Competition – key to efficiency

FCA Yearbook 2010
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FCA yearbook 2010
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The main challenge to the FCA's societal impact is promoting functional markets, which create preconditions for successful business and ensure that the benefits from the development of productivity will be passed on to the customers and consumers.
Economic competition and competition policy are not just for good times. During recession and decline and the withdrawal thereof, economic competition is part of the solution and not the root cause of the problems. For smart companies, sound and effective competition and the provisions of competition law guarantee for their part preconditions for success in the market and generate growth. Growth cannot be assumed to be built on business activity which would constantly require the cover of competition restraints or protection from competition in other ways.

These issues touch upon the FCA's strategic key areas. We seek to secure that the battle for declining orders will not lead to the creation of artificial impediments in the way of efficient competitors; to cartels in the attempt to manage overcapacity problems; or to unnecessary public regulation to protect from competition.

The solution cannot be found by the FCA alone, however – not even in its essential parts – without wider social policy endorsing competition and the free market, and without the support of citizens. The competitive culture needs to be consolidated.

In the everyday work of the FCA, these issues show in anti-cartel activities, decisions regarding the artificial foreclosure of competitors from the market and in advocacy where the so-called competition neutrality in particular is currently a major issue.

In combating cartels, the fines imposed for the asphalt cartel and the timber procurement cartel are vital for the creation of a credible anti-cartel policy. Imposing large fines is part of a competition culture where the society condemns harmful conduct. Following these decisions, high on the FCA's agenda are increasing the risk of getting caught for cartels and boosting control in markets where competition is scarce due to the market structure.

In the area of artificial foreclosure, the FCA's activities centre on telecommunications; there are currently several competition infringement fine proposals pending at the Market Court. Attention is paid to issues of foreclosure in other markets, too, because during an economic slump, the temptation for the creation of artificial impediments in the competitors' way is evident.

In advocacy, recent experiences have also been promising. The demands of competition neutrality have been largely taken into consideration in the incorporation of state-owned businesses, and the position of municipal enterprises was examined in a working group set up by the Ministry of Finance. The number of opinions requested from the FCA concerning legislative reforms grew appreciably compared to previous years, and the FCA was represented in altogether 26 working groups preparing legislation. In addition to the competition neutrality working groups, these included a development project for forestry promotion organisations and the working group preparing passenger transport on railways.

The FCA's organisation was reformed in February 2009 when an industry-based organisation was introduced in competition control. The Director General's staff was also reinforced for strategic and research work. Internal procedures were reformed to boost and expedite case management so that all cases with a major impact will be reviewed by the management board in the early stages of the investigatory proceedings. The main lines of the investigation are confirmed during the review and preliminary deadlines are set in relation to other pending investigations.

These reforms also serve the demands set on the FCA's procedures in the forthcoming new Competition Act.

June 2010
Juhani Jokinen
Calendar 2009

29 January 2009  Competition Act 2010 working group delivered its memorandum 

1 February 2009  FCA moves to industry-based organisation.

26 February 2009  Professor Aki Kangasharju submitted his report on the social influence 
of the FCA (Ministry of Employment and the Economy, Competitiveness 6/2009).

20 April 2009  The oral hearings in the asphalt cartel case began at the Supreme 
Administrative Court.

23 April 2009  The working group examining competition neutrality between public and 
private production delivered its memorandum (Ministry of Employment and the Economy, Competitiveness 23/2009).

5 May 2009  The oral hearings in the timber cartel case began at the Market Court.

15 June 2009  FCA, the Ministry of Education, the Association of Finnish Local and 
Regional Authorities and the Federation of Finnish Enterprises published a joint recommendation to promote business in municipal sports services.

18 June 2009  FCA issued a commitment decision in a matter involving the owner banks 
of Automatia Pankkiautomaatit Oy (Automatia ATMs).

3 September 2009  FCA published its evaluation criteria concerning the broadband market.

10 September 2009  Nordic competition authorities published a report on the role of 
competition policy in the financial crisis.

23 September 2009  FCA commenced an investigation on the pricing practices of district 
heating companies.

24 September 2009  FCA and the Finnish Competition Law Association arranged a joint 
seminar on cartel control and the reforming Article 82 (present 102).

29 September 2009  Supreme Administrative Court issued its decision in the asphalt cartel case.

8 October 2009  FCA and the Association of Finnish Local and Regional Authorities 
arranged a joint seminar on the topic “How to detect bid rigging and 
decrease the risk thereof?”

11 November 2009  FCA and the Pharma Industry Finland arranged a joint seminar on 
the topic “Competition and leading by results – a drag or motor of health care?”

3 December 2009  Market Court issued its decision in the timber cartel case.
The FCA protects sound and effective economic competition by intervening, where necessary, in restrictive practices, such as cartels and abuse of dominant position, violating the Act on Competition Restrictions (the Competition Act) and Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) forming the basis of competition policy. Where necessary, the FCA makes proposals to the Market Court that it impose competition infringement fines for those in breach of the competition rules.

The FCA may also order that the business undertaking terminate the illegal conduct or decide that the commitments shall be binding on the business undertakings if these commitments are such that they may eliminate the restrictive nature of the conduct. The FCA may also oblige a business undertaking to deliver a product to another undertaking on similar conditions as offered by the same business undertaking to other undertakings in a similar position.

The FCA also has a duty to intervene in concentrations exceeding certain turnover thresholds, if, as a result of such a concentration, a dominant position shall arise or be strengthened which significantly impedes competition in the Finnish markets. Where necessary, the FCA may attach conditions to the implementation of a concentration or propose that the Market Court ban the deal.

The FCA promotes competition by participating as an expert member in the removal of the institutional impediments of competition and the increase of competition particularly in highly regulated sectors. Initiatives, opinions, stake holder cooperation and participation in competition-related working groups set up in the different branches of the government are typical of this work.

In addition to competition control and advocacy, the FCA also tends to the international tasks falling under its jurisdiction. The major international cooperation partners include the ECN network between the EU competition authorities and the competition authorities of other Nordic countries.

The FCA’s mission statement is to protect sound and effective economic competition and to increase economic efficiency in both private and public-sector activity.

In the FCA’s vision, Finland is a market economy capable of regeneration in which competition serves the interests of consumers and businesses.

The main challenge to the FCA’s societal impact is promoting functional markets.

These create preconditions for successful business and ensure that the benefits from the development of productivity will be passed on to the customers and consumers. At the same time, they create incentives for the development of new products and a better supply including more inexpensive prices.

The FCA’s values include professionalism, openness, creativity, impartiality, effectiveness and cooperativeness.

Competition restrictions are investigated both on the FCA’s own initiative and on the basis of complaints.
The steep decline in economic activity which began in the latter half of 2008 steadied during 2009, but for example export has remained at a clearly lower level than what it was before the crisis began. Overcapacity therefore prevails in many fields.

The situation shows itself in the work of the competition authority as follows:

Since demand of products is still weak, the sellers have incentives to increase the utilization rate of production capacity in different ways. Related to this may be the temptation to artificially foreclose competitors from the market. The temptation to assemble market power through a forbidden cartel may also grow in these conditions.

The number of mergers generally decreases in recession, but the emerging cases have a tendency to be particularly complex because they may concentrate the market in a major way and decrease production capacity to a large extent.

From the point of view of advocacy, crisis areas may come into existence with attempts to maintain competition by exceptional measures. Other ad hoc arrangements unfavourable to competition may also appear.

All the above-mentioned alternatives require special vigilance from the FCA and an ability to react quickly, where necessary, to the detected competition problems. Stakeholder cooperation to prevent potential problems is also important.

The significance of competition and the lack thereof shows more clearly than before if the buying power of citizens appreciably decreases with the financial crisis. At the same time, the pressures increase to consolidate the competitive coordination of social policy.

It is apparent in any case that the fast indebtedness rate of the public economy in recent years cannot go on any longer. It is necessary to create efficiency and structural changes increasing productivity both in the public sector and elsewhere in the economy.

The importance of functional competition in the accomplishment and follow-through of reforms cannot be stressed enough. During 2009, the issue was for example emphasized in the February meeting of the OECD Competition Committee (see p. 43) and the joint report published by the Nordic competition authorities in September (see p. 41).
Operational efficiency

According to the evaluator’s report published in 2009 (Ministry of Employment and the Economy, Competitiveness 6/2009), the FCA’s investigatory skills are of a high quality and companies obtain good case-specific advice and guidance. In international comparison, too, the FCA received good marks. However, the operations could be developed in a more target-oriented direction and some operational processes could be enhanced.

According to the evaluation, the focus of the activities should be on the investigation of cases which have a major impact on the economy. Such cases are brought before the management board at an early stage of the investigatory proceedings, and they are sought to be prioritised according to the overall benefit of the society.

Productivity and economic efficiency

Impact class 1 contains so-called naked competition restraints and cases with a large volume of operations or which are otherwise significant in principle. Impact class 3 contains cases of minor importance both from the point of view of graveness of the activities, their importance in principle and the volume of operations. Class 2 is a so-called grey area where the economic significance of the operations, the commonness of the conduct and the potential impacts on competition affect the approach to the case. (See Graph 1.)

Roughly two-thirds of the working hours registered in case-handling in 2008 and 2009 have been spent on cases with impact class 1, i.e. the gravest restraints. In 2008, there were 8 closed cases in impact class 1 and in 2009, 9 closed cases in impact class 1.
The relative time spent on actual case-handling decreased last year from 36.6 to 33.0 per cent. The court proceedings as part of case-handling also took a threefold time compared to the two previous years. In 2007 and 2008, 1.1 person-years were used for court proceedings; in 2009, the figure was 3.2 person-years.

The relative share of work related to the production of so-called other inputs increased by one-fifth compared to the previous year (20.0 → 24.3). This was e.g. due to the fact that more time was spent on the investigation of sector-specific competitive conditions, customer guidance, stake holder cooperation and the handling of requests for documents on the basis of the Act on the Publicity of Official Documents. More time, relatively, was also spent on international cooperation than in the previous year.

More time (2.1 → 3.7 per cent) was also spent on different development projects; these were mainly related to the central government productivity projects. The service centre project of the government’s financial and personnel administration (called “Palkeet”) caused the most extra work. The FCA also became a Palkeet customer as soon as its operations began on 1 January 2010. Other development projects in 2009 included the Competition Act 2010 and the development of electronic inspection.

The working hours spent on so-called other tasks decreased (41.2 → 39.0). These include management; personnel, financial and general administration; personnel training; IT-; and registry, secretarial and caretaker services.

The façade of the FCA’s premises was renovated in May-November 2009, which encumbered the administration, in particular. The dust and noise caused by the renovation also generally deflated job satisfaction and efficiency.

The FCA’s total costs rose last year to 6 million euros (11 per cent of growth). The person-years (70) were the same as in previous years. The division of costs to the main result functions and the division of person-years per result function can be seen from the graphs.
Performance and processing times

### Domestic case-handling, without merger cases, number

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opened</td>
<td>355</td>
<td>419</td>
<td>408</td>
</tr>
<tr>
<td>Closed</td>
<td>322</td>
<td>419</td>
<td>448</td>
</tr>
<tr>
<td>Decision</td>
<td>26</td>
<td>31</td>
<td>36</td>
</tr>
<tr>
<td>Letter/reply</td>
<td>211</td>
<td>234</td>
<td>264</td>
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<tr>
<td>Other</td>
<td>85</td>
<td>154</td>
<td>148</td>
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</table>

### Merger cases, number

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<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opened</td>
<td>48</td>
<td>38</td>
<td>38</td>
</tr>
<tr>
<td>Closed</td>
<td>45</td>
<td>33</td>
<td>34</td>
</tr>
<tr>
<td>Decision to approve the deal</td>
<td>32</td>
<td>21</td>
<td>14</td>
</tr>
<tr>
<td>Other</td>
<td>13</td>
<td>12</td>
<td>10</td>
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### Cases related to advocacy, number

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<tbody>
<tr>
<td>Opened</td>
<td>93</td>
<td>110</td>
<td>153</td>
</tr>
<tr>
<td>Closed</td>
<td>94</td>
<td>107</td>
<td>159</td>
</tr>
<tr>
<td>Opinions</td>
<td>70</td>
<td>82</td>
<td>121</td>
</tr>
<tr>
<td>Other</td>
<td>24</td>
<td>25</td>
<td>38</td>
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### International affairs, number

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<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opened</td>
<td>560</td>
<td>542</td>
<td>590</td>
</tr>
<tr>
<td>EU cases</td>
<td>454</td>
<td>384</td>
<td>321</td>
</tr>
<tr>
<td>EU meetings</td>
<td>70</td>
<td>71</td>
<td>53</td>
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### Competition restraints cases notified in the ECN Interactive database, number

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<tr>
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<th>2007</th>
<th>2008</th>
<th>2009</th>
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</thead>
<tbody>
<tr>
<td>All EU countries</td>
<td>147</td>
<td>159</td>
<td>150</td>
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<tr>
<td>Notifications from Finland</td>
<td>3</td>
<td>3</td>
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### Performance and person-years of State Provincial Offices*

<table>
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<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total of closed cases</td>
<td>91</td>
<td>79</td>
<td>84</td>
</tr>
<tr>
<td>Cases referred by the FCA</td>
<td>21</td>
<td>19</td>
<td>17</td>
</tr>
<tr>
<td>Cases arriving directly to the SPOs</td>
<td>62</td>
<td>58</td>
<td>62</td>
</tr>
<tr>
<td>Cases opened on own initiative</td>
<td>3</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Inspections</td>
<td>5</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Closed cases</td>
<td>71</td>
<td>56</td>
<td>63</td>
</tr>
<tr>
<td>Person-years spent on the handling of competition cases in the SPOs</td>
<td>4,7</td>
<td>6,0</td>
<td>5,6</td>
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</tbody>
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* The Regional State Administrative Agencies which began their operations at the start of 2010 participate like their predecessors the State Provincial Offices in advocacy and competition control. The FCA concludes annual performance agreements with them in which the objectives of the work are agreed on.

