FCA YEARBOOK 2009
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To the reader

The economic crisis and, to a certain extent, the means to alleviate it are a challenge to economic policy in particular but also to competition. Is the financial crisis a sign that the market mechanism functions poorly in maintaining the economic order, and what role does economic competition play in surviving the crisis?

— No causality has been found between economic competition or the lack thereof and the international finance crisis – it was more a question of unsuccessful regulation and too much risk-taking. A forceful competition in the finance sector is not an impediment to such stability either which the proper functioning of the finance market necessarily requires.

— In the real economy, the supporting of companies with no chance of success complicates the growth in the long run. Problems may also arise from the building of “national champions” and the unnecessary support thereof. Economic crises have a tendency to prolong, if the application of competition rules has been compromised.

These views are the main fruits of the OECD Competition Committee’s February meeting. The aim of the meeting was to investigate the impacts of the financial crisis on competition policy.

How should the competition authority, the FCA included, adapt its mission to the economic downturn?

— According to the OECD Competition Committee, the control and assessment of competition restraints and mergers should be adapted to the economic environment of the crisis without sacrificing the basic goals of competition and the commonly accepted economic principles of competition policy. We should also aim at a more thorough assessment of impacts on a case-by-case basis instead of a formal review.

It may be added to the above that the Competition Survey published by the FCA in October 2008 provides strong evidence that safeguarding economic competition – not merely in good times but during the recession, too – brings a considerable rise in welfare. The Competition Survey was published in honour of the FCA’s 20th anniversary and the 50th anniversary of the Competition Act.

The Competition Survey contains a summary of the theoretical basis of competition, reports on the meaning of competition in maintaining economic development and reviews of competition in telecommunications, the electricity market, water and sewage construction and the environmental business. The Survey provides a good basis for discussion on competition and the importance thereof, and decision-making, and its input is particularly important in the economic crisis at hand.

Active competition policy and adjacent social policy have created a more favourable operating environment to competition in Finland in the past few years. There still remain major defects in competition, however, and the new economic situation may bring with it new competitive problems. A wide coordination of social policy to promote competition is therefore important.

Topical challenges from the competition viewpoint include the safeguarding of competition neutrality between the public and private businesses and the assessment of the competition impacts of the above-mentioned economic support measures.

June 2009

Juhani Jokinen
Economic crisis and competition

Until the autumn of 2008, a period of stable and strong economic growth was experienced in Finland and the entire world economy. Thereafter the situation changed quickly and radically. The FCA has actively monitored the development of the economy and sought to pay attention to the crisis when predicting its own actions. The FCA’s Competition News made the following assessment of the state of the economy in September 2008:

"It appears quite clear, however, that the relation between economic growth and inflation is becoming substantially more unfavourable than in the past few years. At the same time as economic growth approaches zero, the annual inflation has risen to 4–5 per cent; i.e. we are approaching a stagflation type of situation."

In the FCA’s operational and financial plan for 2010-2013 written in September 2008, the following remarks are made on the development of the economy:

"During the entire 2000s, economic growth everywhere has been strong and international exchange has rapidly increased. This strong period of growth has been branded by lack of equilibrium, however. Particularly the industrial countries have maintained a high level of activity by means of low interest rates, but structural reforms, whereby the growth capacity of the economy could have been increased in the long run, have remained in the background.

The strong expansion of the economy has considerably increased the demand of raw materials and other input factors in the entire world, due to which growth has come up against – perhaps the first time in world history – the physical adequacy of natural resources. The result has been a drastic growth in prices, which has given rise to a worldwide cost inflation shock.

The artificial increase of net asset values, indebtedness and the instability of the economies of the industrial countries combined with cost-inflation and the related weakening of buying power have now taken the sting out of growth.

In Finland, more structural changes have been made than in many other countries and our country has benefitted from the expansion of the Russian economy; the bubble of net asset values has also been considered smaller than in many other European states. The threat of stagflation concerns Finland, too, however."

Economic trends and the FCA

Economic trends have a major bearing on what kind of competition restraints are brought before the FCA.

It is typical of an economic boom that products sell well and there are occasional problems in availability and prices tend to be high. Particularly in countries like Finland where the markets are highly concentrated and dominant position is a common phenomenon, a high number of suspicions on unreasonably high prices and price increases are brought before the competition authorities. Refusals to supply and other allegedly arbitrary measures may also occur, when the significant market power of the sellers and strong demand meet each other in the market. A large number of mergers are also conducted, when there is plenty of capital for implementing structural arrangements.

In a recession, the demand for products is low and the sellers’ incentives to increase the utilisation rate of their production capacity are reinforced. Related to this may also be the temptation to artificially foreclose competitors from the market. The number of mergers and acquisitions usually decreases but the cases which are detected tend to be particularly difficult, as they may lead to a significant concentration of the market and a major decrease in production capacity.

The relation of cartels to economic trends is somewhat more unclear compared to other competition restraints, because in an economic boom it is easier to negotiate a cartel whereas in a recession there is a stronger need for the forbidden cooperation.

For competition authorities, the stagflation circumstanc- es would be challenging in that problems typical of both an economic boom and recession might come to fore when both the rise of prices and underutilisation of capacity would be prevailing in the economy. As regards cartels, stagflation would both ease the implementation of collusion and strengthen the incentives thereto.
Fierce fall

The countries which are most dependent on foreign trade suffer the most from the worldwide crisis. Their import is based on raw materials and investment products and their major trade partners are among those most suffering from the recession. Finland fulfils these criteria deplorably well. Compared to other countries, however, the Finnish situation is alleviated by a below average price bubble on the housing market and the relatively stable position of the financial sector – at least for now.

Production and foreign trade began a steep glide in Finland in October-November 2008. Production diminished by 4.1 per cent in November compared to the previous year, and in December the fall further deepened. The following is reported on the crisis in the result agreement conducted between the Ministry of Employment and the Economy and the FCA on 17 December 2008:

"The FCA prepares for the (at least initial) inflationary trend of the economy by further reinforcing its ability to quickly detect cartels based on direct and indirect evidence; by efficiently intervening in the efforts of companies occupying a dominant position to artificially foreclose their competitors from the market or unfairly use the market situation to the detriment of the consumers and by seeking to influence, in advance, possible crisis arrangements in different sectors of the economy to combat their anti-competitive, restrictive or distorting effects.”

It was evident by the turn of the year that the economic crisis will affect the entire world and that it will lead to cutbacks in the world economy in 2009 for the first time in more than 60 years. Instead of a financial crisis, there was talk of a real economy crisis and eventually also a downturn: emergency meetings were held both in Finland and in the context of the EU, and support measures were boosted. In Finland, the GDP was roughly 11 per cent in January-February and the value of imports more than a third smaller than a year before.

In the new strategy of the Ministry of Employment and the Economy Group confirmed in 2009, the crisis was raised to an equally central role than other major trends whose effects would be felt over a long term:

"The ongoing global economic crisis will forcefully alter the operating environment in the short term. The main long term trends include the control of the environmental change and the adaptation thereto particularly by means of energy policy, and globalisation and the ageing of the population.”

"The world economy is in a recession and it seems that the new rise has moved further away. The recession meets all sectors of the economy at the same time. The impacts of the financial crisis show e.g. in the collapse of the public trust, the difficulty in obtaining credit and the decrease in net asset values. This has resulted in the fading of world trade and investments, the loss of jobs, an increase in the security saving of households and finally a halt in production growth and its downfall.”

The world market prices of raw materials took a rough downturn as the crisis deepened, and the rise of the price level has ceased despite major public support measures and the increase in the amount of money. The most recent predictions say that the EU GDP will shrink by four per cents during the year, and in some countries, the price level is already in the decline. The duration of the crisis and the means to entangle from it are actively discussed but a major change in 2009 is considered unlikely.

Common challenge

While this is being written, it is clear at any rate that the recession and the efforts to alleviate its impacts affect the activities of all companies and citizens and all administrative branches in Finland, too. They also pose a challenge for competition policy and the FCA.

When the citizens' buying power is reduced, the significance of competition and the lack thereof show more clearly than before. The circumstances are hence more prone than usual for demonstrating the importance of competition and the work of the competition authorities.

