Contents

To the reader ................................................................. 4
Results ............................................................................. 6
  Numerical results ...................................................... 6
  Personnel resources ................................................... 8
  Competence development ......................................... 8
Influencing stake-holder decision-making .................... 11
  Initiatives and opinions .............................................. 11
  Active working group cooperation ............................. 12
  Stake-holder cooperation and communications .......... 13
Competition control as a tool ....................................... 15
  Monopoly control ..................................................... 15
  Merger control ........................................................ 16
  Cartel and distribution channel control ..................... 16
Report on the construction sector ................................. 19
International cooperation ............................................. 23
In 2007, the FCA issued five proposals to the Market Court on the imposition of a penalty payment for breaches of the Competition Act. There were 19 competition restraints cases pending at the Market Court at the end of the year. Of these, 12 were related to cartels or vertical restraints, 6 were cases regarding the abuse of dominance and one was related to mergers and acquisitions.

The Market Court imposed fines for a total of €19.4 million for seven companies that participated in the asphalt cartel. For relevant parts, the Market Court hence confirmed the FCA's infringement fine proposal. The asphalt cartel decision is an indication of how a supervisory authority and a court of law can clear the detection, investigation and judging of a secret cartel. The proceedings continue at the Supreme Administrative Court.

The court proceedings tax the FCA's resources. The preparation thereto is more demanding than before. This is natural since the provisions on the imposition of infringement fines have been tightened and the sentence for a competition restraint may lead to actions for damages more easily than before. Some experiences have been obtained of claims for damages in competition issues. They indicate that actions for damages have not become a supplement for competition control conducted by the authorities, as it has in some other countries; rather, the damages are based on the evidence obtained and decisions made by the authorities. This inevitably raises the question of whether the FCA should focus on supporting these damages trials or the removal of competition re-
straints and impediments which have a negative impact on the performance of the national economy. Our view in this respect is clear; a pending damages claim is no basis for prioritisation as such.

The FCA has renewed its strategy and operative goals. The benefits of competition policy and competition control to the national economy and consumers are directly comparable to the impact of the issues investigated by the FCA. The FCA’s strategy seeks to ensure that the office focuses its activities on issues that are relevant and significant, and that it is possible to assess ex post facto whether it has been successful in its efforts.

There is nothing surprising in the FCA’s newly formulated strategic priorities. Firstly, these include market power: strengthening plausible anti hard core cartel policy, collusion in concentrated markets and the artificial exclusion of competitors and efficient merger control. Secondly, in competition advocacy, the FCA’s emphasis is on the removal of unnecessary impediments to competition. What is new is that these performance meters help to steer activities toward the issues that have the most significance.

Prioritisation is a challenge to competition authorities in all countries; i.e. how to justify to companies or consumers that their case will not be investigated. One method is to improve the transparency of the FCA’s tasks and activities. We apparently need to be more open about what we do and why. While this is being written, the FCA is preparing its prioritisation principles. The intention is to publish them. Perhaps our performance agreement and the goals set in the Parliament’s budget proposal could be more openly presented and explained on our Internet pages. The same goes for the FCA’s internal procedure in the handling of the restraints and mergers. We also seek to improve the transparency of our activities.

April 2008
Juhani Jokinen
Results

Numerical results

In 2007, the FCA handled 669 domestic competition restraints. A total of 458 issues were solved. The EU Commission submitted 454 cases for the FCA’s review, and there were 70 EU meetings.

The processing times of complaints shortened, as the median processing time of cases improved by 15 per cent compared to the previous year.

In 2007, the FCA made five proposals to the Market Court. By the end of the year, there were 19 competition cases pending at the Market Court. Of these, 12 were related to cartels or vertical restraints, and six required measures in 2007.
### Domestic case handling; opinions and initiatives, no

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opened</td>
<td>414</td>
<td>444</td>
<td>448</td>
</tr>
<tr>
<td>Closed cases</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Decisions</td>
<td>31</td>
<td>46</td>
<td>26</td>
</tr>
<tr>
<td>Cases solved by letter</td>
<td>230</td>
<td>218</td>
<td>209</td>
</tr>
<tr>
<td>Opinions and initiatives</td>
<td>55</td>
<td>83</td>
<td>72</td>
</tr>
<tr>
<td>Closed by other means, e.g. by negotiation</td>
<td>112</td>
<td>129</td>
<td>103</td>
</tr>
<tr>
<td>Total</td>
<td>428</td>
<td>476</td>
<td>410</td>
</tr>
<tr>
<td>Unsolved cases 31.12.2007</td>
<td>217</td>
<td>173</td>
<td>204</td>
</tr>
</tbody>
</table>