At the end of the year, the FCA managed to decrease the number of open cases by almost one-fourth; at the end of 2008, there were 201 open cases, and at the end of 2009, the figure was 159.

Long-pending cases were closed during the year in particular; at the end of 2009, there were less than 20 cases pending which had been lodged with the agency more than three years ago.

The unloading of cases which began in 2008 still showed in the handling times of decisions in impact class 1: the objective was 730 calendar-days from initiation, and the realised median was 1589 days. But the objectives concerning the handling-times in impact classes 2 and 3 were achieved. Matters which were not investigated further were closed according to plan within one month.
In the cases based on the FCA’s infringement fine proposals, a total of five legally valid decisions were issued in 2009; one of these was issued by the Supreme Administrative Court and four by the Market Court.

Three of the proposals were approved as such both pertaining to the substantive decision and fines. In one case, the amount of fines was drastically decreased, and one of the proposals was dismissed as regards the fines. As regards substantive decisions, the success rate was 5/5.

The Market Court further issued nine decisions relating to appeals made on the FCA’s decisions; eight of these were legally valid by March 2010. The appeal was dismissed in all these cases.

At the end of 2009, the Market Court had 9 competition restraints cases pending (28 at the end of 2008), five of which concern the imposition of an infringement fine.

The estimate of the 2009 stakeholder survey on the proper content and quality of the FCA’s decision on a scale of 1-5 was 3.79 when in the previous year the result was 3.70.

<table>
<thead>
<tr>
<th>Median handling times of complaints per impact class (excluding the cases pending at the Market Court)</th>
</tr>
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<tbody>
<tr>
<td>Impact class 1</td>
</tr>
<tr>
<td>Impact class 2</td>
</tr>
<tr>
<td>Impact class 3</td>
</tr>
<tr>
<td>No entry</td>
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Median processing times of complaints per end measure, days

<table>
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<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
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</thead>
<tbody>
<tr>
<td>Decisions on complaints</td>
<td>699</td>
<td>1397</td>
<td>1091</td>
</tr>
<tr>
<td>previous figure in years</td>
<td>1,9</td>
<td>3,8</td>
<td>3,0</td>
</tr>
<tr>
<td>Letter decisions</td>
<td>23</td>
<td>26</td>
<td>26</td>
</tr>
<tr>
<td>Closed by “ad acta”</td>
<td>49</td>
<td>49</td>
<td>133</td>
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</table>

Average processing time of merger notifications, days

<table>
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<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
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</thead>
<tbody>
<tr>
<td>I stage decision</td>
<td>16</td>
<td>16</td>
<td>12</td>
</tr>
<tr>
<td>II stage decision (also includes processing time of stage I)</td>
<td>122</td>
<td>143</td>
<td>89</td>
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</table>

In stage I of mergers, the shortest processing time from the arrival of the notification was 3 days and the longest 26 days. This was clearly below the average three-week processing time, which was the performance objective. In simple questions of interpretation, the answer was given in 24 hours.

Only one stage II merger decision has been made per year during the past few years (Hankkija-Maatalous Oy/Lännent Tehtaay Oyj in 2007 and Alma Media Oyj/Talentum Oy in 2009). In 2008, the long handling period was due to the Market Court extending the processing time of TV4/Canal+.
The amount of FCA’s person-years was 70.2 last year. The total attrition was still high (21.7 per cent) due to family leaves and other leaves of absence. At the end of the year, altogether 14 officials were on a leave of absence. Part-time work was conducted by 9 officials during the year; at the end of the year, this had reduced to four.

Six fixed-term officials were recruited to substance tasks during the year and one permanent position transferred to the administration from another agency. The share of fixed-term officials was 20.9 per cent at the end of the year.

In autumn 2009, the FCA’s human resource policy was outlined, based on which working time flexibilities were increased and telework was introduced. In the follow-up work, the primary development targets are the total salaries and rewards of the personnel, working processes supporting prioritisation, creation of career development models and intervening in non-satisfactory job performance.

As regards the salary system, structural changes were made which support the FCA’s strategic policy definitions and prioritisation principles and promote the productivity of the activities. The changes also sought to increase the incentives of the system and make it more flexible in that it would respond more quickly to changes in individual performance.

**Good employer image**

The esteem enjoyed by the FCA as an employer was investigated for the first time last year in conjunction with a stake holder survey. The average value of the replies on a scale of 1-5 was 3.5. The best estimates (over 3.7) were given by representatives of the public administration and research institutes; the worst (roughly 3.1) by competition lawyers and political decision-makers.

The views of economics or law students about the FCA as a workplace were also examined as a separate study. Over two-thirds of altogether 207 respondents found the FCA a stable and safe workplace which may offer them duties befitting their education. More than half the respondents also considered the FCA a valued workplace where the tasks are challenging and educative. The FCA’s international operating environment was also well known.

The Competition Law in Practice course arranged by the FCA for the Faculty of Law of the Helsinki University was participated by a record number of students in 2009 (30). The feedback from the new two-day seminar form and the contents of the course was very good.

In addition, five university trainees worked at the agency in the summer of 2009; at least one in all other main performance areas. The FCA also offered a traineeship for two polytechnic students last year.

**Job-satisfaction and wellbeing**

The FCA’s working atmosphere was considered good (3.9 on a scale of 1-5) in the VMBaro work satisfaction survey conducted in autumn 2009. The employees are particularly happy with the fair and human treatment by colleagues (4.2) and the realisation of the equality of the sexes (4.0).

In addition to good working atmosphere, the staff particularly values the challenge and independence provided by the work (3.9). People are also quite satisfied with the support given by the superiors (3.8).

The average figure of all the categories of the VMBaro answers decreased a little from the previous year (3.53 → 3.42) but was still better than in government agencies on the average (3.36). The decrease was due to lowered estimates pertaining to working conditions, payment and career development.

In the open replies pertaining to working conditions, particularly the inconvenience caused by the renovation of the office facade in 2009 was brought up.
The expertise of the FCA staff was maintained and developed e.g. in the following ways in 2009:

- Four of the staff took the PG diploma in EC Competition Law or Economics in Competition Law at King’s College in London. Two of the staff acquired Masters qualifications. Two more commenced PG studies and three Masters studies.

- One person participated in a week-long Regulatory Impact Assessment (RIA) training arranged at the Center for European Policy Studies (CEPS) unit in Belgium.

- Two of the staff participated in a two-week Forensic IT course in Germany.

- The time spent on other courses arranged abroad was 12 person-years, and the topics e.g. included vertical competition restraints.

- Two in-house training events were arranged at the agency with experts from the Commission DGIV Competition as lecturers. The topics of the lectures were cartel control and damages for violations of competition rules.

- There were three other researcher meetings: one on commitment decisions, another on cartel investigations and third on the Lisbon agreement and the case law of the EU Courts. In addition, 12 in-house training sessions were arranged for the researchers which supported the organisation reform and the FCA’s prioritisation goals.

- Two training events on court proceedings were arranged together with the Market Court, with the Consumer Agency and Energy Market Authority also attending.

- One of the officials worked for three months at the Ministry of Employment and the Economy familiarising himself with broad-range competition policy, and another worked for a month as a trainee at the Commission’s DGIV Competition getting acquainted with competition control in the IT sector.

- Four Heads of Research underwent management training (HAUS-VIRE or HAUS-JOKO).

- Expertise was also developed via participation in academic research work. This resulted not only in licentiate and doctoral theses but also in academic publications in international journals.

- The FCA’s expertise was also used in the guidance and assessment of academic theses. Outside employment in editorial staffs related to scientific publication also serve to sustain the importance of research-related stake holder cooperation.

Performance meters related to expertise, wellbeing and employer image

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Training days, person-years</td>
<td>7.1</td>
<td>4.4</td>
<td>≥ 8</td>
<td>7.4</td>
</tr>
<tr>
<td>Share of personnel who have a minimum of a Master’s Degree at the end of the year, %</td>
<td>62</td>
<td>68</td>
<td>≥ 66</td>
<td>66</td>
</tr>
<tr>
<td>Working atmosphere, VMBaro (scale 1-5)</td>
<td>—</td>
<td>3.9</td>
<td>3.5</td>
<td>3.9</td>
</tr>
<tr>
<td>Sick leave, working days / person-years</td>
<td>12.1</td>
<td>6.4</td>
<td>&lt; 9</td>
<td>8.9</td>
</tr>
<tr>
<td>Short-term (1-3 days) sick leave</td>
<td>191</td>
<td>220</td>
<td>&lt; 190</td>
<td>212</td>
</tr>
<tr>
<td>Applications / open position</td>
<td>35</td>
<td>43.6</td>
<td>≥ 40</td>
<td>—</td>
</tr>
<tr>
<td>Exit turnover</td>
<td>11.8</td>
<td>4.8</td>
<td>&lt; 10</td>
<td>8.7</td>
</tr>
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</table>
Court decisions in the asphalt and timber cartel cases

The cartel decisions issued by the Supreme Administrative Court and Market Court at the end of 2009 brought the long-standing case investigations to a head. The Supreme Administrative Court ended the five-year long court proceedings in September in a matter involving the imposition of a competition infringement fine in the so-called asphalt cartel case, and the Market Court decided the timber cartel case which had been pending for three years in December. The Market Court ruled in favour of the FCA’s proposal, and that decision too now has legal validity.

The Supreme Administrative Court found that a national asphalt cartel operated in Finland during 1994-2002, and all the biggest actors of the field were involved. The parties were sentenced to fines which amounted to 82.5 million euros altogether. The decision sets a very important precedent in many ways. (More about the case on pages 22–23.)

The extensive trials tied a major part of cartel resources last year, and the asphalt cartel process in particular usurped a large amount of resources for several years. The results achieved in the trial more than make up for the input invested in the case, as the decisions are vital in reinforcing a credible “hard core” anti-cartel policy in Finland.

- In the Supreme Administrative Court’s decision, the asphalt companies were found guilty of serious, long-standing and extensive market partitioning and bidding cooperation in breach of the Competition Act. It was one integrated cartel composed of several parts, with the intention of eliminating competition from the asphalt market. The undertakings had agreed in advance about the regional and quantitative division of asphalt work conducted by the state, municipalities and private individuals, and this division was maintained by agreeing in advance about the prices paid in the bidding contests and by monitoring that the pricing was followed. The joint market share of the companies involved in the cartel during 1994-2002 was roughly 70 per cent.

- The Supreme Administrative Court ruled that Lemminkäinen Oyj, VLT Trading (former Valtatie Oy), NCC Roads Oy, Skanska Asfaltti Oy, SA-Capital Oy, Rudus Asfaltti Oy and Super Asfaltti Oy pay infringement fines for a total of €82.55m. The sum corresponds to the figures proposed by the FCA within the maximum limits permitted by the legislation. (The Supreme Administrative Court decision 29 September 2009, 2009:83.)