The new situation requires from the FCA "both vigilance and vigour and an in-depth appraisal and ability to communicate the results of the assessments to the citizens and other interest groups”, like it was predicted in the Competition News last September. The public administration and its ability to cooperate internally play a major role.
The interface between regulation and competition law

–If the current financial and economic crisis has taught us anything, it is that there is a high price to pay when regulation fails, and that competition policy is essential for keeping our economy working well. So said EU Competition Commissioner Neelie Kroes in the speech she delivered at the Detsche Bundeskartellamt on 28 April 2009.

–But the market economy and competition are not enough - we also need efficient, high-quality regulation, Kroes continued. As examples of sectors where regulation is needed she cited the financial sector and the energy and the telecommunications markets. The markets and competition alone are not enough to safeguard the interests of the consumers in these sectors, but regulation alone will not do it either. It needs to be combined with active competition control – at both national and European level.

–Competition and regulation do not compete with each other, reminded Kroes, they are parallel processes. According to her, this is best evidenced in the telecommunications market. Regulation is only an option, however, if the markets are characterised by high and non-transitory barriers to entry; the market structure does not tend over time towards effective competition, and if competition law is by itself insufficient to deal with the market failures identified. This is known as the ‘three criteria test’. A further criterion is that the companies involved have significant market power.

Additionally, the above-mentioned test can only be applied reliably in ex post review. Ex-ante reviews are always based on forecasts and their success is not guaranteed. For example in Spain, the telecommunications regulation was based on faulty forecasts and later led to an intervention by the competition authorities. Similar problems have been encountered in France and Germany, and there are suspicions that this might be happening in Poland and Slovakia.

Generally, however, Kroes finds that the development in the telecommunications sector has been favourable: old monopolies have been dissolved, prices have dropped and innovation has provided new and better products to consumers. In the energy field, progress has been much harder to come by. The markets are still predominantly national and dominant incumbents often own both supply and transmission businesses. The incentives to invest in interconnection and network capacity are therefore weak and market entry is difficult. To some extent, this is a result of the imperfect regulatory systems or its implementation.

If regulation respects competition principles, there is less to worry about both for the consumers and the enforcers of competition rules. Constant dialogue between regulators and competition enforcers is therefore required. Regulation and competition law only work when they work together.

–Without these consistent and continuous relationships it is much harder to deliver the self-sustaining competition that Europe needs to remain competitive and to get back to growth, finished Kroes.

Challenging work for common benefit

In the FCA’s vision, Finland is a market economy capable of regeneration in which competition serves the interests of consumers and businesses. The FCA’s activities are geared toward better productivity and hence an increase in common welfare.

Our objective is to protect sound and effective economic competition and to increase economic efficiency in both private and public-sector activity.

Our mission is to monitor compliance with the Act on Competition Restrictions and the EU competition rules (Articles 81 and 82) and to promote efficient competition by various ways as an expert authority.

The customers and consumers benefit from the well-functioning markets through increased choice, innovations and a better quality of products and a more inexpensive price thereof. From the companies point of view, the FCA seeks to safeguard the freedom of business and equal competitive conditions.

The strategic key areas and operative goals of the FCA’s activities support the Group strategy in the field of administration of the Ministry of Employment and the Economy, and the general economic policy definitions of the Finnish government. As a supervisory authority, the FCA is independent, however.

Our major interest groups include companies and industrial organisations, political decision-makers, other authorities and civil servants, universities, colleges, research institutes and the media.

The cooperation with the interest groups seeks to increase the FCA’s societal influence. Consumers - i.e. ultimately all citizens - should know the rules of efficient competition and the gains achieved therewith.
The values and principles which guide the FCA’s operations include:

• **Professionalism:** We seek to fulfil our social service duty by making decisions which have the right content and which are well argued, by offering high-quality expert services to our interest groups and by actively participating in the competition policy discussion both in Finland and the ECN network. Our aim is to be an internationally valued professional of competition control and advocacy.

• **Impartiality:** We treat our customers and interest groups impartially so that we may act in the same way in the same situations and that similar decisions are made in similar issues. Matters are prepared objectively on the basis of facts and equal chances are provided for all parties to comment on the draft decisions. The basis of our actions, e.g. the prioritisation principles, are known by all and applied in the same manner in all cases.

• **Effectiveness:** Our aim is to conduct the duties the society has appointed to us as effectively and with as much impact as possible in relation to our resources. In both competition control and advocacy, we seek to intervene in the right issues at the right time and to increase the welfare of all citizens in doing so. The activities primarily focus on issues which have the most significance for the national economy, and decisions are made as quickly as possible in the circumstances.

• **Cooperativeness:** We wish to conduct fruitful cooperation with all our interest groups for the best of the citizens and companies. We offer our own expertise to our interest groups and develop our activities based on the feedback from the interest groups. We value the different know-how of different people and different organisations and are prepared for a dialogue with everybody. It is only possible to serve the society in a highly efficient manner when we cooperate.

• **Openness:** We communicate openly about our activities and particularly about the grounds of our decisions, so that everybody would have the opportunity to understand the benefits of sound and effective competition. The transparency of our activities is also essential in that companies and citizens may monitor the fulfilment of their own rights and be ensured about the lawfulness of our actions. Openness as a value also means the willingness to accept criticism and to change when the operating environment changes.

• **Creativity:** We wish to be a living and learning organisation, which actively monitors the latest trends of competition law and competition economy and applies them open-mindedly and efficiently in its decisions and other activities. We constantly sound our operating environment in order to obtain topical information for the prioritisation of our functions. We seek to constantly develop our problem-solving skills and e.g. our skills to communicate about the right things to the right interest groups at the right time and in the proper manner.
Good working atmosphere a strength

As regards its personnel, the FCA’s objective is to guarantee the high-quality know-how needed and the well-being and productivity of its staff.

From the point of view of know-how, it is essential that the employer image is well looked after and that the FCA is appealing as an employer, and to remove any deficits in know-how by means of internal, on-the-job training and external training. When it comes to well-being, the aim is to ensure occupational health, working ability and work safety and to take good care of the staff’s motivation.

The personnel parameters show a favourable development in 2008: the average of the responses received in the VMBaro work satisfaction survey¹ (3.53/5) is appreciably better than in the survey conducted in 2006 (3.22) and also better than in public administration on the average. The results improved on all areas. The best estimates were granted for working atmosphere (3.89) and working conditions (3.85), and the worst for salary (2.83).

In addition to a good working environment, the staff values the challenging nature of its work, in particular (3.91), and its independence (3.97). The employees are able to orient themselves in a versatile way both with the economy and the working of the public sector, and the job offers a vantage point to observing international business as well. The estimates concerning leadership also improved from 3.1 to 3.6, and the desire to change jobs decreased.

The good results of the personnel questionnaire also reflect a conscious effort to increase the staff’s opportunity to participate in common projects, such as the strategy work concluded in 2008.

Interesting employer

The interest towards the FCA’s positions is generally strong: e.g. in 2008 the FCA received roughly 44 job applications for each five open positions. Temporary posts and traineeship positions were usually applied for by dozens of applicants.

Each year, the office offers 8–10 traineeship positions for university students of competition law and competition economy around Finland. These traineeships have become an important recruiting channel for the FCA: several of the new employees have previously acted as trainees at the office.

The cooperation with potential new employees is active in other ways, too. The FCA e.g. annually arranges a lecture course called Competition Law in Practice for the Faculty of Law of the Helsinki University and publishes high-quality, competition-related reports and MA Theses in its publication series.

The attractiveness of the employer image is measured each year both by the number of job applications and exit turnover, i.e. the number of employees who change employers. In 2008, the exit turnover was low, only 4.8 per cent. The total attrition (22.2 per cent) and entry turnover (31.7 per cent) remained high, as during previous years. E.g. family leaves and other forms of leave of absence increase the total attrition.

Flexibilities in working time have increased, e.g. the interest for a part-time employment has continued to increase. During 2008, a total of 12 civil servants were employed part-time, whereas during the previous year there were only six part-time workers. At the end of 2008, there were eight part-time workers.

The objective on person-years was 70 last year and the realised figure – including the trainees – was 69.3.