### Median processing times by final measure

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decisions, days/years</td>
<td>577/1,6</td>
<td>826/2,3</td>
<td>699/1,9</td>
</tr>
<tr>
<td>Change compared to previous year, days/years</td>
<td>128/0,4</td>
<td>249/0,7</td>
<td>-127/-0,4</td>
</tr>
<tr>
<td>Cases solved by letter, days</td>
<td>32</td>
<td>30</td>
<td>23</td>
</tr>
<tr>
<td>Change compared to previous year, days</td>
<td>7</td>
<td>-2</td>
<td>-7</td>
</tr>
<tr>
<td>Closed by other means, days</td>
<td>22</td>
<td>22</td>
<td>49</td>
</tr>
<tr>
<td>Change compared to previous year, day</td>
<td>-25</td>
<td>0</td>
<td>27</td>
</tr>
</tbody>
</table>

### Merger cases, no

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opened</td>
<td>55</td>
<td>62</td>
<td>48</td>
</tr>
<tr>
<td>Closed</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Merger decisions</td>
<td>33</td>
<td>39</td>
<td>35</td>
</tr>
<tr>
<td>Other closed cases</td>
<td>18</td>
<td>19</td>
<td>13</td>
</tr>
<tr>
<td>Total</td>
<td>51</td>
<td>58</td>
<td>48</td>
</tr>
</tbody>
</table>

### Average processing times of mergers, days

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>I stage decision, days</td>
<td>20</td>
<td>15</td>
<td>15,5</td>
</tr>
<tr>
<td>II stage decision, days</td>
<td>34</td>
<td>91</td>
<td>122</td>
</tr>
</tbody>
</table>

### EU-cases and meetings, no

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU-cases</td>
<td>374</td>
<td>422</td>
<td>454</td>
</tr>
<tr>
<td>EU-meetings, no</td>
<td>71</td>
<td>84</td>
<td>70</td>
</tr>
</tbody>
</table>
Personnel resources

In 2007, there were a total of 70 posts at the FCA, and the number of person-years realized was 65.4. The number remained smaller than envisaged due to leaves of absence, flexibilities in working hours and the turnover of personnel.

The total loss of personnel and the entry turnover remained quite high, as in previous years. Particularly family leaves increased the FCA’s total loss of personnel. Altogether 15 FCA officials were on a leave of absence at the end of year 2007. Of these, two were on a maternity or family leave and 8 on a nursing leave.

On 31 December 2007, the FCA had 63 officials in office and in temporary employment. Additionally, at the end of 2007, two secretary trainees and two persons undergoing non-military service were employed by the office.

Flexibilities in working hours increased. The interest e.g. toward part-time employment increased further, and new forms for it were introduced during the past year. In 2007, six officials were employed part-time. The amount of sick-leaves increased but this was affected by a few extended sick-leaves.

In 2007, the FCA provided four traineeships for secretary trainees, nine traineeships for university trainees and four traineeships for persons undergoing non-military service.

During the year, special attention was paid to improving the pay level of the experts. The development of the performance-based payment system was transferred to 2008.

Competence development

Long-term planning of competence development continued. The goals included increasing substantive knowledge, leadership skills and the visits of outside lecturers at the office. Systematic management training commenced at the start of 2008.

The staff received training on the basics of company finances and company decision-making, as well as electronic surveillance. The FCA also has an active economist circle. In 2007, the FCA prepared a long-term economic training programme, which commenced in January 2008.
## Personnel statistics

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average age, years</td>
<td>41.5</td>
<td>42.4</td>
<td>43.5</td>
</tr>
<tr>
<td>Age distribution, %</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20-24</td>
<td>1.5</td>
<td>1.5</td>
<td>1.6</td>
</tr>
<tr>
<td>25-29</td>
<td>15.9</td>
<td>14.7</td>
<td>11.1</td>
</tr>
<tr>
<td>30-34</td>
<td>23.2</td>
<td>22.0</td>
<td>15.9</td>
</tr>
<tr>
<td>35-39</td>
<td>7.3</td>
<td>7.4</td>
<td>15.9</td>
</tr>
<tr>
<td>40-44</td>
<td>10.1</td>
<td>11.8</td>
<td>11.1</td>
</tr>
<tr>
<td>45-49</td>
<td>11.6</td>
<td>8.8</td>
<td>6.3</td>
</tr>
<tr>
<td>50-54</td>
<td>8.7</td>
<td>8.8</td>
<td>14.3</td>
</tr>
<tr>
<td>55-59</td>
<td>13.0</td>
<td>16.2</td>
<td>15.9</td>
</tr>
<tr>
<td>60-64</td>
<td>8.7</td>
<td>8.8</td>
<td>7.9</td>
</tr>
<tr>
<td>Researcher training and the share of academic degrees, %</td>
<td>78.3</td>
<td>76.5</td>
<td>77.8</td>
</tr>
<tr>
<td>Temporary staff (no background office) %</td>
<td>7</td>
<td>14</td>
<td>9</td>
</tr>
<tr>
<td>Part-time staff, no %</td>
<td>2</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Working hours put in / regular annual working hours</td>
<td>76.0</td>
<td>74.6</td>
<td>73.6</td>
</tr>
<tr>
<td>Total labour costs, 1 000 euros/year</td>
<td>3 391</td>
<td>3 594</td>
<td>3 532</td>
</tr>
</tbody>
</table>
Influencing stake-holder decision-making