- The Market Court found in its decision issued today that during 1997-2004 Metsäliitto Cooperative, Stora Enso Oy and UPM-Kymmene Oyj were guilty of forbidden national price cooperation and exchange of information in the procurement of timber. The case involved a procurement cartel by the buyers. The forest managers of the companies had e.g. met each other regularly to discuss issues pertaining to the availability and prices of timber. In the meetings, the procurement price of timber had been examined in the light of statistical information per forestry centre region and per assortment of timber. The price of timber per company had been compared to the average price or the price of other companies.

No actual decisions were made during the discussions but the forthcoming pricing was sought to be influenced. The regional managers had also discussed issues pertaining to the availability and prices of timber similarly to the forestry managers. The price development was scanned from the statistics per assortment of timber even per municipality. The regional directors informed each other of their own procurement prices and these were compared to the average prices. Exact prices were not agreed in the meetings, but the forthcoming timber trade was sought to be influenced to ensure a stable price curve.

The Market Court imposed competition infringement fines for conduct violating the Competition Act totalling €51 million: €30 million to Stora Enso and €21 million to Metsäliitto. The size of the fine corresponds to the FCA’s 2006 Market Court proposal. UPM-Kymmene Oyj was exempted from the infringement fine because in May 2004 it disclosed information on the illegal conduct to the FCA and submitted information regarding the cartel to the agency. Metsäliitto also assisted the FCA in the investigation the matter, due to which its infringement fine was reduced by 30 per cent. (Market Court decision of 3 December 2009, diary no 407/06/KR, no 614/2009.)
Other court decisions involving cartels

Anti-cartel work also yielded other good results last year: in addition to the timber case, the Market Court reviewed cases involving automobile spare parts and two trade organisations, and its substantive decisions were similar to the FCA’s proposals.

However, the level of fines remained lower in these cases than the FCA had proposed – with the exception of case Suomen Hiusyrittäjät ry (Finnish Barbers and Hairdressers). Due to appeals, proceedings on all three cases continues at the Supreme Administrative Court.

• The Market Court found in its decision that five major wholesalers active in the automobile spare parts and accessories market – HL Group Oy, Oy Kaha Ab, Koivunen Oy, Örum Oy Ab and Oy Arwidsson Ab – were guilty of forbidden price cooperation during 2004-2005. The aim of the cooperation was to explicitly restrict competition, and the competition restraint regionally covered the whole of Finland. (Market Court decision 20 February 2009, diary no 216/06/KR, no 91/2009.)

   The wholesalers in the cartel agreed on the forbidden cooperation after the Osaset chain, which had been their customer, announced that it would start a new closer collaboration with Atoy Oy competing with the above-mentioned firms. The cartel companies began to boycott the Osaset chain, to complicate its collaboration with Atoy. The boycott was carried out by decreasing by mutual understanding the discounts awarded to the Osaset chain, i.e. by raising prices.

   Pursuant to the Market Court’s decision, the major decrease in discounts which had previously been granted to the dealers in the Osaset chain was a de facto refusal to deal with the Osaset dealers, since business at the new prices was financially unprofitable for the dealers as a rule.

   Wholesalers have an interest to act together in the matter, because for example if only one wholesaler were to impair the conditions it would not have had a major impact on the operations of the Osaset chain. The aim of the forbidden cooperation was to get the Osaset dealers to continue their purchases from the said wholesalers without tougher competition from the firms.

   The Market Court ruled that the parties pay penalties to the state amounting to €1.03m. The biggest infringement fine, €500 000, was imposed on Koivunen Oy. Oy Arwidsson Ab was exempted from the fines, as it disclosed information about the illegal conduct to the FCA and submitted information to this effect.

   For the first time, the Market Court decided a case in which cartel fines were sentenced for a cartel detected on the basis of the leniency system. But the infringement fines imposed by the Market Court in February 2009 were only one-third of the amount proposed by the FCA (total of €3.76m).

   • By its decision, the Market Court imposed an infringement fine of €33’000 on Suomen Hiusyrittäjät Oy (Finnish Barbers and Hairdressers) for price recommendations violating the Competition Act. The Market Court’s decision corresponded to the FCA’s 2007 proposal. (Market Court decision of 22 December 2009, diary no 289/07/KR, no 658/2009).

   In its newsletters and press releases, Hiusyrittäjät combined information on the wage increases agreed in collective bargaining agreements to its own estimates about the impacts of the cost increases on the service prices. The organisation also proposed its own estimates and recommendations for price increases calculated on the basis of the above and suggested that the businesses increase their prices. The Market Court found that, by its press releases, Hiusyrittäjät had sought a certain percentual raise in the prices of the hairdressing services above all to safeguard the income level of the business of the field.

   • The Market Court imposed an infringement fine of €5’000 on Suomen Kodinkonehuoltojen liitto (the Finnish Household Appliance Maintenance Association) for forbidden price cooperation which took place during 1997-2003. As regards the violation, the Market Court reached the same conclusion as the FCA in its 2006 proposal, but the fines imposed by the Market Court remained lower than those proposed by the FCA. (Market Court decision of 22 December 2009, diary no 144/06/KR, no 657/2009.)

   The forbidden cooperation concerned the prices and pricing principles on which the repair shops in the association were ready to offer maintenance and repair services to the firms granting warranties for household appliances. The purpose of the cooperation was to raise the price level of warranty services and repair prices.

   The FCA also proposed that an infringement fine be imposed on 17 repair shops which were in the board of directors of the association during 1997-2003 and which the FCA found to be the main actors in the implementation and execution of the price cartel. The Market Court dismissed the FCA’s proposal in this respect.
The Market Court decisions made in December 2009 signal to the trade organisations that they cannot agree on prices or otherwise involve themselves in the pricing of their members. Price recommendations are also forbidden because they harmonize the pricing of the actors in the field and spur companies to raise prices irrespective of their cost development. The recommendations also harmonize the timing of the price increases which makes it difficult for customers to avoid the raise by switching service provider or trader.

**New cartel investigations and development of control**

Only a few new cartel investigations were commenced last year because the resources were tied up in the trials. The FCA e.g. commenced investigations related to local bid rigging suspicion, and inspections were made in December. Investigations also began on alleged Nordic bid rigging. A decision was made to close the investigations conducted together with the Norwegian and Danish competition authorities, however, as no evidence was found to support the forbidden cooperation. Investigations were also closed on a local cartel suspected in the broadband market due to lack of evidence.

One leniency application was lodged with the FCA in 2009. A leniency application had already been lodged with the European Commission in the same matter, and the application did not provide the FCA with cause to make an inspection.

The investigation of alleged competition restraints in the sale of timber was continued. In addition, inspections were made into some forest management associations, to forest owners’ federations and the procurement firms owned by the forest owners’ federations.

The methods of investigation are constantly sought to be developed in cartel issues – particularly the electronic and other inspection activities. In 2009, the FCA participated in a project financed by the European Commission in 2009 in which the officials of the member states are trained in methods and software relating to so-called Forensic IT inspections. The project is part of a wider entity combating financial crime.

The FCA also hosted an annual meeting of Nordic cartel officials in 2009. The topics included the methods and procedures developed by the different authorities to detect cartels.

"A price-fixing cartel is an arrangement whereby the sellers of products or services on the same production or distribution level either directly agree on the prices of their products (purchasing and selling cartels) or other factors affecting the price or the pricing principles, such as discounts, provisions, terms of payment or guarantees.

In a price-fixing cartel, it may also be agreed that a certain price may not be undercut or exceeded. Statistical cooperation or other exchange of information between undertakings may also be forbidden if the undertakings exchange detailed information on prices, sales or costs with each other. In addition to the nature of the information, what is decisive is the structure of the market, the age of the information exchanged as well as its frequency and transparency.

The above-mentioned price cooperation is forbidden by the Competition Act, whether it be based on written or oral agreement or tacit understanding. The legal form of the cooperation is not decisive either.”

(Source: www.kilpailuvirasto.fi)
Seminar on bidding cartels

The risk of getting caught for forbidden cooperation was sought to be further increased by arranging a training event with the Association of Finnish Local and Regional Authorities. The purpose was to improve the capabilities of procurement officials to detect cartels. The event arranged in October by way of the traditional “KIVI seminar” was attended by dozens of officials dealing with procurement issues in the state administration, municipalities and congregations. The keynote speaker of the event was expert Antonio Capobianco from the OECD.

Other lecturers included Professor Pertti Virtanen from the University of Lapland, Legal Director Kari Prättälä from the Association of Finnish Local and Regional Authorities, Chief Legal Counsel Juha Myllymäki from the Public Procurement Advisory Unit, and Director General Juhani Jokinen and Heads of Research Mika Hermas and Leena Lindberg from the FCA.

The topic of Capobianco’s presentation was “Guidelines for Fighting Bid Rigging in Public Procurement” published by the OECD in the spring. The guidelines e.g. describe how cartels typically operate and how the procurement process may be designed so as to minimize the cartel risk. The guidelines also contain information on factors which may point to the existence of bid rigging.

The OECD “Guidelines for Fighting Bid Rigging in Public Procurement” have also been published in Finnish in their entirety and they can be found from the web pages of both the FCA and the OECD. In the following, some extracts from the guidelines:

Common forms of bid rigging

Bid-rigging conspiracies can take many forms, all of which impede the efforts of purchasers to obtain goods and services at the lowest possible price. A common objective of a bid-rigging conspiracy is to increase the amount of the winning bid and thus the amount that the winning bidders will gain.

Although bid rigging can occur in any economic sector, there are some sectors in which it is more likely to occur due to particular features of the industry or of the product involved. Procurement agents should be especially vigilant for example if there is only a small number of companies active in the market, and there has been no entrants for a while. If the goods or services are identical or simple and there are few if any substitutes, it makes it is easier for firms to reach an agreement on a common price structure.

The most common bid-rigging schemes:

- **Cover bidding.** Individuals or firms agree to submit bids that involve at least one of the following: a competitor agrees to submit a bid that is higher than the bid of the designated winner; a competitor submits a bid that is known to be too high to be accepted; or a competitor submits a bid that contains special terms that are known to be unacceptable to the purchaser.

- **Bid suppression.** One or more companies agree to refrain from bidding or to withdraw a previously submitted bid so that the designated winners bid will be accepted.

- **Bid rotation.** Conspiring firms continue to bid, but they agree to take turns being the winning bidder. For example, conspirators might choose to allocate approximately equal monetary values from a certain group of contracts to each firm or to allocate volumes that correspond to the size of each company.

- **Market allocation.** Competitors carve up the market and agree not to compete for certain customers or in certain geographic areas. Competing firms may, for example, allocate specific customers or types of customers to different firms, so that competitors will not bid (or will submit only a cover bid) on contracts offered by a certain class of potential customers.
How to detect bid rigging?

If certain bidding patterns and practices seem at odds with a competitive market, this may indicate the possibility of bid rigging. Observe the frequency with which firms win or lose tender offers.

Subcontracting and undisclosed joint venture practices can also raise suspicions. Look for patterns that suggest that companies may be coordinating their efforts such as price increases that cannot be explained by cost increases.

When losing bids are much higher than the winner’s bid, conspirators may be using a cover bidding scheme. A common practice in cover pricing schemes is for the provider of the cover price to add 10% or more to the lowest bid.

Signs of a bid-rigging conspiracy can also be found in the various documents that companies submit. By comparing documents, evidence may be detected that suggests that the bids were prepared by the same person or were prepared jointly.

Statements indicating that certain firms do not sell in a particular area or to particular customers or statements indicating that an area or customer “belongs to” another supplier may also give rise to suspicions.

(Source: OECD’s Guidelines for Fighting Bid Rigging in Public Procurement)

If you suspect bid rigging or any other cartel, contact one of the following persons in the FCA’s Industries 1 unit:

Assistant Director Mika Hermas, tel. +358 9 7314 3344
Assistant Director Leena Lindberg, tel. +358 9 7314 3374
Head of Research Hannele Väisänen, tel. +358 9 7314 3388
Senior Research Officer Sanna Syrjälä, tel. +358 9 7314 3385

E-mails are of the type forename.surname@kilpailuvirasto.fi.
A major precedent

The asphalt cartel decision by the Supreme Administrative Court (2009:83) is a major precedent. The impact of the decision issued in September 2009 to case law already showed in December 2009 when the Market Court issued its decision in the timber cartel based on the FCA’s infringement fine proposal. For the FCA’s activities, the main comments are related to the assessment of the evidence presented for the cartel and the level of fines – both issues which have a direct bearing on the functioning of the leniency system.