Knowhow the core of the matter

During 2007–2008, the FCA sent a total of nine Research Officers to study at London’s King’s College in the Masters in EC Competition Law and Masters in Economics in Competition Law programmes. In the summer of 2008, one Research Officer also participated in a two-week competition-related training "Competition and Regulation"

¹ VMBaro is a personnel questionnaire measuring work satisfaction. It was created for the state sector by the Ministry of Finance.
in the European Summer School CRESSE arranged by the international competition experts.

Research Officers annually visit several training events arranged abroad. In 2008, 15 of such visit were made. Two of the Research Officers also participated in a month-long training at the EU Directorate General for Competition. International cooperation in the working groups of the EU Commission and other international cooperation groups increases the Research Officers' know-how.

In Finland, Research Officers e.g. participated on courses dealing with the services for public good, different types of competition restraints, industrial monitoring and the making of administrative decisions. Additionally, a two-day inspection training, economic training and several internal researcher meetings were arranged for the Research Officers.

The Competition Survey published in October 2008 was written by a project team, and eight of its nine members are employed by the FCA and one by the State Provincial Office of Eastern Finland. The Research Officers were given a chance for an in-depth familiarisation of the literature of the field, and they obtained new information on the development of research methods and the general development of the field from the cooperating research institutes.

The Competition Survey was successful in integrating judicial know-how and analytic economic research. The project hence offered a useful model for the development of the researchers' work more generally. The separate report on the construction market published in the summer of 2008 also developed the researchers know-how.

Methodical training for superiors has been commenced at the office, and last year five Heads of Research participated in it. The heads of the substance units also participated in a two-day seminar on the management of a specialist organisation.

The staff in the support tasks participated in the special courses of their own field. The 2008 topics included financial administration and terms of the collective bargaining agreement, risk management, competence management and induction, and the new information and travel management systems. Training was also arranged for the whole staff on the latter.

The strong investment in the outsourcing services of training in 2007 and 2008 shows from the attached diagram (cf. page 13). Almost €100 000 was used for external training services, i.e. 1.8 per cent of the budget. In all, training costs increased to almost €160 000 as regards permanent and temporary staff, i.e. to almost €2 500 per person-years.

The VMBaro showed that the planned result for personnel training and the possibilities for personal development was achieved: the objective was 3.5 and the realised figure 3.6. In 2006, the figure was 3.4.

**Remuneration and welfare**

In the summer of 2008, a project on remuneration strategy and the development of the payment system was commenced at the office. In addition to material rewards, it deals with the content and quality of work, the balance between work and the rest of a person’s life, management and organisation, the working environment and the possibility to develop. Other topics include work-time solutions which promote productivity and the improvement of the specialists’ career development possibilities.

The number of sick-days per person-year declined in 2008: the aim was 9 work-days / person-years and the realised figure 7.9 work-days / person-years, i.e. less than ever before during 2005–2007. The average duration of sick-days, i.e. 2.1 days, and the amount of occupational health services bought per person-years was the smallest in a five-year inspection period.

The apex in the amount of occupational health services bought in 2007 is due to a workplace health hazard survey under the Occupational Health Care Act and the health inspection of the whole staff made every four years.

Since 2007, sports vouchers have been available to the staff, and they have been used actively. Additionally, badminton and floorball can be played each week. The lunch vouchers introduced at the end of 2007 are used by roughly one half of the staff each month.

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3 FCA’s Reports 1/2008: Functioning of the construction market — problem areas and possibilities for promotion.
**Key personnel figures 2008:**

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<tr>
<th></th>
<th>Realisation 2006</th>
<th>Realisation 2007</th>
<th>Result agreement goal 2008</th>
<th>Realisation 2008</th>
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<tbody>
<tr>
<td>Person work-years, permanent and temporary</td>
<td>69.2</td>
<td>65.4</td>
<td>70</td>
<td>64.3</td>
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<tr>
<td>Trainees, person-years</td>
<td>4.6</td>
<td>5.0</td>
<td></td>
<td>5.0</td>
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<tr>
<td>Labour costs, 1000 € *)</td>
<td>3 594</td>
<td>3 556</td>
<td>3 800</td>
<td>3 785</td>
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<tr>
<td>Labour costs, 1000 € **)</td>
<td>3 695</td>
<td>3 668</td>
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<td>3 977</td>
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**Removal of knowledge deficiencies**

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<th>Realisation 2007</th>
<th>Result agreement goal 2008</th>
<th>Realisation 2008</th>
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<tbody>
<tr>
<td>Workplace training and possibilities for personal development, VMBaro (scale 1–5)</td>
<td>3.4</td>
<td>-</td>
<td>3.5</td>
<td>3.6</td>
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<tr>
<td>Training input, workday/person-year</td>
<td>9</td>
<td>8.7</td>
<td>&gt; 9</td>
<td>7.4</td>
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<tr>
<td>Share of personnel with a Master’s or a Doctor’s Degree at the end of the year, %</td>
<td>63.2</td>
<td>61.9</td>
<td>66</td>
<td>68.1</td>
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**Improvement of physical well-being**

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<th>Result agreement goal 2008</th>
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<tr>
<td>Workin atmosphere, VMBaro (scale 1–5)</td>
<td>3.5</td>
<td>-</td>
<td>3.4</td>
<td>3.8</td>
</tr>
<tr>
<td>Sick-leave, working day/person-year</td>
<td>9.2</td>
<td>13.4</td>
<td>&lt; 9</td>
<td>7.9</td>
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**Enticing employer image**

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<th>Realisation 2006</th>
<th>Realisation 2007</th>
<th>Result agreement goal 2008</th>
<th>Realisation 2008</th>
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<tbody>
<tr>
<td>Number of job applications/open position</td>
<td>-</td>
<td>-</td>
<td>40</td>
<td>43.6</td>
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<tr>
<td>Exit turnover, %</td>
<td>5.8</td>
<td>11.8</td>
<td>&lt; 10</td>
<td>4.8</td>
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</table>

*) In 2007, the labour costs used in internal inspection were reported in the financial accounts, which were mainly composed of, although not exclusively, of the labour costs in business accounting.

**) Here the reported labour costs include the figures recorded in the accounts on labour costs, training, occupational health, recreational services and other personnel services. These resemble more closely the labour costs defined by the Ministry of Finance in their standards on the financial statements on personnel.

**Personnel services bought during 2005–2008 (1000 €)**

![Graph showing personnel services bought during 2005–2008](image-url)
A report on the FCA's social impact

The Ministry of Employment and the Economy commenced an external evaluation of the Finnish Competition Authority in early 2008, the aim of which was to evaluate how the FCA's objective has been met and how the social impact of its operations has developed during the past 10 years. D.Sc. (Econ.) Aki Kangasharju was selected to conduct the evaluation. He acts as a Research Professor at the Government Institute for Economic Research.

The report which was finished in February 2009 (The Ministry of Employment and the Economy’s reports, Competitiveness 6/2009) gives a positive account on the FCA’s activities. According to the evaluation, the FCA has succeeded in its task and its operations have had a positive impact on society.

According to the report, the authority’s investigatory competence is at a high level, and companies still receive valuable counselling and guidance on a case-by-case basis. The FCA also scores highly in international comparisons.

Operations could be developed in a more steering and target-oriented direction in particular, and certain operating processes could also be enhanced. There should be a stronger operational focus on the investigation of cases of major economic significance. The FCA could also take a more active public role and clarify its communications.

Good reviews from interest groups as well

Each year, the FCA also requests the views of its interest groups on its operations. In 2008, the results of the interest group study support the findings of the evaluation described above. According to the study, the FCA has managed to achieve its objectives relatively well.

The FCA gained the best reviews of its operations from the representatives of the economy and other authorities; the most critical reviews were given by the competition law lawyers. Other groups included political decision-makers and reporters writing about competition issues.

The 78 people who replied to the questionnaire considered the FCA generally reliable, professional and a socially significant and impartial actor. According to the respondents, the expressions “productive” and “open” described the office relatively well. The expression “prompt” did unfortunately not describe the office at all, according to the respondents.