In competition advocacy, strategic priorities include public production, the stagnated industries from the perspective of regulatory reform and infrastructure industries which are complex from the perspective of effective competition.

The FCA seeks to influence the preparation of legislation by making initiatives, issuing opinions and communicating in many different ways. The competition viewpoint is put forth through participation in the work of committees, working groups or other preparatory organs. These advocacy activities also bore fruit, as the new government programme contains several of the policy definitions and goals the FCA has actively promoted.

The government programme prescribes that the competition distortions caused by the latent VAT contained in private social and healthcare services will be investigated. The programme states that the private and third sectors will complement the municipalities’ service production. The government wishes to expand the field of application of the municipal service voucher to social and health care. The support of organizations is directed in such a way that it does not conflict with the competition legislation and is allocated to non-profitable activities. The government programme also states that the government ensures, by means of competition policy, that private and public service production have equal opportunities to operate.

**Initiatives and opinions**

In its initiative to the Ministry of Transport and Communications, the FCA proposed that the Ministry set up a working group to investigate how the piloting services could be opened up to competition. The task of the Pilotage Act working group is to propose necessary amendments to the Pilotage Act, if it is decided that piloting remain the sole right of the State Pilotage Enterprise, or to assess which issues should be investigated if the piloting service were opened up to competition.

The FCA made an initiative to the Ministry of Agriculture and Forestry in which it proposed that the cadmium content requirements of calcic fertilizers should not be tightened up prior to obtaining the results on the harmful effects of cadmium. The present two-year transition period is too short and, in effect, implies an entry barrier. The FCA proposed that the transition period be extended to 10 years.

The FCA gave an opinion on a working group memorandum regarding the tendering of national pilotage services. The FCA found it positive that instead of the exclusive rights granted to the Finnish State Pilotage Enterprise, the working group proposed that the pilotage and other related services be purchased from effective markets in the future.

In its statement to the Ministry of Transport and Communications, the FCA proposed that when the new Taxi Traffic Act is enforced and the regulation on driving shifts is alleviated, the technical solutions of the taxi relay centre or the registration of drivers and motorists and the qualifications imposed on the drivers should not prevent or restrict operating in the field.

The FCA issued an opinion to the Ministry of Social Affairs and Health on a report commissioned by the Ministry on the problem of the cost-liability of drugs. This two-channel system for the public funding of drugs provides an incentive to financiers to transfer their medical costs to other financiers. In publicly funded health care, the choice of medicines should be based on their medicinal value and on cost-efficiency. Attention should be paid to the overall social costs and the possibility to partial optimization should be ruled out.

In a statement on a report concerning the development of the paramedic and ambulance services, the FCA found the administrator’s proposals misguided. They would decrease market-based steering, strengthen the exclusive right of public production and would not eliminate the needs testing of ambulance transports. The propos-
als of the administrator would also unnecessarily reinforce the position of the hospital districts with respect to the municipalities.

The office commented the report of the follow-up group of nicotine replacement products by saying that the present licence procedure could be replaced by a notification procedure. The FCA supported the elimination of sales restrictions proposed by the working group. The proposal to make the sales of tobacco subject to licence was deemed unnecessary by the office.

The FCA issued its statement on the reports prepared by the National Product Control Agency to the European Commission. The FCA concurred with the Agency’s conclusions about the indiscriminatoriness and intransparency of Alko’s activities and found that the procedures of the company could be further developed.

The proposal by the pharmacy working group to renounce the pharmacy fee was seconded by the office as part of a more extensive reform of regulation in the pharmacy sector. However, contrary to the working group’s view, the FCA found that the individual measures to reinforce the operations of the sub-outlets would further strengthen the restrictive and exclusionary impacts for conducting business born from the needs testing of pharmacy licences. Increasing the number of medical cabinets and permitting their maintenance for other than pharmacists was supported by the FCA. At the same time, a greater liberalisation of the retail sales of OTC-medicines should also be considered.

The FCA’s opinions contributed to Ministry of Education founding a working group to consider e.g. the reorganization of the National Board of Antiquities. The measure was preceded by Administrator Mykkänen’s proposals in the matter.