Assessment of evidence

It is unequivocally stated in Supreme Administrative Court’s decision that the same demands cannot be set on evidence presented in a competition case as a criminal case. The evidence shall be assessed as a whole, and in the assessment weight shall e.g. be given to circumstantial evidence.

The main conclusions of the Supreme Administrative Court can be found in section 985 of the decision:

In deciding, in a manner prescribed in 51 (1) of the Administrative Judicial Procedure Act, which facts a decision involving forbidden cooperation among business undertakings may be based on, attention shall be paid to the problems in obtaining evidence for the collaboration of business undertakings which show e.g. in the Cement ruling and the fact that the same demands cannot be set on the evidence presented in competition and criminal issues in Finland where the competition legislation is part of the European legislation. Therefore deduction can also be used in finding such forbidden collaboration.

In the lack of consistent explanation, events and procedures resembling each other in the market and circumstantial evidence may therefore act as a sign of competition law violation. In such deduction, there is no obstacle to giving weight to both scattered evidence and witness accounts on what they have heard told. Similarly, it may be possible to deduce a connection between events from the resemblance of individual events and the entity formed by them. The important thing is a comprehensive examination of the evidence. As for duration, it should be considered sufficient that the evidence presented is temporally linked to facts that are sufficiently close, in order to reasonably find that the said violation of the competition rules has continued uninterruptedly between the starting time of the alleged cartel and its date of termination.”

The issues relating to evidence in section 985 may be expressed as follows for the sake of clarity:

- Finding evidence in cartel cases is difficult. Deduction may also be used in finding cartels. A comprehensive examination is important.
- It may be possible to deduce a connection between events and the entirety formed by them from the resemblance of individual events. Similar events and procedures in the market and other circumstantial evidence may therefore act as a sign of violation of the competition rules in the lack of a coherent explanation.
- In addition to other scattered evidence, there is no obstacle to giving weight to witness accounts of what they have heard told in the deduction.
- As regards duration, it is enough is the evidence is temporally linked to facts which are sufficiently close. If this is the case, the violation may reasonably be assumed to have continued uninterruptedly between the starting time of the alleged cartel and its date of termination.

The Supreme Administrative Court also takes a stand to the level of counter-evidence proving innocence in its decision. According to the Court, companies subject to an infringement fine proposal shall be able to present a credible alternative interpretation to the FCA’s evidence and conclusions. This statement can be found in section 1141 of the decision:
“The FCA has presented extensive and consistent evi-
dence based on documents, recordings of telephone
conversations, witness statements and economic anal-
ysis on that an antitrust cartel has operated in the as-
phalt sector during 1994-2002. To prove their inno-
cence of the violation of the provisions of the Compe-
tition Act, the defendant companies should have been
able to present a credible alternative interpretation to
the existence of the FCA’s evidence or the conclusions
drawn by the FCA thereof. The defendant companies
have not been able to undermine the credibility or
trustworthiness of the evidence presented by the FCA
or to show that the conclusions drawn by the FCA of
the evidence are false. The Supreme Administrative
Court therefore finds that based on the evidence pre-
sented by the FCA a national cartel has operated in
the Finnish asphalt market, breaching Articles 5 and
6 of the Competition Act.”

The Supreme Administrative Court’s finding on the
assessment of evidence has major importance when
the FCA focuses its resources freed from the trial to
the detection of cartels. The Supreme Administra-
tive Court set the burden of evidence in cartel cases
to a level which steers and spurs the FCA to collect
and screen specific items of information and market
tips even more effectively than before.

Level of fines

For many years, the FCA has been concerned about
the level of fines imposed for serious violations of
the competition rules. The OECD has also paid
attention to the matter as regards Finland. The
amount of the sanctions imposed by the Supreme Adminis-
trative Court for the asphalt cartel is finally
so high that it is fair to say that it has a special and
generally preventive effect.

The decision also attests that on the basis of the in-
fringement fine provisions in effect prior to 1 May
2009 already it was possible to impose infringement
fines which question the profitability of cartels. The
fines set by the Supreme Administrative Court were
roughly similar to those proposed by the FCA, within
the maximum limits provided by the law. In the tim-
ber procurement cartel, the fines were also in line
with those proposed by the FCA.

Leniency system

The comments of the Supreme Administrative Court
on the assessment of evidence, and the considerable
infringement fines do not change the fact that it is not
easy to find evidence for cartel cooperation which is
meant to be secret. The leniency system has therefore
been developed to promote the detection of cartels.

In the timber procurement cartel, the FCA did not
propose an infringement fine on UPM-Kymmene
Oyj, which was the first party to disclose the cartel to
the FCA. On the other hand, the FCA proposed that
when imposing the fine on Metsäliitto Osuuskunta
attention should be paid to the fact that the compa-
ny was instrumental in assisting the agency in the
investigation of the competition restraint. As a re-
result, Metsäliitto received a 30 % reduction of the in-
fringement fine.

However, the timber procurement cartel is only the
second Finnish cartel decision which has originated
from a leniency application. Experience has shown
that the system does not work in the desired man-
ner. The reasons which have often been pointed out
for this include the low risk of getting caught and the
modest level of the infringement fines.

The situation is now different, however. The policy
definitions of the asphalt cartel decision on the as-
essment of evidence increase the risk of getting
caught, which spurs the companies involved in the
forbidden restraint to seek leniency. By the decision,
the FCA’s burden of proof has been set on a level
which is realistically achievable. In the asphalt car-
tel, the amount of the infringement fines has been
raised to a level with which a special and generally
preventive effect can be reached. To this extent, our
case law is in line with the EU law.

The inoperability of the leniency system has also
been considered when the new Competition Act has
been prepared. The existing system is being devel-
oped to meet the provisions of the European Com-
mission’s leniency system and the Model Leniency
Programme of the ECN network. The intention is to
offer companies involved in a cartel a credible op-
tion to free themselves of the forbidden cooperation
and the infringement fines imposed on it. The new
system is presently expected to enter into force from
the start of 2011.
Competition control in other fields

Regarding other than cartel control, the most significant of the decisions issued by the FCA last year was the commitment given by the banks not to continue the discrimination of the new ATM operators (see p. 26).

The agency also commenced investigations of the market of some building materials (paints, heat insulation, construction board and saw timber) and an extensive investigation of the pricing of district heating.

It was characteristic of other than cartel control, too, that a large number of the resources were tied up in the trials related to the cases. Market Court proceedings on two proposals related to distribution agreements were actively pending, and written proceedings on two cases involving abuse of dominance were underway at the Supreme Administrative Court and six at the Market Court.

In what follows, a summary of the competition control in markets of major importance to the society.

Energy field

In September 2009, the FCA sent an extensive questionnaire to the 10 biggest district heating companies in Finland on the pricing principles these apply to district heating. At the first stage, the aim of the investigations was to form an idea of whether there is cause to believe that the field engages in unreasonable pricing referred to in the Competition Act and whether the pricing of district heating should be examined in more detail.

The results of the first stage of the investigations are set to be finished in the next few months. Possible further measures shall be determined after the results are available.

The agency also commenced own-initiative investigations of the liquid fuel markets, during which all the distribution companies active in Finland were contacted. The investigation is still pending.

A pending case on electricity transmission was closed, since no indication of a competition restraint was found in the fees collected by Fingrid. The practice concerning the collection of the power reserve fee was amended during the investigation.

The district heating companies maintain a strong position with respect to their customers. The costs of joining a district heating network are so high that the customers cannot in practice change the form of heating if they have already chosen district heating as their heating form. In addition, the market share of district heating of the heating market in the big cities in particular is high. It is hence justified to examine the market activities of the companies from the perspective of dominant position referred to in the Competition Act.

The position of district heating in the heating market was further reinforced when the Land Use and Building Act became effective on 1 January 2009, as an obligation may now be imposed in the town plan on new buildings to join the district heating network. The amendment increases the freedom of the companies to price district heating independently of competing heating forms, because when the new law is applied there is no need to fear that the customers would seek alternative heating forms.

Unlike in the electricity field for example, there is no special legislation or supervisory authority in the district heating sector. The pricing in the field is hence based on the Competition Act generally providing on all business activity. And the FCA has an obligation to ensure that the prices collected by companies in a dominant position will not be unreasonable in a manner referred to in the Competition Act.

It should be emphasised in this context, however, that it is not the FCA's task to impose a certain price or profitability level on companies. It is hence not the intention of the FCA to start implementing price regulation through the present investigation.

In other ways, too, the control conducted by the FCA differs from the one applied e.g. to electricity transmission based on sectoral regulation in that the Competition Act does not seek similar constant surveillance of specific companies implied in the Electricity Market Act. As the authority monitoring compliance with the Competition Act, however, the agency has an obligation to ensure that the pricing by dominant companies remains within legal boundaries.
In addition, the FCA issued 14 opinions on the energy market and participated in the discussion of the competitive impacts of the construction of new nuclear reactors with the different parties.

The agency also participates in a working group set up by the Ministry of Employment and the Economy, with the task of drafting a proposal on the implementation of the third EC energy legislative package and the related legislation in Finland. The package covers the three regulations and two directives on the natural gas and electricity markets, and the implementing measures have major significance for the development of the sectors.

**Finance market**

*Automatia ATMs Oy* owned by Nordea Bank Finland, OP-Keskus osk and Sampo Pankki Oyj has been the only company offering ATM services in Finland until of late. For example in 2008, there were only roughly 1700 ATMs in Finland, which is an exceptionally small number in the EU in proportion to the population. Unlike in the other Euro states, the number of ATMs has also decreased during the whole 2000s.

There has hence been room for new business in the market, but an entry problem is e.g. that the pricing of the Automatia member banks discriminated new operators. The commitment decision issued by the FCA in June removed this problem. In the decision, the Automatia owner banks undertook to price their customers’ Otto ATM withdrawals and the withdrawals made by debit cards (Visa Electron, Visa Debit and MasterCard Debit) at the ATMs of the new operators in a mutually indiscriminatory way.

The decision ensures fair competitive conditions in the cash dispensing market. Fair and effective competition conditions ensure that services and services providers which best meet the customers preferences and expectations prosper in the market. A wider ATM network than previously increases the choice of customers and of the trade as regards both service providers and the payment methods used.

The increase in the number of ATMs improves the customers’ possibilities to withdraw cash and places the actors within the trade in a more equal position than previously. Improvement in the availability of cash also ensures that cash remains a viable option to payment cards which will become more expensive with the arrival of SEPA. The entry of new ATM operators also spurs the banks to differentiate their service supply and increases the competition of the banks for customers.

The commitments provided by the banks and the FCA’s consequent decision was a quick and efficient solution to the existing problem both from the viewpoint of the new ATM operators and the consumers. A Market Court proposal would have been a much slower way of solving the case.

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In December 2008, the FCA took the preliminary view that Automatia and its member banks have joint dominance in the cash dispensing market in Finland. The service fees charged by the banks from their customers for the withdrawals made from the new operators’ banks were suspected to lead to abuse of joint dominance by creating obstacles to the entry of new ATM operators.

The FCA considered the service fees charged from the withdrawals made from the new operators’ banks partially unfounded, compared to the costs incurred from the withdrawals. After the negotiations conducted in the spring of 2009, the member banks finally provided commitments by which they undertook to stop the indiscriminatory pricing of the new ATM operators.

In the spring of 2009, the banks incurred one euro’s worth of more costs from the Visa withdrawals made at the new operators’ ATMs than they did from the Otto ATM withdrawals. As regards MasterCard withdrawals, the cost difference was roughly 60–65 cents. According to the decision, the difference between the service fees collected from the withdrawals made at the new operators ATMs and the Otto ATM withdrawals can only equal this cost difference.

In its decision, the FCA did not take a stand as to how the banks price their Otto ATM withdrawals. The banks may still offer these withdrawals to their customers for free. The FCA's decision did not impose obligations on any other banks than the three member banks of Automatia.
Last year, the FCA also closed the investigations concerning to the banks’ intentions to replace the national bank card by Visa and MasterCard debit cards. In the FCA’s decision, the banks were required to make independent decisions on the bank card product in the future.

**Daily consumer goods and other trade**

The trade has been in the public eye to an exceptional degree in the past few years. The topics which have sparked discussion have included the price level of food, the liberalisation of opening hours, the decrease of the value-added tax, the construction of large shopping centres and the question of whether competition in the retail trade is operable in the first place.