As regards its functions, the best reviews were obtained from the FCA’s anti-cartel work and merger control. Improvements could be made in intervention with oligopoly problems and making initiatives to open up the markets and to remove structural impediments to competition.
New sectoral organisation

The FCA’s organisation was renewed from 1 February 2009: instead of the former division on types of competition restraints, competition control is now industry-based. At the same time, a DG’s staff was reinforced, and its responsibilities include the follow-up of environmental changes and the development of research.

After the reform, the FCA is better equipped to detect competition concerns in the market and to intervene with them. The industry-based examination increases sectoral know-how, enables the simultaneous handling of different types of competition restraints in the same sector and hence boosts case-handling.
The tasks of the units in the new organisation:

**Staff**
The staff supports the Director general in the planning and execution of the FCA’s strategy. The staff is also responsible for the follow-up of economic changes, the development of research and the Competition Reviews.

**Industries 1**
The unit is responsible for competition enforcement e.g. in the following markets:
- daily consumer goods
- chain of foodstuffs (incl. agriculture)
- finance
- pharmaceuticals
- forestry
- printing business
- accommodation and catering business
- other services

**Cartels:**
Industries 1 also receives leniency applications and provides information on the leniency procedure. The unit is also responsible for developing the FCA’s inspection activities.

**Industries 2**
The unit is responsible for competition enforcement in the following markets:
- energy
- industry
- construction
- transport and ports
- electronic communications and the IT sector
- water supply and sewerage, and environmental business
- sports and gaming
- copyright associations

**Merger issues:**
A sub-unit of Industries 2 provides information related to mergers and acquisitions, and handles the merger notifications arriving in the office.

**Advocacy Unit**
The task of the unit is to promote competition by offering expert services (initiatives, opinions etc.) to decision-makers and other interest groups of the office. The activities focus on conflict situations between economic competition and regulation and the securing of equal competition conditions for private and public business.

**International Affairs**
The International Affairs Unit coordinates the FCA’s EU and other international cooperation (ECA, OECD, Nordic countries, ICN, bilateral relations) and represents the FCA in several international expert working groups.

**Communications and Personnel Development**
The duties of the Communications and Personnel Development unit include internal and external communications, the coordination and organisation of the FCA’s personnel development, and the FCA’s information and translation services.

**Administration**
The administration is responsible for personnel administration and employer tasks, financial and information management and the registry and archives.

**State Provincial Offices**
The State Provincial Offices also participate in advocacy and competition control. The FCA annually concludes result agreements with them and agrees on the goals of the cooperation.
Advocacy

The FCA’s advocacy function aims at the abolishment of the institutional impediments to competition and an increase in competition particularly in the infrastructure fields, services and sectors which are heavily regulated.

The objective is above all to establish efficient competition conditions and to open up new business opportunities in the new sectors which are created due to the development of technology, changes in demand and reform of regulation.

In the regulated fields, emphasis is on the positive effects of increasing competition. Particularly as regards the infrastructure fields, the FCA stresses the need for an expansive competition strategy which would span the whole of the economic policy. This would be needed to improve efficiency and to safeguard the interests of consumers and businesses.

The resources in the function particularly focus on the securing of equal competition conditions. The competition conditions between different businesses should be fair and equal, while public production is becoming more and more marketized.

Working groups in central role

In the past few years, the FCA’s advocacy work has focused on memberships in competition-related working groups founded in various sectors of the administration. The most important of these include the working group investigating competition neutrality in public business, set up by the Ministry of Employment and the Economy, the working groups on transports set up by the Ministry of Transport and Communications, and the waste management working groups set up by the Ministry of Finance and the Ministry of the Environment.

The efforts of the past few years – even if not solely the FCA’s accomplishments – include the introduction of competition considerations in the development of rail-road maintenance and mass transport, car taxation and inspection, the development of municipal service production and the setting up of working groups in the fields of waste management, ports, pilotage and ice-breakage.

The FCA also gave a significant input to the work of the Competition Act 2010 working group. (More about the matter on page 22.)

In the following, a summary of the FCA’s aims and activities in the recent, most important domestic working groups:

- The working group examining the competition neutrality issues between the public and private business had the objective of forming a clear picture about the equal competition conditions of public and private economic activities and the extent of the competition problems related to them. Its goal was to contribute to new legislation which will abolish and effectively remove competition neutrality problems. The working group submitted its memorandum on 23 April 2009. (More about the issue on page 18.)

- The Ministry of Transport and Communications working group discussing the commercialization of radio frequencies promoted radio frequencies being allocated in a service and technology neutral and marketised manner in the future. Conditions were also created for an after-market of the services. The reforms facilitate entry into the communications market and enforce the use of the frequency resources. The law bill based on the work of the working group which finished its work in the spring of 2008 was passed by the Parliament on 3 June 2009.

- The Ministry of the Environment working group investigating the possibilities to develop waste taxation aimed at the competition neutrality of municipal and private actors in community waste management, the clarification of the grounds of imposition and remission of tax of different types of waste and the securing of the competition conditions of different waste management companies. The working group memorandum was delivered to the Ministry on 14 April 2009.
Competition neutrality ensures equal operating conditions

Competition neutrality means ensuring equal operating conditions for all market actors. The equality is e.g. affected by the neutrality of taxation, the price and availability of funding, pricing principles, the validity of accounting obligations and the policy definitions and goals related to ownership steering and trade policy.

Public and private businesses meet more and more often on the same market. As the basis for the operations is different, competition neutrality problems inevitably appear, and related questions have come up in many domestic studies. It is also an internationally known phenomenon which has been investigated in many countries e.g. on the OECD’s initiative.

The need for investigating and redressing the problem was pointed out in the first government programme of Prime Minister Matti Vanhanen where it is stated that the government will ensure, by means of competition policy, that the operating conditions between private and public business are equal.

According to the report of the working group examining competition neutrality issues published in April, the present state-owned company form creates competitive problems when the company faces competition in the market. The working group therefore finds that the public state-owned company form is not suited for conducting business in competitive markets.

—It is likely that the municipality as well as the state will have to choose in the future whether it will offer its services in the market. If it will, it will have to be on equal footing with the private sector, said Tarja Cronberg, the Minister responsible for competition issues when the working group memorandum was delivered on 23 April 2009. —Equal competitive conditions have particular relevance for small and medium-sized companies and for new business.

The Minister also remarked that when the market situation is assessed, the possibility of competition shall be considered even when there is no private supply yet. —New companies may arise, if competition is given a chance, she stressed.

The basis of national and European competition policy is a neutral stand toward the position of publicly owned production as such. The competition authorities do not assess in what industries and to what extent public production should be conducted. What is important is ensuring equal competitive conditions for all market actors, whether they be public or private.

(Sources: the press releases of the Ministry of Employment and the Economy and the FCA of 23 April 2009.)
In the producer-responsibility division of the Ministry of the Environment working group preparing a total reform of the waste management legislation, the FCA's aim was to secure the competition conditions and innovation in the waste utilisation and handling services, to secure the transparency and equality of the producer-responsibility systems and to prevent the procedures of the producer-communities which foreclose competition. The division ended its work in March 2009 and delivered its proposal about the reform of the regulation on producer-responsibility to the working group.

In the Ministry of Transport and Communications working group developing the railroad maintenance market (35/2008), the objective was to differentiate the traffic guidance and other facility services and the track construction and maintenance from the VR Group and securing the fairness and objectivity in the supply thereof. The reform proposals of the working group report fulfil the FCA's aims to a large extent.

The Ministry of Transport and Communications working group examining the possibility to tender the passenger transports aimed at opening up competition in early 2010 at least in the Helsinki city traffic. To safeguard equal competition conditions, traffic guidance and training should be differentiated from VR and the short-haul stock now used by the company should be transferred to the capital city train stock whose partnership VR should relinquish. All actors should also gain access to the maintenance and depot premises, stations and other service facilities of the traffic.

Participation in the mass transport forum of the Ministry of Transport and Communications serves interest group cooperation in alleviating the regulation in the field, promoting competition and improving the interoperability of the various forms of transports. The traffic policy report 3/2008 of the State Council was pro-competitive; the reform of the mass transport legislation is prepared in a manner increasing competition and the Ministry initiated the preparation of a mass transport development programme in autumn 2008, which aims at interoperability and the reform of legislation.