The FCA’s representative was heard on the reform of the Local Government Act by the Administration Committee of the Parliament. As proposed, provisions on the municipal conglomerate and the municipally owned business very included in the Act. The bill was approved as presented.

The FCA’s representative was also heard on the amendments of Articles 10 and 13 of the Waste Act by the Environment Committee of the Parliament. The Parliament approved the amendments, which became effective as of 1 June 2007. Approximately one third of the municipal waste management was opened up to competition. The FCA contributed to the statement the Parliament attached to its reply. In it, the government is required to swiftly propose a reform of the Waste Tax Act to harmonise the tax treatment of the private and municipal landfills as regards municipal waste.

Active working group cooperation

In 2007, the FCA participated in the work of several working groups. The FCA was represented in 36 international working groups and 30 domestic working groups, the most important of which included:

- Reform of the Act on Competition Restrictions
- Competition neutrality of public business
- Services of General Economic Interest (SGEI)
- Competition and trade
- National construction policy, follow-up group
- Mass transport forum
- Construction and maintenance of railways
- Developing the role of private service production in public service production, project
- Implementation of national broadband strategy, follow-up group
- Commercialization of radiofrequencies
- Tie-in sales in telemarketing
- Waste Tax
- Consumer policy programme 2004-2007
- Project for assessment of the regulatory impacts on business, support group.

In 2007, the FCA participated in the work of the radiofrequency and tie-in sales working groups affecting the market conditions in the field of telecoms. The purpose of the commercialisation of the radiofrequency working group was to allocate radiofrequencies in a way which is wholly service and technology neutral and as market-based as
possible. A particular purpose is the creation of secondary markets which are as flexible and effective as possible. This would lead to an efficient use of the frequencies and have major positive impacts for the efficiency and innovations in the telecoms sector. It would also have an impact on the price, quality and amount of the telecom services offered to the consumers. The group continued its work up until May 2008.

**Stake-holder cooperation and communications**

In communications and PR, the FCA highlights the benefits of competition to customers and consumers; also that competition promotes general welfare.

Of the interest groups’ visits to the FCA, the most significant in 2007 was the visit by the Parliament’s Finance Committee. The 2007 media visitor was the Finnish Broadcasting Company News. The office was also visited by law students from the University of Lapland and by economics students from the University of Joensuu and by representatives of the Helsinki Employment Office.

The FCA’s representatives gave 35 competition-related speeches to various stake-holders. They also lectured on a study course on competition law of the Faculty of Law of the University of Helsinki.

Together with the National Research and Development Centre for Welfare and Health (STAKES), the FCA arranged a mini-seminar on the relationship of competition and health policy. It appeared that the offices could cooperate in healthcare issues and in the assessment of the nature of healthcare services as products.

TEKES, the Finnish Funding Agency for Technology and Innovation, commenced a series of projects on the market mechanisms in public services within the framework of its Serve - Innovative Services Programme. The FCA is represented in its management group as well as in the steering group of the Effective public procurement market project of the Helsinki Region Chamber of Commerce. The groups provide the FCA with the possibility to influence the views of the trade and other administration concerning public service production.

In 2007, the FCA commenced network type of Nordic cooperation in advocacy issues related to the pharmaceuticals and pharmacy sector.

In the FCA anniversary seminar, the interest groups were informed about the need to boost the coordination of economic policy as a requirement of effective competition advocacy. The seminar guests gave positive feedback on the seminar.

It could be deduced on the basis of newspaper and magazine articles and the number of visits to the FCA’s home pages that the interest toward competition issues has increased. The number of visits to the home pages amounted to roughly half a million in 2007, and hence increased by more than 50 per cent from 2006.
Monopoly control

In monopoly control, the FCA focused its activities on the investigation of competition concerns in the infrastructure fields and on the removal of generally exclusive competition restraints. The key industries included the construction, electricity and telecoms markets.

The working group of Nordic competition authorities investigated the competitive conditions in the electricity markets. The group issued its report in autumn 2007, and it included recommendations for measures in the electricity markets.

In 2007, the FCA also investigated on its own initiative whether there are problems in the electricity markets which should be intervened with on the basis of the Competition Act. It was also investigated whether amendments promoting competition in the electricity market could be made. It appeared that from the point of view of well-functioning electricity markets it is essential that there is enough production capacity. The FCA seeks to ensure that all market parties, new entrants included, have equal opportunities to make investments in production capacity.

As regards the telecoms markets, the FCA made four proposals for infringement fines in cases involving the discriminatory discounts systems of subscriber lines. It was proposed to the Market Court that it impose an infringement fine of €100 000 on Oulun Puhelin Oyj. Smaller infringement fines were also proposed to three other telecoms companies for abuse of dominant position.