According to a recent study financed by the Ministry of Employment and the Economy (Kotilainen, Markku – Koski, Heli – Mankinen, Reijo – Rantala, Olavi: Price formation of foodstuffs and the operability of the market, ETLA 2010, Discussion papers No. 1209), no particular deficits can be detected in the competition in the trade or the rest of the foodstuff chain. The competitiveness of the trade and the foodstuff industry is also fairly good, whereas the competitiveness of agriculture was found to be weaker than in the comparison countries.

It was found to be typical of the Finnish foodstuff chain that the trade covers a clearly larger share of the functions of the foodstuff chain than in the comparison countries and there is also less import into Finland. A major explanatory factor to the high price level of foodstuffs in Finland was found to be the higher value-added tax-base than in the comparison countries.

It is still topical to the trade that the chain command is tightening even more. The impacts on the market may be such that they improve efficiency on the one hand but they may also narrow down the selection and/or freeze prices.

Other topical issues have included buying power. It is important to discern when it is a matter of buying power harming the competition process and hence covered by the competition legislation and when it is buying power which is an inevitable part of the competition process, albeit unequal for the operators.

The FCA estimates the functioning of the market from the point of view of increase in efficiency and the transfer thereof to the consumer and how the conduct affects the components of the benefit felt by the consumer. These include the price and quality of the products, the width of the selection and loyal customer benefits. For instance, the total benefit felt by the consumers is not positive even if the price of the product would decrease if their options decrease at the same time and/or the quality of the products becomes worse.

For example loyal customer schemes and provision of the related discounts are, as a rule, a way for companies to compete for clients and in that sense they may be seen to increase or at least to maintain competition. However, the benefits offered by the system may distract the customers from product prices and hence decrease the customers’ price sensitivity. This may make it possible for the trade to incorporate loyal customer discounts in the price of the products to begin with.

A situation may hence arise in which only the loyal customers with biggest purchases benefit from the systems. It should be noted, however, that there is not enough information available on the impacts of the maintenance costs of loyal customer schemes on the price level. Raising the general price level through the systems would also entail a situation where competition between the different trading groups would not function.

Loyal customer schemes are constantly developed, however, and the potential impacts of these changes shall be considered when competition in the trade is assessed. It cannot be ruled out that in the future the competition for customers shall be built more and more on images on the superiority of some loyal customer schemes over the others, and the importance of product-specific prices may decrease.

The competition impacts of loyal customer schemes spanning several sectors (e.g. banking and insurance) shall also be taken into account in the evaluation.
In its infringement fine proposal of 29 April 2010, the FCA proposes to the Market Court that it impose on the Iittala Group Oy Ab an infringement fine of four million euros for RPM violating the Competition Act.

In 2005-2007, Iittala imposed minimum resale prices on several well-known products such as the Kivi candle holders, the Maribowl, the Moomin products, the Teema series, the Aalto glassware and the KoKo products. Iittala hence prevented any price competition between retailers.

The RPM concerned almost all Iittala retailers in Finland. The investigations of the case commenced when the retailers contacted the FCA. Iittala terminated the violation after the FCA had intervened in the matter.

In distribution agreements, RPM is considered one of the most serious competition restraints. Retailers shall have the right to set the price of their products independently and if they so wish, to compete on prices. RPM is forbidden because it is considered to push up prices for consumers.

Telecommunications

In May 2009, the FCA issued its decision on Elisa Oyj, which contained a more general discussion of the principles applied by the agency when it estimates suspicions of abuse on the broadband market. The FCA was able to close the proceedings on Elisa after the company had lowered the network rental fees it had charged from its competitors.

In line with the above-mentioned general principles, a similar case regarding Kuopion Puhelin was also closed. In that case, too, the company had lowered the network rental fee it had collected from its competitors to remove the competition problem. The FCA’s intervention in the matter facilitated the entry of competitors to the market in both cases.

The FCA later published a memorandum on the principles which is hoped to assist companies offering fixed-network services to evaluate their pricing and other practices from the viewpoint of competition law.

(An extract from a letter to the editor written by the FCA’s Senior Research Officer, Dr. Pol. Sc. (Economics) Tom Björkroth published by the Helsingin Sanomat on 6 August 2009.)
A case involving the times of delivery in which Telia-Sonera relinquished access rights to its network was closed after the company has changed its conduct. In conjunction with the Ministry of Foreign Affairs, the Ministry of Employment and the Economy and the Ministry of Transport and Communications, the FCA also prepared the Finnish view to the European Court of Justice concerning the preliminary ruling on Telia-Sonera Sverige.

In 2009, investigations on Elisa’s household cable were also commenced. This was due to several complaints to the agency after Elisa had increased the price of the product to nine-fold. The case may have wider relevance, as apparently other fixed-network telecom operators have considered or are considering price increases of the corresponding product.

It is an obvious sign of the fast development of the field that 24 opinions concerning the electronic communications market were issued by the FCA last year. In addition, four co-operation meetings were arranged with Finnish Communications Regulatory Authority (FICORA).

In the spring of 2009, the Market Court imposed a fine of €100,000 to Suomen Numeropalvelu Oy (SNOY) for abuse of dominance because it refused to submit information from its subscriber connection database. The decision improves the competitive scene in electronic cataloguing business. SNOY has appealed the case to the Supreme Administrative Court. (Market Court decision Diary nos 281/05/KR and 293/05/KR, nos 178-179/2009, 6.4.2009)

In addition, the FCA submitted two large rejoinders last year to the Lännen Puhelin case currently pending at the Supreme Administrative Court, and rejoinders in four so-called subscriber connection cases:

Pertaining to Lännen Puhelin, in a decision by the Market Court of July 2008 the company was not found guilty of abuse of dominant position as proposed by the FCA. The case is particularly significant because it will define how the Competition Act will be applied to the rental of the fixed network in the broadband market and in the telecoms market in general. (Market Court decision Diary nos 260/04/KR, no 298/2008, 2.7.2008)

In 2007, the FCA made infringement fine proposals according to which four companies (Oulun Puhelin Oyj, Aina Group Oyj, former Hämeen Puhelin Oy, Kymen Puhelin Oy and TeliaSonera Finland Oyj) had illegally favoured their own service operators in the network rentals they have collected from the subscriber connections. The oral hearing of the cases was arranged at the Market Court in May 2010.

A typical way to restrict competition in the telecom market is a so-called price squeeze, i.e. a practice whereby a vertically integrated company operating on multiple production levels weakens the position of its competitors in the end product market by charging at a price in excess of its costs from an intermediary or adjunct product. The price squeeze is considered a form of forbidden unreasonable pricing under the Competition Act.

The FCA assesses price squeeze suspicions based on the cost and price information presented by the operators. It is e.g. examined in the investigations whether a company which is as efficient as a local operator makes a profit on corresponding cost and price information.

The FCA stresses in its memorandum that in the end the price squeeze is assessed on a case-by-case basis based on evidence presented and accounts provided. A case-by-case decision may hence in some cases differ from the principles presented in the memorandum.
Merger control

In 2009, court proceedings usurped a large number of resources from merger control as well. Proceedings on the complaints in the TV4 AB / C More Group AB required a vast amount of working hours, in particular. The complaints concerned the deal conditionally approved by the FCA in November 2008.

An oral hearing was first arranged at the Market Court on the claim on the stay of execution of TV4, which the Court subsequently dismissed by its decision of 22 January 2009. TV4 appealed the Market Court’s decision to the Supreme Administrative Court which dismissed the claim on 18 May 2009. A corresponding claim by Sanoma Entertainment Oy was dismissed by a decision issued by the Market Court on 2 March 2009.

Sanoma Entertainment cancelled the complaint made in the principal issue on 9 June 2009. TV4 also partially withdrew its complaint on 15 June 2009 leaving its claim concerning the FCA’s lack of jurisdiction for the Court to decide. In its decision of 30 October 2009, the Market Court ruled that the FCA was within its powers to examine the deal.

The FCA issued several statements in the matter concerning both the substance and the process and the requests for documents.

In the case, TV4 owned by the Swedish Bonnier media group acquired control in C More Group offering pay-TV services under the Canal+ brand. The competitive concerns of the deal were related to the market of pay-TV services. The remedies imposed (e.g. the sublicensing of the Finnish National Hockey League) ensured a versatile consumer supply and the possibilities of the other companies to pose a competitive counterforce to the concentration.

The FCA also issued an opinion to the Supreme Administrative Court on the Fortum / E.ON case pending at the Court. The proceedings are connected to the appeal made by the agency on the Market Court’s decision.

In March 2008, the Market Court gave its decision on Fortum’s appeal concerning the merger decision made by the FCA in 2006 in case Fortum/E.ON Finland (14.3.2008, 209/06/KR). The case is relevant e.g. from the viewpoint of the concentration trend of the electricity market.

In its decision, the FCA has required that Fortum divest part of its production capacity, because the dominant position of the company on the national electricity market and its possibility to influence the pricing of electricity in Finland would have otherwise strengthened in the FCA’s opinion. The Market Court reached a different conclusion on the definition of the relevant market and dismissed the FCA’s decision.

In 2009, the FCA did not pose conditions on any of the mergers it reviewed; all the 14 cases were approved as such.

Alma Media’s Talentum deal was transferred to stage II but it was subsequently approved as such in November because the threshold for intervention required by the law was not exceeded on the basis of the investigations. However, the deal has yet not been implemented.

Both parties to the deal publish newspapers and magazines in Finland, maintain websites and sell advertising space to them. Both companies also offer several other electronic and other services to their customers. With the merger, e.g. the financial newspaper Kauppalehti and financial magazines Talouselämä and Tekniikka & Talous, and the websites Monster.fi and Uratie.fi specializing in job advertising will become part of the same group. The FCA probed the deal particularly from the point of view of Alma Media’s Kauppalehti and Talentum’s magazine readers and the advertisers using the said publications.

Based on its investigations, the FCA estimated that the merger may strengthen the position of the parties in the news reader markets. When the impacts were estimated, however, e.g. the following were taken into consideration: the lack of competition between Kauppalehti and Talentum’s magazines; the long descending circulation numbers; and the number of alternative news sources to the newspapers and magazines of the concentration. In addition, it was of significance that major subscribers of Talentum’s magazines were able to negotiate on subscription rates. On this basis, the FCA found that the creation or strengthening of a dominant position which significantly prevents competition in the news reader does not exist.

Pertaining to the sales of advertising space to decision-maker advertising, the FCA found that the merger may strengthen the position of the parties. After examining e.g. how well the different print media reach the decision-makers; the contact prices, and the relation of print media to alternative advertising channels the FCA found that there was no evidence that the merger would cause major competition problems in the sales of
advertising space in Finland. In electronic job advertising, there are alternative services on the market in addition to the services offered by the concentration. Attention was also paid to newspaper advertising in the assessment.

At the turn of 2009 and 2010, three mergers in the field of trade were also up for review, and these attracted a large amount of media attention. These were the so-called Euromarket deals. The seller in all three cases was Suomen Lähikauppa Oy and the buyer an individual regional cooperative.

In the deal approved on 4 January, the buyer was Pirkanmaan osuuskauppa from Tampere; in the deal approved on 14.1. January the buyer was Keskimaa Osk from Jyväskylä; and in the deal approved on 25 February, the buyer was Osuuskauppa Arina from Oulu. The FCA investigated the competitive impacts of the mergers on retail market of daily consumer goods in particular and in the procurement market of daily consumer goods. Based on the investigations, the deals do not cause major competition concerns referred to in the Competition Act, and they were approved as such.

While this is being written, there is another merger related to Alma Media pending at the agency. It involves an arrangement whereby Alma Media Oyj, Keskisuomalainen Oyj, Ilkka-Yhtymä Oyj, Pohjois-Karjalan Kirjapaino Oyj, Keski-Pohjanmaan Kirjapaino Oy and Länsi-Savo Oy acquire control in Alma Markkinapaikat Oy, to which the online housing, car and consumer market places now owned by the Alma Group will be transferred prior to the arrangement taking place. The above-mentioned companies also acquire control in Arena Interactive Oy conducting mobile business.

The parties to the deal publish newspapers and magazines in Finland, and sell advertising space both to the newspapers they publish and the websites thereof. The concentration covers housing advertising (Etuovi.com and the printed Etuovi.com magazine), car advertising (Autotalli.com) and consumer advertising (Mikko.com).