The considerations presented to the Ministry of Transport and Communications in the civil servant working group in January 2008 about the opening up of competition in the pilotage services were later delivered to the Ministry as an opinion in which it was found that it is possible to arrange the service without a monopoly by means of competition or by tendering the regional actors. The Ministry decided to extend the working group’s mandate to examine the impacts of opening up competition and to supplement the working group by representatives of the Ministry of Transport and Communications and the FCA. According to the extended working group’s final report, the alternatives in the arrangement of the pilotage service include retaining the monopoly, regional tender and applied open competition. The last two are in line with the FCA's views.

In the Ministry of Transport and Communications working group reforming the legislation on port authorities, the FCA’s aim is to harmonise the regulation on private and municipal ports, increasing competition between and inside the ports, securing the fairness and equality of the payment policy and decreasing the official and regulatory duties and the differentiation thereof from the business activities.

The office is also represented in a civil servant working group which considers what kind of legislative changes are required by the 2007 report by administrator Erkki Rajaniemi on the competition conditions of the employment pension scheme. The aim is to act in such a way that the cooperation of the employment pension institutes would be limited and the role of the Ministry of Social Affairs and Health would be reinforced in the as regards the functions requiring the cooperation of the institutes. The transfer of the employment pension bases should also be facilitated and the distorting impact of the terminated insurance profits be removed.
Major opinions in 2008:

- **Development of construction regulation (Ministry of the Environment)**: The opinion drew attention to the fact that new construction regulation is often composed of small separate amendments or individual regulations. The impacts of the proposed regulation do not hence appear to be very significant. It is problematic, however, if new regulations or the tightening of old ones is constantly being proposed in a field already heavily regulated.

- **Increasing the supply in the construction sector (Ministry of Finance)**: The opinion seconded the move to the so-called REIT-model which would remove the dual taxation of property investments, particularly to enable new types of building production models. Attention was also paid to the terms and exclusions included in the proposal, which might in practice prevent the realisation of the aims. These terms have since been alleviated.

- **Reform of Land use and Construction Act (Ministry of the Environment)**: The opinion paid attention to the smoothening and quickening of the zoning and permit procedures, the rights of private land owners to make initiatives and to participate in zoning and the need to investigate the construction regulation.

- **Obligation to join distance heating (Ministry of the Environment)**: The opinion pointed out that the distance heating activity will be a law-based monopoly, if a provision is added to the Land use and construction Act, on the basis of which the municipality may order distance heating to be the form of heating of new houses by zoning. The provision was included in the Land use and construction Act from 1 January 2009.

- **The review of national objectives for land use (Ministry of the Environment)**: The opinion held it important that safeguarding sound and effective competition would be included in the objectives for land use. The opinion also proposed that the regulation on the relocation of the retail trade, residence, work place and services should be alleviated and that the treatment of the service network of the trade in different areas and town plans should be harmonised.

- **Developing competition in the car inspection business (Ministry of Transport and Communications)**: The FCA issues several opinions on the matter in which it brought out that the founding of inspection facilities for passenger cars and vans should be allowed without the obligation to inspect heavy commercial vehicles. Additionally, car repair shops should be allowed to make periodic car inspections. The Finnish Vehicle Administration AKE has subsequently also proposed that the inspection permits for heavy commercial vehicles be separated to increase competition in the inspection sector. (Cf. Competition control, page 24.)

- In the opinions delivered to the Ministry of Transport and Communications on the change of the private Halla industrial port into a private general port, the FCA brought out that the increase in the number of general ports may be one way of increasing competition in the field, provided that extensive legislation be established for the field which clarifies the entry requirements and harmonises regulation. The opinions contributed towards founding a Ministry of Transport and Communications port legislation working group.

- **Icebreaking (Ministry of Transport and Communications)**: The opinion seconded the proposal of the icebreaking working group, which finished its work in October 2008 and which proposed a regional and gradual form of tender combined with cooperation with the Swedish Sjöfartsverket. Because of the lack of icebreaking capacity and the costs
of new investments, the FCA found the proposed schedule too challenging, however. Enough freedom of action should be left for the service providers as regards the ice-breakers used and other practical arrangements. Attention was also paid to the strong position of Finstaship in the market and the potential competitive problems resulting therefrom. The solving of them may require structural means, too.

- **Reform of the Medicines Act (Ministry of Social Affairs and Health):** The opinion repeated the view that a total reform should be made in the pharmaceutical system, which should aim at an improved availability of the drugs, reduced prices and more efficient activities. Particularly the means-tested permit system of the pharmacies should be abandoned.

- **The reform of the legal certainty system of public procurements (Ministry of Justice):** The memorandum in principle proposed that the EC Public Procurement Remedies Directive should be implemented in such a way that the imposition or proposal of the remedy should be the FCA’s task, in addition to which the FCA would intervene with illegal direct procurements. The opinion held that further investigations are needed as to whether the new obligations will limit the FCA’s possibilities to prioritise. An alternative proposed by the FCA was that the additional resources would be focused on the securing of the resources of the Market Court and the development of their procedures.

- **The National Product Control Agency for Welfare and Health report about Alko’s activities:** In the opinion to the National Product Control Agency for Welfare and Health operating under the Ministry of Social Affairs and Health, the FCA supported the development of which products should be included in the product range and proposed that the publicity of Alko’s sales information be extended. The FCA also proposed that the impacts to retail competition should be taken into consideration when retail outlets are founded.

- **The certificates and population information system of the Population Register Centre (Ministry of Finance):** The opinion paid attention to the significant position of the Population Register Centre as the producer of the citizen certificate and the provider of the certification services. Competitive problems may arise if commercial production activities are engaged in alongside with public production. In the hearing of the Administration Committee of the Parliament, it was found that when the law bill was prepared more attention should have been paid to the financial significance of the information reserves of the Population Register Centre and their usefulness for the different functions of the society.

- **Draft government bill on the reform of the Act on Government Guarantee Fund and the Act on Credit Institutions (Ministry of Finance):** The opinion held that public regulation in the finance market should not be increased any more than is necessary to secure the stability of the finance system.

- **Draft government bill for an Act on the state investments in deposit banks (Ministry of Finance):** The opinion held that the application of competition rules should not be neglected even in difficult economic circumstances, because they help to create competitive pressure in the finance market, which supports a functional market and favourable structural change in the long run.
New Competition Act on the way

The working group appointed by the Ministry of Employment and the Economy to assess the need to amend the Act on Competition Restrictions (Competitiveness 4/2009) proposes the replacement of the current Competition Act dating back to 1992 by a new Act. A functional competition mechanism was found to be the main objective of competition control and advocacy. A competitive environment benefits the companies as well as customers and consumers.

To fulfil this goal, it is essential that the FCA is able to handle matters with sufficient speed and efficiency. Regulation on the publishing of documents and the development of the FCA’s powers of investigation also emerged as key development targets. Additionally, the working group found that separate provisions on the companies’ right to defend themselves should be included in the Act. The aim is a balance between efficient procedure and the legal certainty of companies.

Tougher sanctions

According to the working group’s report, fines would still remain administrative in nature. However, the aim is to implement the pre-emptive nature and foreseeability of sanctions more effectively than at present. The working group does not propose the criminalization of violations of the Competition Act nor the creation of a separate business prohibition system for matters related to competition restrictions.

The most harmful and long-drawn violations should be more severely sanctioned. The sanctions should also be calculated in accordance with the Commission Guidelines on the method of setting fines. Furthermore, the provisions on the compensation for damages are proposed to be altered to better enable victims of competition infringements, including consumers, to benefit.

The proposals also include a new merger control test, on the basis of which a merger could be prohibited or conditions could be attached upon its implementation if it significantly impedes effective competition in Finland or a substantial part thereof. This would correspond with the so-called SIEC test applied by the Commission where the impacts of the merger are assessed. Further proposals include the elimination of the deadline set for compulsory notifications and the possibility to extend processing time limits.

The working group wishes that the leniency system would be more predictable and encourage the companies to inform the FCA of cartels in which they participate. A further aim is to harmonize the provisions with those generally applied in the EU.