While the FCA was investigating the matter, the companies cancelled their discriminatory discount systems. The entry of competitors to the market was facilitated when the price of the subscriber lines went down and the pricing principles of the network leases became similar to those of the service operator governing the network.

In 2004, the FCA made a proposal to the Market Court on the imposition of an infringement fine to Lännen Puhelin Oyj in the matter of a price screw. The extensive Market Court proceedings of the case were conducted in autumn 2007. It is a significant precedent in the broadband market. During 2007, the FCA also finalised two other major cases concerning the broadband market. The cases are a signal to the market that abuse may be punishable even if the competition restriction was cancelled during the FCA's investigations. Cancelling the restraint may, however, reduce the amount of the infringement fine.

In the study of the construction market launched by the FCA, the intention was to highlight the most problematic areas in the functioning of the construction market. The main themes include problems in land use, the large amount of public regulation and guidance as an entry barrier and the national standardisation of the construction products industry. The advocacy work which related to the themes was begun when the investigations were underway. The FCA's representative was twice heard in the major advocacy forum, i.e. the government's housing policy working group. Additionally, during the wide interview round conducted with various stake-holders, competition viewpoints were brought up from a relevant angle for each stake-holder.

During 2007, the FCA concluded its own-initiative investigations on Finnair Oyj on the abuse of dominant position. Under investigation were the conditions of Finnair's travel agency contracts, corporate customer discounts and the pricing of Finnair's connecting flights. During the investigations, Finnair made some changes to its contractual usage. As a result of these changes and the developments in the competitive situation in the air traffic market, the possibilities of competing air carriers,
travel agencies and tour operators to compete are now more equal than before.

**Merger control**

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 Finland. In the assessment, the future developments in the markets are also taken into account.

To ensure the efficient handling of mergers, a preliminary negotiation was arranged in 2007 in all major mergers and acquisitions. Guidance on mergers was also given daily. The shortest handling period from the receipt of the notification was 2 days and the longest was 30 days.

When defects and needs to reform the current Competition Act were charted at the FCA, three separate investigations were made in the area of mergers. They concerned turnover thresholds, the test of merger control and general needs to reform.

**FCA closed 35 mergers**

The FCA made 35 merger decisions in all. Not a single merger was proposed to be banned. One deal was cleared in stage two as modified.

Hankkija-Maatalous Oy from the S-group obtained the agricultural business of Lännen Tehtaat Oy. The target of the acquisition i.e. the agricultural business included Suomen Rehu Oy and its subsidiaries conducting animal feed business at the time of notification as well as Avena Nordic Grain Oy and its subsidiaries conducting corn trade. Since Hankkija-Maatalous is also active in the procurement and wholesales of corn, the concentration would have commanded a strong position in the feed and corn trade. The parties announced during stage two that they would exclude Avena Nordic Grain from the deal, and hence modified, the arrangement was not found to pose any problems.

The proceedings on the appeal made by Fortum on the Fortum/E.ON Finland deal took place at the Market Court in autumn 2007. In this major decision from the viewpoint of the concentration of the electricity market, the FCA had obliged Fortum to relinquish part of its production capacity, for otherwise its dominant position in the national electricity market would have been reinforced. The Market Court solved the matter in the spring of 2008 by stating that the FCA has no grounds to impose conditions on the deal, since, according to the court, Fortum does not hold a dominant position in the production and wholesale market of electricity. The FCA appealed the decision to the Supreme Administrative Court.

To ensure the efficient handling of mergers, a preliminary negotiation was arranged in 2007 in all major mergers cases. Guidance on mergers was given daily. The average handling time of first stage decisions was 15 days, making it shorter than before.

**Cartel and distribution channel control**

In the control of cartels and distribution channels, the emphasis is on the FCA’s own-initiative investigation. In 2007, the FCA particularly focused on the service sectors in which competition is weak; these traditionally have strong regulation or entry barriers. The targets of investigation included the daily consumer goods trade, the SEPA cooperation in the banking sector, sales collaboration in the timber trade, exchange of information in the energy sector and cooperation between employment pension companies.

In cartel control, the FCA made one proposal to the Market Court in 2007 for the imposition of an infringement fine. Suomen Hiusyrittäjä ry (Finnish Hairdressers and Barbers) had issued unlawful price recommendations to its members in 2000-06. The recommendations harmonised the size and date of the price increases for the detriment of the service users. Due to the size of the market (360 million euros), even the small increase in service prices resulting from the price recommendations have meant a major loss for the consumers and also an income transfer from the consumers to the barber-hairdressers.
Banking sector

In cooperation with the European Commission, the FCA has sought to prevent the concentration of the payment card market, which would decrease competition and generate general welfare losses. The FCA and the Commission sought to secure that payment card systems competing with Visa and MasterCard remain in the market and new be born when the EU moves to the single euro payments area, SEPA.