On 3 May 2010, the FCA commenced further proceedings in the case. It will be examined during Stage II, which will last a maximum of three months, whether the transaction shall result in the creation or strengthening of a dominant position which significantly prevents competition, particularly in housing or car advertising in Finland. The FCA will examine the competitive impacts of the arrangement as regards both online and printed advertising.
Advocacy

New policy definitions were made in the FCA’s advocacy function last year based on the recommendations of the performance agreement made with the Ministry of Employment and the Economy and the Evaluator’s report. Resources focused more on the securing of fair competition conditions, stakeholder collaboration was specified and working group representation was given impact goals in all the domestic working groups in which the agency had representation.

A considerable increase in the opinions invited and the inputs made is a sign of the consolidation of the advocacy work and the increased effectiveness of the stakeholder collaboration. In the following, a look at the main results of the advocacy function:

The working group examining the competition neutrality of the public procurement function submitted its memorandum in April 2009 (Publications of the Ministry of Employment and the Economy, Competitiveness 23/2009). The group included two of the FCA’s representatives, and the opinions presented at the report about the competition problems in public enterprises were largely similar to the FCA’s views.

The FCA has long experience of the problems dealt with in the report, because over the years the FCA has received dozens of complaints on the production activities of the state and the municipalities. It has e.g. been suspected in them that public companies subsidize by tax revenue the products sold to competitive markets and hence commit under-pricing.

As regards the fairness of competition, other problematic issues include the different institutional operating environment of public and private production and the operating areas of public units which enjoy protection from competition. The intransparency of the financial relations between the marketized activities of public enterprises and their official activities or other activities protected from competition has also commonly been found a problem.

The starting point of national and European competition policy is a neutral stand to the position of publicly owned production as such. The competition authorities do not take a stand as to what sectors and to which extent public production should be practiced. It is important to safeguard fair competitive conditions for all market actors, whether they be public or private.

The work of the competition neutrality working group continued in the Municipalities and competition neutrality project which was set up by the Ministry of Finance in November 2009. The FCA has a representation in this working group, too. The project background is the Destia decision issued by the Commission in 2007 in which it found the bankruptcy protection and differing tax treatment of Destia a form of forbidden public support.

The aim of the Municipalities and competition neutrality project was to affect legislative reforms which will ensure that competition neutrality will be implemented when the municipalities operate in the market. The mandate of the working group expired on 31 May 2010.

The working group suggested that the Act on the municipalities be amended so that a municipality should – when it is a question of a task which is to be dealt with in the competitive markets – handle the task in the form of a company, society or a foundation (incorporation obligation). The Act would exclude some tasks which would not be dealt with in competitive markets. These would concern the legal duties of the municipalities, the cooperation of the municipalities and the tasks managed by a monopoly. In addition, some exceptions were proposed to be made to the incorporation obligation. If the municipality produces the services or goods referred to in these exceptions in the competitive markets, it should price the products on commercial principles.

The Act on the service voucher of social and health care became effective on 1 August 2009. The FCA has long acted for the reform and still seeks to promote the increase in the use of the voucher. The participation in Sitra’s service voucher project, in particular, supports this aim.

In August-September 2009, Sitra arranged a series of seminars on the service voucher reform with the Finnish Local and Regional Authorities. The impacts of the new system and the possibilities awarded for municipalities, customers and service providers were discussed in the seminars. The FCA’s expert lectured in all the events.
The service voucher extending to almost all social and health care services spurs the service providers to develop their activities in accordance with the consumers' preferences. At the same time, it enables the competition born out of the alternative nature of the production methods and the creation of a functional service market. Business in the service sector is expected to increase as the municipalities introduce the service voucher.

New service providers may be enticed to participate by informing them in good time of a municipality's decision to introduce the service voucher. Transfer to the system demands openness and endurance to enable the producers' commitment to the activity. The municipalities' cooperation in the creation of the service market is also important. Regional markets rather than a single municipality are likely to entice more new producers.

A questionnaire of inhabitants conducted by the Finnish Local and Regional Authorities in the spring of 2009 showed that the inhabitants wish to influence the services provided and find freedom of choice between the various service providers important. This shows in willingness to use e.g. the services and service vouchers of neighbouring municipalities. The importance of freedom of choice was now emphasised more than in the previous questionnaire dating from 2004. (Source: www.kunnat.net)

To increase competition, the business of the forest centres was proposed to be differentiated from the public service tasks. The business of the forest centres and the activities financed from the forest management fee should be arranged in such a way that competition neutrality is not endangered.

A legislative project was proposed to be set up for the reforms. In addition, the report suggests that the use of funds of the forest care centres should be specified by a State Council Decree and by measures concerning e.g. the bookkeeping of the forest care centres, the publicity of the use of the forest management fee and the monitoring of time spent.

The report also emphasises the importance of the forest reserve information and suggests that the collection, maintenance and use thereof should be arranged so that the information would best serve the forest owners, the forestry business and the development of forest service market.

The reasons behind the proposals include change in the structure and attitudes of the forest ownership, the reform of the state regional administration, the state productivity programme, the need to promote competition in the forestry service market, the possibilities opened up by the new technology in the consultation of forest owners and the strategic structural change in the forest industry.

The Ministry of Agriculture and Forestry set a development project of forestry promotion organisations in April 2009, which contained three subgroups in addition to the steering group: the organization and competition working groups and transfer of research data working group. The aim of the project was to make proposals on the development of the forestry centres and Forestry Development Centre Tapio, to increase the potential for competition in the forestry service market, and to convey research data more effectively.

The final report of the steering group was completed in December 2009, and it was published in the beginning of 2010 in the Ministry of Agriculture and Forestry working group memorandums series (2010:3). The proposals made in the report largely correspond to the views presented by the FCA's representative in the Competition subgroup of the project:

One national state aid organisation was proposed to be formed of the 13 regional forestry centres and Forestry Development Centre. The regional activities would be carried out by customer-oriented regional units. It was decided that the possible incorporation of Tapio's other parts to the Finnish Forest Research Institute would be investigated, as well as the possibility to incorporate the development function.

The preparation of the new forest centre Act has since progressed under the direction of the steering group of the above-mentioned project, and the draft bill will soon be embarking on a round of statements. From the perspective of competition, it is significant that the business conducted by the present forest centres is intended to be differentiated in the new Act on the official duties and general promotional tasks of a national centre.

The working group also proposed the initiation of a wider legislative project concerning both the forest centres and the Forestry Development Centre Tapio and the forest management centres. The FCA supports the idea because a critical review of the position of the forest management centres would be needed to promote competition.

A new Public Transport Act entered into force on 3 December 2009. The founding of a federation of municipalities responsible for the planning and organisation of public transport and the advancement of the separation of the buyer and service functions improve the operations of the capital city bus transport market in accordance with the goals presented by the FCA.
The FCA also participated in the working group examining the liberalisation of passenger transport on railways, which submitted its memorandum to the Ministry of Transport and Communications on 18 May 2010. In accordance with its mandate, the group investigated the functional and legislative arrangements required by liberalisation. The arrangements concern the safeguarding of the integrated service level of passenger transport; access to stock; maintenance and depot services; traffic guidance; distribution of energy; organization of training in the railway business, and access to stations and property.

In its memorandum, the working group also presents its view on a possible avenue of liberalisation of the passenger traffic on railways, and the service entities which would be more open to competition. The working group finds that the tendering of the passenger traffic on railways should take place by service entities and gradually, from the easiest service entities to those that are the most difficult to carry out.

The working group finds that tendering the traffic should start by tendering the near traffic in the Helsinki city area. The preparations for tendering the traffic entity should begin at once if the aim is that the traffic could be tendered after the procurement traffic contract between the Helsinki Regional Transport Authority (HSL) and VR Group has expired (31 December 2017). The customer organisation would be the competent authority, i.e. Helsinki Regional Transport Authority (HSL).

The experience of the Helsinki city near traffic should be used if the decision is made to continue the tender by tendering other transport and service entities. If the tender would proceed according to the readiness and suitability of the entities, the next reasonable entities could be the population centres supplementing the Helsinki and Tampere regional traffic and possibly the routes Lahti–Kouvola–Kotka, Hanko–Karjaa, Ylivieska–Iisalmi and Nurmes–Joensuu–Pieksämäki.

The last service entity to be tendered would be long-distance traffic. The current procurement traffic could be connected to this service entity.

The Act on opening hours still contains policy definitions which may be difficult for consumers, business undertakings and the authorities. The exclusions related to acreage, sector and the products sold and the need for an exceptions permit procedure brought about by regulation will create problems of interpretation and unnecessary bureaucracy, says the FCA’s opinion submitted to the Economic Committee of the Parliament.

For example in Sweden the opening hours in the retail trade were completely liberalised in the beginning of the 1970s, and the opening hours have also been liberalised in Estonia. The abolishment of the Act on opening hours—and not the reform thereof—would have been the most appropriate measure from the point of view of the objectives of the law in Finland, too, finds the FCA.

The FCA, the Ministry of Education, the Finnish Local and Regional Authorities and the Federation of Finnish Enterprises published a common recommendation on practices promoting business in the sports activities of the municipalities in June 2009. The wider competition policy relevance of the matter is related to the above-mentioned discussion on the competition neutrality of state-owned enterprises. This refers to the need, in general, to arrange the public service provision and business so as not to prevent or jeopardise the preconditions of supplementary private supply.

The aim of the recommendation is to highlight practices relating to the supply of sports services which increase fair and effective competition. The service supply is examined from the point of view of the potential for business. The recommendation does not concern municipal activities under Article 2 of the Sports Act, or common sports club activities at amateur level.

It is important that the creation and support of sports opportunities is examined at the municipalities from both sports and trade policy perspectives. When activities promoting sports are planned and developed, a clear difference should also be made between the responsibility for arranging the service and the production thereof.

The firms and associations active in the area of a municipality shall be able to foresee when making their own investment and other plans which sports services the municipality itself intends to produce in the future. The municipalities should therefore define as clearly as possible the services they produce themselves and make these known by the other actors in the field. The municipalities also have a similar need to receive enough infor-
mation from the other actors on the current and planned service and accommodation supply.

If the municipality produces services which lie outside the scope of the obligations set on municipalities by the Sports Act, or services which are also offered by private actors, the municipality should pay particular attention to the pricing of the services. The pricing should be transparent and cover all the costs incurred from practising the activities ROI included.

On the basis of municipal and sports Acts, the municipalities can support the sports activities in many ways. The support given to the business should be transparent, however, and it should not distort the competitive conditions.

One solution to the transparent and fair support of the sports opportunities of the inhabitants of a municipality could be the use of service vouchers. The same size of support would then be directed to the payment of the rent of the sports centres governed by the municipalities and private actors.

It would be important from the point of view of a functional market that when buying sports services the municipalities would follow good procurement practice even in cases where the threshold values defined in the Procurement Act are not exceeded.

The Health Insurance Act was amended last year, and the examination and treatment conducted by dental hygienists are now compensated in certain respects, as the FCA has repeatedly proposed from 1996. The means-tested permit system was also discontinued from patient transports. The FCA had acted for that reform as well.

The traditional official activities of the National Board of Antiquities, i.e. the excavations referred to in the Antiquities Act may be opened up to competition based on the decision by the the Deputy Chancellor of Justice. Additionally, the competition neutrality problems of the Board are being solved by setting up a limited liability company for its business activities. The FCA has promoted these reforms, too.

Altogether 48 major opinions were issued in legislative projects in 2009 concerning e.g. the following topics: energy, public procurement, waste management business, car inspection business, the zoning of the trade, incorporation of enterprises, transport, pharmaceuticals, forest industry, finance and insurance, telecommunications, identification and certificate services, communities of common good and the public broadcasting business.

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**Third sector as the producer of welfare services**

The FCA and the Association of Voluntary Health, Social and Welfare Organisations (YTY) arranged a joint seminar in Helsinki in April 2010 on the topic of "Third sector as the producer of welfare services: challenges and new opportunities". Roughly 200 people participated in the seminar and represented the decision-makers and civil servants of the state and the municipalities, the industry and various third sector organisations.

The lecturers included Director-General Raimo Ikonen from the Ministry of Social Affairs and Health, Professor Risto Harisalo from the University of Tampere, the Chair of YTY Pirkko Karjalainen from the Central Union for the Welfare of the Aged, and Executive Vice President Timo Kietäväinen from the Association of Finnish Local and Regional Authorities.

The aim of the event was to advance the discussion on the role of the third sector in a situation where the demand for social and health services is increasing in a major way and the arrangement and production of public welfare services is undergoing an in-depth change at the same time.

