och 1061/61/00)  
**MD** 18.8.2003 (Diary no 221/690/01)  
**HFD** 4.10.2005 (Diary no 2715/2/03, file copy 2527)

### Hotel Sweet Home Oy

Hotel Sweet Home had complained to the FCA and suspected that the city of Piekämäki abused its dominant position in the lease of a business site rented to two separate hotel managers. The FCA did not find an abuse by the city and closed the case. Hotel Sweet Home appealed to the MC which rejected the complaint as the different size rents of the hotel managers resulted from the time period the agreements were made in. This difference in the circumstances was considered acceptable from a competition law viewpoint. The SAC did not find grounds to change the MC’s decision either.

**KIVI** 1.4.2003 (Diary no 874/68/02)  
**MD** 2.4.2004 (Diary no 79/03/KR)  
**HFD** 9.11.2005 (Diary no 1317/2/04, file copy 2912)

### Neste Markkinointi Oy

The FCA had proposed to the MC that it find Neste Marketing guilty of forbidden RPM when it e.g. imposed minimum and maximum limits for the retail prices of the Neste Quick Shop chain and forbid the retailers from undercutting the campaign prices. The MC rejected the proposal and found that although the said chains involved a vertical system between Neste Marketing and the Neste Quick Shop entrepreneurs, these entrepreneurs could not be considered the next sales level with regard to Neste Marketing. Art. 4 could thus not be applied to the case and Neste Marketing was not found guilty of violating the RPM ban. The SAC rejected the FCA’s appeal on the MC’s decision.

**KIVI** 16.4.2003 (Diary no 99/61/02)  
**MD** 24.2.2004 (Diary no 74/03/KR)  
**HFD** 12.12.2005 (Diary no 884/2/04, file copy 3304)