When the FCA had intervened with the matter, the Finnish banks abandoned their plans to jointly cease the payment card system. In the future, each bank will make an independent decision about offering payment cards, based on their own commercial interests. The replacement of the inexpensive payment cards by more expensive international cards would be paid by the retailers and eventually by the consumers.

The FCA also helped pave the way to operators in the banking field being able to widely use the Tupas identification method used by the banks. The FCA finds that all operators in the banking market shall be able to use the existing system on equal and indiscriminatory conditions so as that the operators developing new business models may boost competition in the field.

Energy sector

After the FCA’s intervention, Neste Markkinointi Oy undertook to change its discount system in the retailer agreements. The system led to the retailers being tied to a single retailer for a long period of time in a manner comparable to a non-competition clause. This complicated the retailers’ possibility to compete retailers.

The Finnish Energy Industries abandoned the development of a reference price system after it had negotiated with the FCA. The companies competing in the retail market of electricity could have reduced their business risk within the system as well as the uncertainty about each other’s market behaviour. This could have led to welfare losses by raising the price level in the retail market of electricity.

The FCA investigated the Finnish Energy Industries’ practice concerning the communications on the forthcoming changes in the retail prices of electric energy. The investigation showed that the communications would not seem to contain forbidden elements.

Daily consumer goods trade

In the daily consumer goods trade, the FCA focused on the horizontal exchange of information between competing daily consumer goods groups in 2007. Additionally, an investigation was commenced concerning vertical contractual relations between the daily consumer goods trade and the industry.

The target of the investigation on information exchange was the ScanTrack service offered by AC Nielsen, which has significantly increased the possibilities of the central trade groups to observe each other’s market behaviour. The FCA was interested in to what extent the exchange of information may lead to a more uniform conduct of the major operators in the daily consumer goods trade and to decreased competition. Considering the size of the more than €12 billion market, it may be estimated that the potential welfare losses of the consumers are considerable.

The investigation which concerned the relations between the daily consumer goods trade and the industry was targeted at companies representing the bakery, dairy, meat and brewery industries. Of particular interest were access to the distribution channels and the use of bargaining power.

Other measures

The FCA used its powers of inspection in five cases where it had reason to believe that business undertakings or associations of business undertakings were guilty of grave competition restraints. On the basis of the inspections and other materials, companies providing doctors for hire and companies selling rescue vehicles could not be shown to engage in activities which would have violated the Competition Act. The investigations regarding the other cases continued in 2008.
The Finnish Photosellers’ Association was found guilty of competition restraints in the photo preparation market by complicating the activities of its competitor selling services at a discount. The FCA found companies and the association active in the roofing felt sector guilty of forbidden exchange of information in 1996-2001. The companies had exchanged detailed sales and market share information on a monthly basis via their association.

The FCA ordered that Kjaerulff 1 Oy importing the Topfield brand of digital receivers cease its marketing money practice as a breach of the Competition Act. The import company had requested that at least some of its dealers use the recommended price issued by it in their advertising as a condition of receiving the marketing money. In 2006-07, the FCA had received many complaints on the pricing of the Topfield receivers.

During 2007, the FCA also investigated the alleged competition restraints of the Veho Group Oy Ab in the repair and maintenance market of the Mercedes-Benz brand of motor vehicles. Veho had allegedly complicated the activities of the independent repair shops and hence decreased competition to the detriment of the consumers. The car servicing and repairs costs are significant, as they cover approximately 40 per cent of all costs caused by purchasing a car.
During 2006 and 2007, the FCA has conducted an extensive own-initiative investigation (“the construction project”) and charted the major challenges in the functioning of the construction market. The objective has been to pinpoint 3-5 problematic areas and to expose them for further study. These are also the major areas for promoting effective markets, and it is both possible and expedient to attempt to influence them to increase supply.

The point of departure in the FCA’s investigations was the observation on the rapidly and forcefully increasing prices in the region of Helsinki, in particular, and the reasons thereto. The increase in prices obviously basically results from the more or less chronic disparity between supply and demand. Of the factors affecting strong demand many are such that, notwithstanding some technical tax revisions, it is not possible to intervene with them in a free market economy. Hence, the problems appear to relate to the supply side, above all. The challenges partially originate from the 1990s depression, when a large number of capacity was removed from the industry. All in all, many supply-side factors are such by nature that they cannot be easily of quickly influenced. Hence, it is highly important that attempts are made to influence the supply-side factors, regarding which this is possible or realistic in the first place.