More efficient inspections

Improvements are also suggested in the FCA’s powers of inspection. The working group suggests that the competition authority could also carry out inspections of private premises on the Market Court’s permission. The other Nordic competition authorities and the European Commission already have similar powers of investigation.

The working group wishes to speed up the handling of competition cases. The possibility for prioritization should be extended if the matter has no relevance for the general working of the market. The possibility for an uninterrupted and successful investigation should also guaranteed more efficiently than before when the investigation is still ongoing.

According to the FCA, the working group’s proposals would improve its possibilities to focus on significant cases and to engage in efficient competition policy. Above all, the new definition of fines and the reform of the merger test would improve efficiency.

According to the Ministry, the Government bill will be brought before the Finnish Parliament during the spring of 2010 at the latest.
The FCA's strategic key area "Prevention of unfair abuse of market power and harmful acquisition" contains the operative objectives of

- the creation of a credible anti-hard core policy
- an efficient intervention in the artificial foreclosure of competitors and in collusion in concentrated markets and
- an efficient merger control.

The FCA prioritises the investigation of cartel suspicions and seeks to increase the risk of the detection thereof by boosting the investigation methods. Resources are also focused on procedures which support the common interest of the oligopoly to limit competition and on artificial methods whereby companies in a dominant position protect their position. The target of the last-mentioned investigations is the infrastructure and service industries in particular which are important for the national economy.

In merger control, cases which fulfil the criteria defines in the law are intervened with and attempts are made to choose the methods in such a way that competitive problems may be effectively removed. Structural conditions are favoured and attempts are made to avoid behavioural conditions.

**Cartel control**

The FCA's biggest cartel case so far is still the so-called asphalt cartel, in which an infringement fine proposal was made to the Market Court in March 2004 (total of €97m). The Market Court issued its decision in December 2007 (19.12.2007, 94/04/KR), which largely confirmed the violation as proposed by the FCA. The level of fines remained much lower than was proposed, however (total of €19.4m).

The FCA appealed the decision to the Supreme Administrative Court in January 2008. It was argued in the appeal that the imposed penalties do not fulfil their deterrent purpose considering the financial gain obtained by the cartel. The decision was also appealed by six of the companies whom the decision concerned.

Extensive written proceedings were conducted by the Supreme Administrative Court in the spring of 2008 with rejoinders and opinions. The oral hearings were conducted in April 2009. The upcoming decision by the Supreme Administrative Court has major importance for the Finnish anti-hard core policy.

Another major cartel case concerns the alleged cartel in the procurement of timber. The FCA proposed to the Market Court in December 2006 that a competition infringement fine be imposed on Stora Enso Plc and the Metsäliitto Cooperative for participating in nationwide price cooperation and exchange of information in the procurement of timber during 1997-2004. The competition infringement fine proposed to Stora Enso is €30m and the fine proposed to Metsäliitto €21m. The FCA did not propose an infringement fine to UPM-Kymmene, as the company obtained amnesty when it exposed the cartel in May 2004. The oral hearings in the case were conducted by the Market Court in May, and the Court is likely to issue its decision in the matter during autumn 2009.

In September 2008, the forestry companies UPM and Stora Enso issued almost simultaneous press releases about their planned production cuts and the closure of their facilities. The FCA investigated whether these decision processes were independently made. Nothing transpired, however, which would have shown any evidence of forbidden cooperation.

A court decision came out in February 2009 on the automobile spare parts case (20.2.2009, 216/06/KR). which the FCA took to the Market Court in 2006 The decision found that the five companies active in the wholesale level of the automobile spare part market were guilty of forbidden price collaboration during 2004–2005. The Market Court imposed an infringement fine of a total of €1.03m on the companies. This was the first case where the Market Court imposed cartel fines based on a cartel detected with the aid of the leniency system.

In December 2008, the Market Court issued its decision on an infringement fine proposal made in 2005 concerning bid-rigging between some taxi drivers (31.12.2008,
The Market Court found that the undertakings had violated the cartel prohibition, but did not find it necessary to impose infringement fines. The judgement was affected by the long duration of the process and the fact that the taxi drivers have not made unlawful cooperation bids after the incident.

The FCA also investigated the alleged forbidden cooperation of employment pension companies last year in the basis for calculation and conditions division of the Finnish Pension Alliance TELA. The FCA had no grounds to intervene with the matter, however, considering the employee’s pension act which requires that the pension institutions cooperate e.g. in the preparation of basis for calculation.

In the spring of 2008 after several contacts from the public, the FCA commenced an investigation of the car inspection market. No evidence was found that the increase of price level would have been caused by a cartel, however.

Additionally, inspections were made into two companies active in the broadband market. No evidence of unlawful conduct was detected, however. Insufficient evidence was also found as regards the alleged cartel in the ventilation duct market and the case was closed.

Three leniency applications were made in 2008. One of the cases was closed because the matter was not covered by Article 9 of the Competition Act. The two other cases still remain open.

The FCA also closed the case in two matters which had been brought before the office by leniency applications made in 2006 and 2007. In both cases, extensive surprise inspections had been made to the companies in the field, but no evidence was found for the alleged competition restraints.

In the following, a summary of the major cases in 2008:

In June 2008, the FCA issued a major precedent relating to horizontal exchange of information facilitating collusion in the oligopoly market. Ruokakesko Plc, the S Group and Tradeka Plc had exchanged such detailed and fresh information on prices and sales quotas through the ScanTrack service maintained by AC Nielsen Plc that it might have harmfully affected the competition between the trade groups in the daily consumer goods market. Considering the size of the market (more than €12bn), the potential welfare losses to the consumers were huge.

The FCA’s intervention in the matter has increased public awareness about the competition rules concerning the exchange of information. Parties representing several different sectors have thence contacted the office and adjusted their upcoming systems for the exchange of information on the basis of the advice received.

The FCA also made an own-initiative investigation of the envisaged cooperation by HK Ruokatalo Plc and Ruoka Saarioinen Plc in the chicken market. The aim was to investigate whether the cooperation might increase the risk of collusion in the concentrated markets. The investigations showed, however, that the arrangement is not likely to cause major harm to consumers while the agreement is still effective.

The introduction of the Single Euro Payments Area, SEPA, based on the self-regulation of the European banks has been suspected to lead to the strengthening of a harmful monopoly in the payment card market. In cooperation with the European Commission, the FCA has sought to secure the survival and creation of payment card systems competing with Visa and MasterCard in the new system, too.

Negotiations were conducted with the banks last year in which it was required that each bank would make the decisions on its own payment card product on commercial grounds. The costs of the potential replacement of the cards which are inexpensive for consumers and retailers by international payment cards might ultimately accrue to the consumers.
The FCA also took a stand to the manner in which the Federation of Finnish Financial Services organises the safeguarding and cooperation in the payment services region. The major concern was related to possibility of the banks to run down the payment card infrastructure by a majority vote. As a result of the negotiations, the Federation changed its decision-making model.

It was also investigated whether Nordea Bank, the OP Group and the Sampo Bank, who own the Automatia Pankkiautomaatit Plc, were guilty of discrimination and foreclosure in their pricing as regards the competing ATM operators. A rejoinder on the matter was sent to the parties in late 2008 and it also contained the FCA's preliminary assessment. The FCA also investigated a cooperation arrangement in the market for the maintenance of currency supply. The parties renounced their plans after the FCA had estimated that the cooperation might lead to excessive market force and increase the prices collected from the customers.

The so-called Tupas service is the solution defined by the Federation of Finnish Financial Services – i.e. all the Finnish banks– for user authentication in Internet services using the banks’ access codes. After the FCA's intervention, the Federation of Finnish Financial Services announced that it would change its procedure so as that the banks may not refuse to offer the Tupas service on the condition only that the service provider engages in competing business. The FCA's aim was to boost the competition in the field by securing that all the actors may use the service on fair and equal terms.

The FCA also investigated a non-competition clause related to a merger, as a result of which there is only one actor in the dredging of the sea bottom. As a result of the FCA's preliminary opinion, the non-competition clause was shortened from five to three years.

There are many other cases pending at the FCA, which concern possible methods of easing collusion and foreclosure in the concentrated markets. The cases are related to the drug distribution market, the repairs and services of motor vehicles, the taxi market, the brewery field and the domestic products market.