Alternatives to the traditional service production of the third sector will develop with the reforms but at the same time new opportunities will open up for the third sector to develop its service production and to create new operating models.

When exploiting the new possibilities, it is essential to safeguard workable competition conditions and competition neutrality between the different operators: the public, private and third sectors. The appropriate application of the competition rules is also important for the fulfilment of the reform objectives.
## Working group representations

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International cooperation

The FCA’s most important international cooperation partners include the ECN network (European Competition Network) between the EU competition authorities founded in 2004 and the Nordic competition authorities. The FCA is also an active participant in the international cooperation conducted within the OECD (Organization for Economic Cooperation and Development).

Other international cooperation parties include the ICN (International Competition Network) and the ECA (European Competition Authorities) and the Federal Antimonopoly Service, FAS, of the Russian Federation.

The FCA annually handles roughly 600 international cooperation issues, and the agency participates in roughly 50 international meetings on the enforcement of competition rules and competition policy.

Rights, obligations and possibilities

International cooperation offers concrete rights to the ECN members, which may be appealed to in individual competition restraints cases. The FCA may for example request that the competition authorities of another EU state make inspections on its behalf into companies operating in the area of the said state if the companies are suspected of restrictive practices targeting the Finnish market or Finnish customers.

It is also the FCA’s duty to tend to the international obligations which Finland as a state and the FCA as the competent national authority are committed to undertake. The majority of the obligations are related to Finland’s EU membership and the efficient application of EU competition rules in Finland.

The EU obligations also include tasks which aim at improving the ECN network cooperation and the solving of the general application problems of EU competition rules. Additionally, the competition authorities of the member states participate through hearings and advisory committee meetings in the discussions on the competition restraints and merger cases pending at the Commission.

The international cooperation increases the expertise of the FCA personnel and hence creates new possibilities for the boosting of national competition control and advocacy. The cooperation ensures that the FCA knows the latest trends of international competition law and economics when implementing national competition policy. The FCA may also bring up issues which it considers important for international discussion.

Where necessary, the ECN members assist each other in the investigation of competition restraints violating the EU competition rules.

Cooperation in case-handling

The ECN members inform each other of all cases to which Articles 101 and 102 TFEU shall be applied – either prior to commencing the first official investigatory proceeding or immediately following it. The member states also have a duty to inform the Commission of certain decisions involving competition restraints a minimum of 30 days prior to issuing the decision.

Where necessary, the ECN members may coordinate among themselves which is the authority best suited to handle a case which has been brought up within the sphere of the network. Thus, the FCA may also be referred a case which has been instituted at the Commission or some other member state.
Where necessary, the network members assist each other in the investigation of competition restraints violating the EU competition rules. The authorities may for example provide each other with information needed in the investigatory work and carry out inspections at the request of another authority.

The material obtained through the inspections, confidential information included, may be further delivered to a network member who has requested the inspection, and the material may be used as evidence when the case is processed. However, the information obtained from another competition authority may only be used for the purpose to which it has been accumulated. The ECN members are also bound by confidentiality regarding the information exchanged within the network.

**Working group and other cooperation**

The ECN members meet each other regularly in so-called general meetings and the meetings of sectoral and other working groups. In addition, the heads of the member states’ competition authorities convene annually.

The sectoral working groups include the food, energy, transport, pharmaceuticals, financial services, telecom and environment working groups. In their meetings, the groups discuss competition problems detected in the various countries and the solutions which have been reached in the different cases.

The ECN network has also launched a Model Leniency Programme. The aim of the Model Programme is to prevent cases in which the different systems of the member states would discourage the companies considering a leniency application from submitting it.

**Nordic cooperation**

In addition to Finland, the competition authorities of Sweden, Norway, Denmark, Iceland, the Faroe Islands and Greenland participate in the Nordic cooperation. The annual meeting which is held in different Nordic countries each year and lasts for 2-3 days marks the main event of the cooperation. Finland usually sends a delegation of 10, and in addition to the FCA’s representatives, these meetings are always attended by officials responsible for competition affairs at the Ministry of Employment and the Economy.

Each annual meeting generally revolves around 3-4 main topics. Insofar as this is possible, the topics are chosen so as that issues which would obviously benefit from cooperation are included. In case of an entity requiring more extensive investigations, a joint Nordic report may also be drafted on the issues.

Joint reports have been made yearly in the 2000s. In 2009, the Nordic competition authorities published a report about the role of competition policy in financial crisis. The topics of the previous sectoral reports have included the pharmacy and pharmaceutical sector, the electricity, telecommunications and retail banking markets and the foodstuff industry and trade.

Since 2002, the joint reports of the Nordic competition authorities can be found in electronic form at www.kilpailuvirasto.fi > Publications.

Additionally, the heads of the Nordic competition authorities convene each year to plan and coordinate the cooperation of the agencies. During the years, the Nordic competition authorities have set up special working groups to support the cooperation. At the moment, these include the legal, economic and cartel working groups.

The Nordic cooperation has long traditions. In 2009, the 50th annual meeting of Nordic competition authorities was held in Iceland.

**ECN Brief**

The newsletter of the network, the ECN Brief, was published for the first time in January 2010. The newsletter which comes out five times a year e.g. includes information on the decisions made by the Commission and the national competition authorities in competition restraints cases, the decisions of the courts, regulatory reform, sectoral reviews and other current events.
Competition Policy and Financial Crisis – Lessons Learned and the Way Forward

In their meeting of September 2009 in Reykjavik, the Nordic competition authorities published a joint report on the role of competition policy in economic crisis. The compiling of the report was agreed on in the meeting of the Heads of the Nordic authorities held in Helsinki. A Nordic team of economists was responsible for the drafting thereof.

The incentive for drafting the report on the financial crisis was the Nordic competition authorities’ common concern that the long-term competition policy objectives would not be considered as important during a recession as they are during an economic boom. The Heads of the Nordic authorities wished to remind the readers of the experience obtained from previous crises and of the results of economic investigation according to which functional competition increases common well-being and reinforces the ability of the economy to break away from the economic slump.

The English-language report Competition Policy and Financial Crises – Lessons Learned and the Way Forward contains reviews of the impacts of the crisis in the various Nordic countries and accounts of the measures by which the negative effects of the slump have been sought to be alleviated. The report is also a general description of the relation of economic competition to innovations and economic growth.

Effective competition is particularly important to boost the recovery from the crisis, states the report. The great recession of the 1930s and the subsequent crises have taught that efficient competition control and dismantling harmful regulation contribute to a speedier recovery in the economy and ensure that the market structure will develop in a more viable direction in the future. Compromising competition policy aims may at its worse lead to the crumbling of international competitiveness and a prolongation of the crisis.

Securing the Nordic welfare states requires innovation and efficiency in the upcoming years both from private and public actors. According to the report, functional competition will assist in achieving this goal.

Although the economic crisis has affected the Nordic countries in partially different ways, the competition policy challenges are basically the same in all Nordic countries, and elsewhere. The report contains several general recommendations concerning both the competition authorities themselves and political decision-makers:

- The economy should not be revived by measures which are in conflict with long-term goals. In preparation for the enactment of new measures, an evaluation of the competitive implications should be performed and the least anti-competitive alternative that would achieve the policy goal should be chosen. The Nordic competition authorities stress the importance of any measures and government involvement being temporary, and that public stakes are sold back to the private sector in a time frame that is reasonable. Particular attention shall be paid to regulations that imply barriers to entry as well as opportunities to stimulate entry by new actors.

- The competition authorities themselves should focus resources in monitoring fields which are important for breaking out from the recession. The authorities shall also understand the pressures faced by market actors and political decision-makers due to the crisis and be flexible on priorities and follow up with intensified surveillance where necessary.

- The share of public procurement of the national products is high in all Nordic countries. Particularly regarding them, necessary measures should be implemented to secure effective competition and stimulate new entrants. However, good quality and cost savings can only be achieved when the participants in tenders are in genuine competition. Public procurers should be explicitly aware of the potential for collusion and use a checklist to detect illegal cooperation and bid rigging in procurement.
OECD cooperation

At the end of June, the OECD, Organisation for Economic Cooperation and Development, will include 34 member states, with Chile, Israel, Slovenia and Estonia as the newest members. Finland has been a member since 1969 and participates actively in the work of its various committees.

In the OECD Competition Committee, Finland is represented by the FCA. The Competition Committee comes together three times a year, and it has two separate subcommittees. One, Working Party No. 2 on Competition and Regulation (WP2) specialises in the connection between competition policy and regulation, and the other, Working Party No. 3 on Enforcement and Co-operation (WP3) specialises on mergers and cartel issues.

The main working method of the Competition Committee and the working groups is a so-called Roundtable discussion in which pre-selected topics of competition law or economics are discussed on the basis of previously delivered memorandums. Almost invariably, world’s leading experts of economics of competition and law and representatives of the economy participate in the Roundtable meetings in addition to member state representatives. Finnish companies have also participated the meetings.

The Competition Committee prepares various recommendations related to competition for the OECD’s approval. For example in 2005, the organisation published Best Practices for the Formal Exchange of Information Between Competition Authorities in Hard Core Investigations. The last published memorandum, the Competition Assessment Toolkit, concerns the assessment of competition issues when drafting sectoral regulation.

The Competition Committee also arranges the Global Forum on Competition each year, created to promote discussion between the OECD countries and non-OECD countries. This event is also participated by e.g. China and India. Some of the non-OECD countries (e.g. Brazil and Russia) participate directly in the work of the Competition Committee with an observer status.

In addition to the Competition Committee, competition issues also come up in some other OECD Committees. Perhaps the most important of these is the Economic Committee, which also takes a stand to possible deficiencies in competition policy when evaluating the member states’ economic policies. The latest report of the Economic Committee on Finland was published in April 2010.

The FCA is also represented in the Permanent Delegation of Finland to the OECD founded by the Ministry for Foreign Affairs of Finland. Its task is to ensure that the work of the OECD reflects Finland’s policy priorities and to promote the use of the work in state administration. In addition to representatives of different ministries, the delegation includes representatives from the Bank of Finland, Statistics Finland and the Consumer Agency.

Other international cooperation

*International Competition Network, ICN*

The ICN founded at the turn of the century presently includes more than 100 competition authorities from all over the world. The FCA has been a member of the ICN from the start. The aim of the ICN network is to increase knowledge and expertise in competition law and economics and to increase discussion on these topics in the world. For this purpose, it seeks to actively establish contacts to developing countries also in its competition policy.

As regards its members, the ICN differs from the OECD for example, which is above all an intra-governmental organisation. The ICN and the OECD work in good cooperation at any rate and coordinate their mutual activities to avoid overlaps.

It is typical of the ICN that in addition to competition authorities, business representatives and academics are also active participants in its work. Another feature describing the network is that it has no permanent staff which would prepare matters.

Membership in the organisation is voluntary and the resources of the members are exploited to best possible effect. With the exception of the annual meeting, matters are largely prepared through electronic communication. Main areas of operations currently include cartels, mergers, unilateral conduct and deregulation and advocacy.

The main products of the operations are the practical reports directed at both the network members themselves and to companies, and particularly to countries in which the application of competition law is not yet established but just developing.

*More information on the ICN network can be found at www.internationalcompetitionnetwork.org*
European Competition Authorities, ECA

The ECA is an international cooperation network founded in 2001. It includes the competition authorities from the European Economic Area, EEA, the European Commission, EFTA (Norway, Iceland and Liechtenstein) and the EFTA Surveillance Authority.

The aim of ECA is to improve the cooperation between competition authorities, and to promote the efficient application of national and European competition rules. The cooperation in the network consists of the exchange of information and experience between the authorities, particularly in the form of meetings and working groups.

Working groups have been established to handle e.g. leniency, financial services and matters concerning aviation. The working groups have published several reports, the latest of which, published in the spring of 2009, deals with the use of commitments in competition restraints cases.

An important form of cooperation in the ECA network is related to merger control: When an authority part of the network receives a notification of a deal which exceeds the notification threshold in several ECA countries, it conveys the information on the deal and the contact information of the relevant case-handler(s) to the other members. The case-handlers in different countries may then exchange non-confidential information on the case with each other. The exchange of confidential information is only possible if the national and EU-provisions allow it.

Federal Antimonopoly Service, FAS

The FCA has a cooperation agreement with the Federal Antimonopoly Service, FAS, of the Russian Federation. The concrete form of the cooperation is the reciprocal visit of officers to Moscow / Helsinki which takes place each year.