As regards competition advocacy, the FCA has paid particular attention to the following: the solving of acute problems relating to land use; the large amount of public regulation and some related problems and the potential problems in supranational standardization, which would appear to increase competition in the construction products industry and the challenges involved in its implementation. As regards competition control, the FCA has paid particular attention to the numerous development and cooperation forums of the companies in the construction industry and the exchange of information taking place within this framework, the general transparency of the sector, and the discount and distribution systems of companies frequently holding a dominant position. Additionally, the FCA has examined the possibilities of increasing production in one-family house production, in particular, and in social house production which has collapsed for several reasons. In the following, a brief discussion of the above-mentioned themes.
Obtaining land to construction use problematic

Finland is one of the most sparsely populated countries in Europe, in which the “lack” of building sites has paradoxically been deplored for twenty years. Since it cannot be a question of de facto lack of land, the problem must relate to the gaining of the land into construction use related to administrative structures. In the capital city area, in particular, this has resulted in the rapid growth of the price of the building sites. Underlying the phenomenon is a group of mutually entwined problems, and their detailed review is not possible here. The results are significant, however: if there is a lack of a central input factor to construction in both an absolute and relative sense, increasing competition by other means is very difficult. There is an absolute lack in the sense of there not simply being enough construction land; and relatively, because in the capital city area, in particular, the prices of building sites are so high that only the biggest construction companies are able to effectively operate in these conditions. Because the problems are caused by several factors, to solve them, many different measures are needed.

Public regulation still plentiful

In Finland, the regulation in the construction sector has traditionally been plentiful, and there are features in the industry which would refer to a planned economy: the introduction of new operating models and decisions does not occur on the initiative of the leading market actors, as in many other fields, but on the initiative of the authorities responsible for regulation. This has resulted in public regulations becoming both the minimum level and the target level for the quality of construction! It is particularly challenging in this regard that the authorities of both the central government and of the municipalities constantly issue regulations in the name of safety, health, environmental considerations and aesthetic values, which almost always raise the construction costs but simultaneously prevent competition. In the gravest cases, e.g. in the municipal planning regulations or in the building code there is a supplier specifically named whose products shall be used. In the less severe cases, the regulations de facto limit the number of alternatives to two or three. The regulatory framework in the construction sector is currently under critical review. Simultaneously, the public regulation on construction would seem to be significantly on the increase European-wide e.g. due to the tightened regulations on energy efficiency caused by combating the climate change.

Supranational standardisation in a stage of development

Underway in the Commission is a major reform of the Construction Products Directive to promote supranational harmonisation and standardisation. In Finland, rather large hopes have been placed on supranational standardisation and on breaking away from national approval procedures, to promote competition in the construction products industry, in particular. This is due to the fact that, according to the FCA’s observations, there are many national standards in Finland which more or less prevent import competition. An example of this is a habit of fitting the locks into the door. Supranational standardisation is obviously a major way of trying to break such set-ups. However, the implementation of supranational standardization in a manner promoting competition may involve several practical problems. For example, in the first phase the new euro-standards still contain a large number of national annexes, at least allegedly paying attention ”special national characteristics”. The implementation thereof in a truly efficient manner may require bigger changes in the whole national command structure.

Many cooperation forums in the sector

The construction sector has traditionally been considered a cartel-prone industry. The detected cases would seem to apply to the construction products industry and not to building construction. All the classic indicators of susceptibility to cartels would not necessarily seem to apply
to actual construction either, but rather to the construction products industry. In its own investigations, the FCA has sought to elaborate on the traditional thesis on susceptibility to cartels. The FCA has also paid special attention to the apparently large amount of information exchange conducted in the various development projects of the field, which may facilitate the indirect coordination of market behaviour in a field already heavily regulated.

**Prices of construction products high**

In the small Finnish domestic markets, there are several dominant construction products industry companies. In practice, this shows in the high prices of the products. The companies in the field have traditionally had an interest to shield their position both through national standardisation and by designing such pricing and discount systems which do not provide incentives to customers to even try competing products. In practice, the lay of the land has been extremely high list prices connected to a complex and diverse discount system. As regards competition authorities, it has become the new challenge that the companies which have been found to occupy a dominant position or which suspect it, have learnt to avoid the traditionally forbidden discounts and to plan ever more sophisticated pricing and discount systems, which may be problematic from the competition perspective, however. In its new rules of interpretation on the abuse of dominant position, the European Commission has paid particular attention on the discount systems and the assessment thereof based on their de facto market effects. In practice, this approach based on the assessment of de facto effects requires at least some kind of new thinking and new conceptual and theoretical tools, the application and development of which contain obvious challenges.

**Possibilities of increasing supply**

Of the potential to increase supply, particularly the private one-family house production and the one-family house industry clearly form a genuine alternative and counter-force to the market and pricing power of large construction companies and their attempts to adjust quality. The role of social housing production is a more intricate issue but by exploiting new, recently materialised solutions with a more market-oriented approach there may open up some possibilities to balance demand and supply.