In 2008, the Market Court handled three competition infringement fine proposals related to distribution agreements. In two of the cases, the Court supported the FCA content-wise, but in one of them, it did not impose an infringement fine.

- The first decision concerned the refusal to provide guarantee services for parallelly imported branded cameras. The Market Court dismissed the case based on insufficient evidence (31.12.2008, 147/06/KR). The FCA has appealed the matter to the Supreme Administrative Court.

- The other decision concerned the suspected RPM of camping equipment during imports. Therein, the Market Court confirmed the FCA's view that it was a case of violating the RPM prohibition. The Court did not impose an infringement fine, however, because the conduct had been very restricted as regards its temporal duration and the number and conduct of the retailers (27.1.2009, 568/05/KR).

- The third decision involved limiting the retail sales of retailers part of an exclusionary distribution system. The Market Court confirmed the FCA's view that the importer, Lastentarvike Plc, had acted unlawfully by limiting the sales of retailers part of its exclusionary distribution system to the customers. The Court imposed an infringement fine of €15 000 (13.2.2009, 336/06/KR).

**Artificial foreclosure of competitors**

The FCA has intervened with competition restraints related to critical bottleneck products particularly in the web infrastructure fields where the infrastructure needed for accessing the market is typically governed by the competitor.

For example in the telecommunications market, several investigations were made on the broadband market in 2008, and two inspections were also conducted. The competitors’ possibilities to use the local networks improved due to the investigations in a large part of the country. The FCA also investigated the marketing tying
the mobile phone and broadband subscriber connections of TeliaSonera Finland Plc and Elisa Plc to each other but did not detect any foreclosure effects in the arrangement.

In July 2008, the FCA received the Market Court decision in the long-pending Lännen Puhelin case. In its decision, the Court established that Lännen Puhelin has a dominant position in the broadband wholesale market, but unlike the office, it held that the company had not abused its dominance. The case has particular relevance, because it defines how the Competition Act is applied in the lease of the fixed network in the broadband market and access into the Internet in the telecoms market more generally. The FCA has appealed the matter to the Supreme Administrative Court.

In the energy market, it is the FCA’s aim to safeguard fair and equal entry conditions for both domestic and foreign undertakings. The tools used include intervention with detected competition restraints and influencing the development of legislation and regulation. In competition control, examples include the investigations on the national grid tariffs of electricity, the aim of which is to ensure that there are no elements of foreclosure or discrimination in the pricing of the national grid.

The FCA has also sought to pinpoint competition restraints related to the public regulation and standards of construction and to show initiative in removing them. The special investigations on the construction sector were finished in the summer of 2008 and the results were published in the FCA’s publication series.4

According to the investigations, the problems relating to the functioning of the market are composed of a large number of individual problems, none of which are particularly dramatic alone. The investigations did not reveal naked cartel suspicions or other clearly prohibited competition restraints. The results show, however, that there is need for further investigation in the sector.

In the matter of abuse of dominance by Suomen Numeropalvelu Oy (SNOY), a decision from the Market Court arrived in April 2009 (6.4.2009, 281/05/KR and 293/05/KR).

In the case, SNOY, the only company nationally delivering telephone subscriber information had refused to submit subscriber information to Eniro Finland Plc since October 2003. SNOY has argued that out of reasons of privacy protection, its customer companies offering cataloguing services cannot offer their service to end customers for free and without prior registration in the Internet.

According to the Market Court’s decision, there were no grounds for SNOY’s demands and the company was found to have abused its dominant position by applying terms which unfairly restricted the customer’s freedom of action. The infringement fine amounted to €100 000.

In addition to the above cases, the FCA investigated the HPAC market, the mobile telephony market, the movie distribution market and some local telecommunications and distance heating markets in 2008 to detect potential impacts of foreclosure. No evidence of it was found, however.

**Merger control**

The FCA has sought to promote the development of merger control e.g. by being active in the Competition Act 2010 working group, the proposals of which include several points relating to merger control. The working group e.g. proposes a new merger test, on the basis of which a deal could be blocked or conditions attached to it, if as a result of it competition is significantly prevented in the Finnish market or a substantial part thereof. It is the same SIEC test, which the Commission applies in the impact analysis of a merger.5

In the following, a summary of the main merger cases in 2008:

- In March 2008, the Market Court issued a decision on an appeal made by Fortum, which concerned the FCA’s merger decision in the Fortum/ E.ON Finland case (14.3.2008, 209/06/KR).

The case has significance particularly as regards the concentration trend of the electricity market. In its decision, the FCA had obliged Fortum

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4 FCA’s Reports 1/2008: Functioning of the construction market — problem areas and possibilities for promotion.

5 More about the proposals of the Competition Act 2010 working group on page 22. – Cf. also FCA’s investigations 3/2008, Anna-Kaisa Nenonen: From the dominance test to the SIEC test – A study on the need to reform the Competition Act as regards the material test of merger control.
to divest part of its production capacity, because the company's dominant position in the national electricity market and its possibility to affect the pricing of electricity in Finland would otherwise have strengthened according to the FCA. The Market Court arrived at a different interpretation of the definition of the relevant market and repelled the FCA's decision. The FCA has appealed the matter to the Supreme Administrative Court.

- In November 2008, the FCA conditionally approved a transaction in which the television company TV4 owned by the Swedish Bonnier media group acquired control in C More Group AB, a company that offers pay TV channels under the Canal+ brand. In Finland, the Bonnier group includes MTV Oy, which provides TV audiences with both pay and free channels. The competition concerns of the acquisition relate to the pay TV services market.

The parties are the two biggest actors in the affected market in Finland and each other's main competitors. They also own most of the key broadcasting rights for pay television.

The conditions imposed on the acquisition sought to ensure that the other companies in the market will be able to establish a competitive counterforce to the concentration. Removing the restrictions on the separate sales of certain MTV channels will make it possible for the distribution operators to offer customers new products in different channel packages, in addition to which an end to restrictions on packaging will make it easier for new competitors to access packages that have wide consumer coverage. Distribution operators will be able to further increase the number of product packages to consumers, when other products may be combined with C More's sports channel package.

The remedies imposed on the transaction are a guarantee of a wide choice of viewing in the future. The condition on which the concentra-

tion commits to sell its share of the Finnish National Hockey League's pay TV broadcasting rights to its competitors will mean that the competitive structure of the market will be assured. The sale of rights will give competitors acquiring them a chance to merchandise them over the next four competition seasons, which is likely to significantly increase the pressure felt by the concentration.

In accordance with the remedies, on 5 June 2009, C More Group AB sold the broadcasting rights of the National Hockey League to URHOTV commencing broadcasts in autumn 2009. The new channel is owned by the Swedish Parsifal Sport. The proceedings on the case will continue at the Market Court following the appeal by TV4 on the FCA's decision.

- The 22 other merger cases handled last year were approved during the first phase. Four cases (NCC Roads Plc/Valtatie Plc, Aspo Plc/Kauko-Telko Plc, ABB Plc/Fortek Plc and Finnair Plc/Finncomm Plc) merited further investigations.

Opinions were also issued to the Market Court on one change of remedies decision and two appeals made on the interpretation of changed remedies. Opinions on two merger cases were given to the Financial Supervisory Authority.
Results of activities

Towards better productivity

A project was completed in autumn 2008 at the FCA, the aim of which was to reinforce the FCA’s strategic thinking and to contemplate measures which might be used to improve the quality, productivity and impact of the operations. The FCA’s risk analysis was conducted as part of the strategic process.

The main areas of development were written down in the context of the strategy project and the common aim thereof was to ensure the achievement of the performance results. The main areas of development included:

- the development of the management system and reinforcement of leadership skills
- increasing efficiency and productivity as part of the government productivity programme and the development of the FCA’s resources
- the development of the results reporting system to support the management system
- further development of the risk analysis and management systems and
- fortifying the staffs know-how in the strategically important key areas.

One of the strategic key areas is to seek to do the right things at the right time. On an operative level, this is done by directing the resources as appropriately as possible. As part of the strategy work, special attention was paid to the methods connected to the case handling process to ensure that the cases which have the most impact can be prioritised in accordance with the society’s overall benefit.