**FCA intervenes with main problems**

Each of the main themes presented above unravel as several subthemes, and examined on the sectoral level, the problems related to competition in the construction sector and the functioning of the market would seem to be an intricate combination of several subproblems or sub-areas. Hence, it is a “problem of small streams”, and this means that the problems are caused by a large amount of individual problems, none of which seem particularly dramatic when examined individually.

Following the extensive investigatory work, it is the FCA’s intention to attempt to influence the major considerations which have come up from the perspective of effective markets. The FCA has commenced the influencing of the relevant stakeholders during its investigations. The FCA has been heard by the Parliament’s Housing Policy working group and issued opinions on the sector e.g. for the purposes of revising the Land Use and Construction Act. The FCA shall continue this work and specify its goals later.

*Head of Research*

*Mr Ari Ahonen*
International cooperation

In its international cooperation, the FCA particularly focuses on cooperation with the European Union, the OECD and the Nordic countries.

In 2007, the FCA's objective was to actively participate in the international discussion of the field and to develop its operations on the basis of the best practices adopted from the competition authorities from other states.

Regular contacts are also maintained in the ECA (European Competition Authorities) and ICN (International Competition Network) networks and with the Baltic States and Russia.

ECA functions as a cooperation forum for the competition authorities of the entire Europe, and e.g. Norway and Iceland participate in its work. ICN is a world-wide cooperation network of roughly 80 competition authorities.

The FCA arranged a meeting of the ECA Air traffic working group and a meeting of the electricity market working group, both in Helsinki.

OECD an important forum

In 2007, the FCA participated in nine OECD meetings. The FCA prepared six reports for the meetings on the following topics:

- Vertical mergers
- Public procurements – Role of competition authorities as advocates for competition
- Cooperation and exchange of information between competition authorities
- Guidance to companies regarding monopolies and dominant position
- Refusal to deal of companies in a dominant position
- The pro and anti-competitive measures of industrial organisations.

The reports and the roundtable discussions conducted on the basis thereof helped to steer the FCA's activities.

Influencing at the Commission

The Commission heard the EU Member States on two reform projects of EU competition legislation: the competition law application guidelines on maritime traffic and the notice and guideline drafts of merger control.

The FCA referred two mergers to the Commission. The Commission referred one case concerning the mobile telecoms market to the FCA.

Representatives of Directorate General for Enterprise and Industry visited the FCA. The issues which were discussed included the implementation of the Lisbon strategy on competitiveness in Finland and the role of competition policy for the implementation of the Lisbon strategy.

Cooperation with the Nordic States, Estonia and Russia

Reports were made on the pharmacy sector and economic analysis in cartel issues for the Nordic meeting of competition authorities. Based on the pharmacy study, a network of Nordic competition authorities was set up for the exchange of information in the field of pharmaceuticals and pharmacies.

The FCA also hosted the representatives of the Estonian Ministry of Finance and the traineeships of the officials from the Federal Antimonopoly Service of the Russian Federation and the officials from the Estonian Competition Board at the office.
Cooperation in the European Competition Network (ECN) subgroups

In 2007, the FCA actively participated in more than 20 ECN subgroups, and several studies on the competitive problems in Finland were delivered for the use thereof. The FCA suggested important competition issues on the groups’ agenda, particularly in the ECN Pharma and ECN Banking subgroups. The FCA also actively participated in the telecoms and energy ECN subgroups.

The ECN network has been utilised particularly as regards the SEPA account. The FCA's joint activities with the European Commission have sought to secure that competing payment card systems could survive and be created in the European payment card market. The activities of the authorities have been aimed at promoting effective payment card markets by intervening with progress which commenced as a result of the international cooperation of the European banks and the results of which could be assumed to be felt in several Member States. The ECN cooperation was seen to have greatly benefitted the handling of the case.

The FCA also cooperated with the Commission in a pending case which concerned the application of the motor vehicle block exemption regulation.

The FCA's representatives had two negotiations with the Commission’s telecom experts. Discussion was waged on the forthcoming topics of the ECN Telecom subgroup and above all, experiences were compared on the investigatory methods of broadband market cases. On the basis of these discussions, changes were made in the investigatory processes of the FCA’s broadband market cases.

The FCA also participated in the work of the ECN energy market subgroup. The focus in the international energy market cooperation was on the Nordic energy market working group by the Nordic competition authorities, however. Its report and proposals for further measures were published in autumn 2008.

The work of the ECN Consumer Correspondent network of national competition authorities commenced last year. The spring meeting was also attended by the representatives of the national consumer organisations. The FCA's representative presented a speech on “Competition Authority - Consumer Organization, Dialogue in Finland”.

A city Eagle-owl visited the FCA’s yard on 12 October 2007.