The most significant cases (class 1) include so-called naked competition restraints and matters which have a large volume of operations or which are otherwise significant in principle. The lowest class (3) includes issues of minor importance from the viewpoint of the graveness of the restraint and its significance in principle and the volume of operations. The middle class (2) is a so-called on grey area where the handling of the matter is affected e.g. by the economic significance of the matter, the commonness of the method applied and the potential impacts of the conduct on competition.

Priorisation principles of cases

The following projects have also promoted productivity:

- the new case management system and the related new follow-up system for working hours
- the introduction of electronic travel management
- the transfer to the receipt of e-invoices
- the introduction of an electronic personal data system
- the use of Hansel Plc’s’ framework arrangements and agreements in procurements

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6 A report about the FCA’s results for 2008 with financial statements can be found at www.kilpailuvirasto.fi and www.netra.fi.

7 Hansel Plc. is the central procurement unit of the Finnish government.
Number of inputs 2008

**Domestic case-handling, without merger cases, no:**

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<thead>
<tr>
<th></th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
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<tbody>
<tr>
<td>Opened</td>
<td>331</td>
<td>335</td>
<td>419</td>
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<tr>
<td>Closed</td>
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<tr>
<td>Decision</td>
<td>46</td>
<td>26</td>
<td>31</td>
</tr>
<tr>
<td>Cases solved by letter</td>
<td>218</td>
<td>211</td>
<td>234</td>
</tr>
<tr>
<td>Cases solved by other means</td>
<td>107</td>
<td>82</td>
<td>152</td>
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<td>Total no of decisions</td>
<td>371</td>
<td>319</td>
<td>417</td>
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<tr>
<td>Unsolved cases 31.12.2008</td>
<td>173</td>
<td>204</td>
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**Merger cases, no:**

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<th>2006</th>
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<th>2008</th>
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<tbody>
<tr>
<td>Opened</td>
<td>62</td>
<td>48</td>
<td>38</td>
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<tr>
<td>Closed</td>
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<tr>
<td>Merger decisions</td>
<td>39</td>
<td>35</td>
<td>23</td>
</tr>
<tr>
<td>Other closed cases</td>
<td>19</td>
<td>13</td>
<td>12</td>
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<tr>
<td>Total no of decisions</td>
<td>58</td>
<td>48</td>
<td>35</td>
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**Initiatives and opinions, no:**

<table>
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<th>2007</th>
<th>2008</th>
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<tbody>
<tr>
<td>Opened</td>
<td>113</td>
<td>93</td>
<td>110</td>
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<tr>
<td>Closed</td>
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<tr>
<td>Opinions and initiatives</td>
<td>83</td>
<td>72</td>
<td>82</td>
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<tr>
<td>Cases solved by other means</td>
<td>22</td>
<td>21</td>
<td>25</td>
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<td>93</td>
<td>107</td>
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**EU cases and meetings, no:**

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<th>2008</th>
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<tbody>
<tr>
<td>EU cases</td>
<td>422</td>
<td>454</td>
<td>384</td>
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<td>No of EU meetings</td>
<td>84</td>
<td>70</td>
<td>71</td>
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**Competition restraint cases notified in the ECN Interactive database, no:**

<table>
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<th>2006</th>
<th>2007</th>
<th>2008</th>
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<tbody>
<tr>
<td>All EU states</td>
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<td>147</td>
<td>159</td>
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<tr>
<td>Notifications from Finland</td>
<td>2</td>
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</table>

The inputs and person-years of the State provincial Offices

<table>
<thead>
<tr>
<th></th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total closed cases</td>
<td>75</td>
<td>91</td>
<td>79</td>
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<tr>
<td>Cases referred by the FCA</td>
<td>18</td>
<td>21</td>
<td>19</td>
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<tr>
<td>Cases arriving directly in the State Provincial Offices</td>
<td>52</td>
<td>62</td>
<td>58</td>
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<tr>
<td>Opened on own initiative</td>
<td>2</td>
<td>3</td>
<td>1</td>
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<tr>
<td>Inspections</td>
<td>3</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Closed Cases</td>
<td>51</td>
<td>71</td>
<td>56</td>
</tr>
<tr>
<td>Person-years used in the handling of competition issues in the State Provincial Offices</td>
<td>4.0</td>
<td>4.7</td>
<td>6.0</td>
</tr>
</tbody>
</table>

Working time used for case-handling, %

Costs per main result function in 2008, total of €5.4m (%)

Person-years per result function in 2008, total of 69.3 person-years (%)
Much work is also conducted at the office, which does not show in the case-handling statistics. Such work is particularly related to advocacy where the focus of the work is on working group and other interest group cooperation. Hearings in government committees (20–30 a year) do not show in the input statistics either. In 2008, a large number of resources were also engaged in the writing of the first Competition Survey and the construction project report.

**Service ability and quality**

The FCA prioritises issues which have a high social impact, and seeks to make decisions which stand up to examination from the viewpoint of both administrative and competition law and competition economics. The FCA also wishes to ensure by guidance and communications that companies and citizens have the right idea about competition rules.

The Supreme Administrative Court and the Market Court issued five decisions concerning the FCA, which are non-appealable. In all of them, the Court came to support the FCA’s view. The cases concerned the conduct of the Finnish Ski Federation in the sponsorship agreement market, the tender by the Mikkeli Pesula Plc laundry to the Vaalijala federation of municipalities, the plan to change the zoning of a new shopping centre in the city of Helsinki, horizontal price cooperation in the sales and purchase of barley and the FCA’s proposal for an infringement fine to some taxi drivers.

During the past two years, the FCA has paid particular attention to the closing of cases which have long been under investigation. Unfortunately, this aim also shows in the considerable lengthening of the median processing times of closed cases in impact class 1.

Several old cases have been closed, however: By the end of 2006, there were 29 cases pending which had been opened during 1998–2003. Two years later, nine out of the 29 were still open. When those already brought before the Court and the complaints concerning the same topic are screened, there were only 2 more cases open at the end of 2008.

The FCA finds itself on the right track as regards processing times as well: By the end of 2006, the average processing time of open cases was 1.82 years. In 2008, this had decreased to 1.67. If the cases pending at the Market Court on the FCA’s proposal are screened, the average time gathered was 1.49 by the end of 2008.

Cases in impact classes 2 and 3 have long been processed within the set deadlines. In merger control, the processing times have also remained relatively short.

### Processing times of solved cases (median, days)

<table>
<thead>
<tr>
<th>Impact class</th>
<th>Initial estimate 2006</th>
<th>Result agreement goal 2008</th>
<th>Realisation 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impact class 1</td>
<td>825</td>
<td>730</td>
<td>1643</td>
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<tr>
<td>Impact class 2</td>
<td>638</td>
<td>630</td>
<td>296</td>
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<tr>
<td>Impact class 3</td>
<td>10</td>
<td>30</td>
<td>29</td>
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</table>

### Median processing time of complaints by measure

<table>
<thead>
<tr>
<th></th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decisions on complaints, day/year</td>
<td>826/2,3</td>
<td>699/1,9</td>
<td>1397/3,8</td>
</tr>
<tr>
<td>Change compared to previous year, day/year</td>
<td>249/0,7</td>
<td>-127/-0,4</td>
<td>698/1,9</td>
</tr>
<tr>
<td>Cases solved by letter, days</td>
<td>30</td>
<td>23</td>
<td>26</td>
</tr>
<tr>
<td>Change compared to previous year, day</td>
<td>-2</td>
<td>-7</td>
<td>3</td>
</tr>
<tr>
<td>Closed by “Ad acta”, day</td>
<td>22</td>
<td>49</td>
<td>49</td>
</tr>
<tr>
<td>Change compared to previous year</td>
<td>0</td>
<td>27</td>
<td>0</td>
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### Mergers

<table>
<thead>
<tr>
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<th>Initial estimate 2006</th>
<th>Result agreement goal 2008</th>
<th>Realisation 2008</th>
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<tbody>
<tr>
<td>Stage I decision</td>
<td>15</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Stage II decision</td>
<td>91</td>
<td>122</td>
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