The Head of FAS Mr Igor Artemyev also gave a lecture in a seminar arranged by the FCA in April 2010. He e.g. spoke of the development of competition in Russia, the monitoring of rules on public procurements and foreign investments, advocacy and international cooperation relating to competition. In addition to the FCA’s staff, the event was participated by representatives of the economy and decision-makers and other officials.

The FCA is also a member of the Russian network led by the Ministry of Employment and the Economy, founded at the start of the 2002s. The network is composed of the Russian experts of the Ministry and the export and corporate service organisations in its administrative sector and the contact persons of external stake holders representing the economy, in particular. The network acts as a discussion forum and a channel for exchange of information between the different parties and coordinates work between the different actors.

UNCTAD

In addition to its other activities, the United Nations Conference on Trade and Development, UNCTAD, also has a competition policy programme. A main area of operation in recent years has been the preparation of so-called Model Law on Competition, and the FCA has also participated in the drafting thereof.

The financial crisis and its impacts on competition and competition policy (“Competition and Financial Markets”) was the main topic of the February 2009 meeting of the OECD Competition Committee. Finland also submitted its memorandum on the topic.

The summaries and background memorandums to the Roundtable discussions of the Competition Committee can be found at [www.oecd.org/competition/roundtables](http://www.oecd.org/competition/roundtables) ever since 1996.
The evaluator’s report published on the FCA at the start of 2009 also took a stand to the FCA’s communications. It was e.g. suggested that the FCA should be a more active participant in public discussion and that it should increase personal contacts to stake holder representatives. The FCA’s electronic communications could also be improved.

Three stake holder seminars instead of the former one were arranged in 2009, and the news production of the FCA web pages was increased. The FCA experts also gave 30-40 lectures to stake holder representatives, and different papers and magazines published altogether 6 rejoinders or letters to the editor written by the FCA experts. 17 press releases were issued.

• The traditional “KIVI day” was celebrated in October 2009 when the FCA arranged a seminar on bid rigging with the Finnish Local and Regional Authorities. The aim of the event was to improve the possibilities of public procurement units to detect and combat beforehand forbidden cooperation between competitors (more on the topic on p. 20).

• The cartel topic was also explored in another seminar aimed at competition lawyers, in particular. The other topic of the event was the implementing reform of Article 102 (prev. 82). The seminar was arranged in September 2009 in cooperation with the Finnish Competition Law Association.

• The third stake holder occasion was the Competition and management by results in health care seminar arranged together with the Pharma Industry Finland. The event arranged in November 2009 gathered altogether 150 participants. The aim of the seminar was to ignite discussion on themes related to the development of health care and competition.

As previously, three issues came out of the FCA’s stake holder magazine (Competition News), and the themes included the reform of the competition rules, cartel control and the role of competition in breaking out from the depression. The circulation of the magazine is currently 2500 copies, and it is widely posted – based on subscriptions and otherwise – to the stake holders of the agency. The magazine and its articles are also published in electronic form at www.kilpailuvirasto.fi.

The academic thesis of the FCA’s Senior Research Officer Minna Heikinsalmi called “Competition Infringement Fine is Cartel Cases in Finland – Grounds of Determination and the Level of Fines” was published in the Investigations series.

The FCA also published the Annual Report (2009) and drafted an unofficial translation of the OECD’s Guidelines for Fighting Bid Rigging in Public Procurement from the spring of 2009.

Communications on the positive impacts of sound and effective competition is challenging. Although competition rules have been applied for over 50 years in Finland, the aims of competition legislation and the impacts of competition may have remained unclear for many.

The problem in getting the message across is e.g. that the short term impacts of competition may sometimes be negative for some groups, and the losses they incur are easily emphasised in public discussion.

The long term positive development brought about by competition – or the “better than expected” economic development in a recession – does not exceed the news threshold as easily.
Positive development

The FCA’s most important stakeholders – political decision-makers, the trade, competition lawyers, civil servants, researchers and the media – gave better estimates in the stake holder survey of the spring of 2009 than a year previously on the operability of the FCA’s communications (3.4 → 3.6 on a scale of 1–5). The estimates of both the topicality of communications (3.5 → 3.8) and access to the FCA (3.2 → 3.6) had improved.

The intelligibility of communications was also estimated to be better than a year previously (3.5 → 3.7). The activeness of communications received the worst assessment, and even that was fairly good (3.4).

As a whole, the different stakeholders gave quite similar estimates about the operability of communications. On average, the lawyers provided better estimates than others, whereas the decision-makers were the most critical. Decision-makers do not find the FCA’s communications as intelligible than the other stakeholders (3.3), in addition to which they do not find access to the agency as good as the others (2.9).

It was particularly positive from the point of view of communications that the estimates of the representatives of the media on the operability of the FCA’s communications had all improved from the previous year.

The general image of the agency was first and foremost found to be reliable (4.1) and professional (4.0), but also fair (3.9), qualitative (3.9) and having a high social impact (3.9). The adjectives which the stakeholders found to describe the agency worst were open (3.2), prompt (2.9) and creative (2.8).

The main media published almost twice the amount of articles on the FCA than a year previously (cf. Graph 8). The topics were versatile: in addition to the topical asphalt and timber cartels, the retail trade (zoning, opening hours, price of food), the forestry sector (forestry trade and industry and the other organizations of the field) and energy issues were also written about.

The editorials of national and regional newspapers mentioned the FCA 21 times in a year.

Graph 8. The news items on the FCA during 2000-2009
The 2004 reform of competition rules and efficiency of competition control

Significant changes occurred in the EU and Finnish competition law in May 2004. One major change in EU competition law was that the competition authorities of the member states obtained full powers to apply Articles 101 and 102 of the EU competition rules. The changes of the Finnish Competition Act sought to ensure that the change was successfully implemented in Finland as well. All in all, the changes in the EU and Finland aimed at more effective detection of competition restraints by the competition authorities.

Last year, the European Commission drafted a report of its own experiences and stated that the legislative reforms of 2004 had provided it with more effective possibilities to intervene with serious competition restraints. This article assesses the impact of the 2004 legislative reform on the possibilities of Finnish competition authorities to intervene with the most serious competition restraints which take place between competitors, in particular.

Abolishment of exemptions

The change in the 2004 Competition Act led to the abandonment of the exemption system. At the same time, the negative clearance system was abolished. This meant that companies no longer had a chance to submit their arrangements for prior approval by the FCA.

The new competition regime is based on the obligation of the companies to assess the legality of their activities themselves. The FCA no longer states in its decisions whether a practice investigated by it is legal. The FCA can only find that it has no cause to proceed with the investigation of the case.

Knowledge of the abandonment of the exemptions led to a dramatic increase in exemption applications, as companies sought to secure exemptions for their arrangements prior to the new Act becoming effective. As a result of this, the FCA handled almost as many exemption applications in January-April 2004 than it did in the entire last year (21). Some of the applications were dismissed, and the handling of the cases continued in court due to appeals.

In the context of the law reform, a large amount of guidelines and instructions were published on the application of the law. The EC case law is also used in the interpretation. Additionally, the Competition Act required that the FCA provide companies with efficient guidance when the new system based on self-evaluation is adopted.

However, the FCA could not provide such guidance which would have de facto meant that it would have granted oral exemptions. In some cases, the guidance process has led to the FCA requesting changes to the proposed arrangement and expressed its readiness to ban the arrangement.

1 The author of this article, Assistant Director Rainer Lindberg acts as the Head of the FCA’s International Affairs Unit. Lindberg was the Head of the FCA’s Cartels Unit during 10/2003-01/2007.


3 On the experiences of stake holders pertaining to the reform, see e.g. Pokela H. - Hiltunen S. (2004): Finnish Competition Authority as a Cooperation Partner. Matti Purasjoki 60 years commemorative book.
Focus on serious restraints

The reform of the Competition Act aimed at a more efficient competition control when the FCA could focus its resources on more serious restraints. This meant above all focusing on the prohibited competition restraints between competitors, e.g. secret cartels.

The forbidden competition restraints between competitors were a natural focus also because the OECD had paid attention to the deficiencies of cartel control in Finland. Since the May 2004 reform also prohibited certain vertical distribution chain procedures, the control concerning them also became a focus.

In 2006, the FCA conducted a so-called road show to the municipalities to detect forbidden competition restraints. The representatives of both the FCA and the Association of Finnish Local and Regional Authorities arranged roughly 20 training events for the procurement organisations of the biggest cities. At the same time, the agency received valuable information of the cartel suspicions prevalent in the different markets and around the country. The development of electronic inspection also began.

One way of examining the change in the focus of control is to observe the amount and level of the sanctions imposed for competition restraints in the long run. The examination supports the view that the focus of the activities has successfully shifted to more serious restraints between competitors in a manner required by the legislative reform of 2004.

Table 1 lists the sanctions imposed on competition restraints between competitors in Finland in 1992-2009 (horizontal competition restraints). The table also contains the sanctions imposed on distribution agreements, which were only forbidden in 2004 with the exception of RPM. The sanctions imposed for abuse of dominant position have been described in Table 2. The Market Court may only impose a competition infringement fine on the proposal of the FCA.

When the case law of the past few years is examined, the biggest cartel cases naturally surface first. The ruling given by the Supreme Administrative Court on the asphalt cartel is an important precedent regarding both the level of fines and the assessment of evidence. The Supreme Administrative Court’s influence is clearly felt in the subsequent timber cartel case in which the Market Court directly applies the Supreme Administrative Court’s guidance on the evaluation of evidence.

The cartel on automobile spare parts currently reviewed by the Supreme Administrative Court is the first leniency case which has been brought before the Supreme Administrative Court, and the forthcoming ruling will possibly bring new material to the assessment of evidence provided by a leniency applicant.

Minor importance is not categorical

The FCA has discretion over whether to propose an infringement fine or not. As a result of this, it is sometimes asked whether competition restraints of minor importance are also brought before the courts in addition to cartels. The question is naturally justified but it requires agreement on what is a violation of minor importance.

In the following, some views on this issue with practical examples. All the cases mentioned were brought before the Market Court as the FCA’s infringement fine proposals.

Firstly, a case which seems minor may still have relevance in principle. The case law contains the examples of Greendoor and Lastentarvike (Children’s Supplies) which involved restrictions imposed on an Internet shop. In the Greendoor case, a new entrant was prevented from independently pricing its product in the web store, and its possibility to use the cost benefits of the electronic business concept were curtailed.

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4 This activity continued in the form of the bid rigging seminar arranged by the FCA and the Association of Finnish Local and Regional Authorities in autumn 2009.
5 The table lists the sanctions imposed by the court. They do not necessarily correspond to the infringement fines the FCA has proposed.
6 Market Court decision 27.1.2009, diary no 568/05/KR, no 27/2009
### Table 1.
The competition infringement fines imposed on horizontal and vertical competition restraints in Finland

<table>
<thead>
<tr>
<th>Year</th>
<th>FCA Proposal</th>
<th>Fines</th>
</tr>
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<tbody>
<tr>
<td>1992</td>
<td>—</td>
<td>€</td>
</tr>
<tr>
<td>1993</td>
<td>—</td>
<td>€</td>
</tr>
<tr>
<td>1994</td>
<td>Taxi cars of Vihanti, <em>bidding cartel</em></td>
<td>€6700</td>
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<tr>
<td>1996</td>
<td>—</td>
<td>€</td>
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<td>1997</td>
<td>—</td>
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<td>1998</td>
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<td>1999</td>
<td>—</td>
<td>€</td>
</tr>
<tr>
<td>2000</td>
<td>Procurement of timber, <em>cartel</em></td>
<td>€1512000</td>
</tr>
<tr>
<td>2001</td>
<td>Taxi drivers of Kuopio, <em>bidding cartel</em></td>
<td>€5000</td>
</tr>
<tr>
<td></td>
<td>Skanska/YIT, <em>bidding cartel</em></td>
<td>€160000</td>
</tr>
<tr>
<td>2002</td>
<td>—</td>
<td>€</td>
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<tr>
<td>2003</td>
<td>—</td>
<td>€</td>
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<tr>
<td>2004</td>
<td>Asphalt companies, <em>cartel</em></td>
<td>€8255000</td>
</tr>
<tr>
<td>2005</td>
<td>K Retailer Association/Kesko, <em>RPM</em></td>
<td>€110000</td>
</tr>
<tr>
<td>2006</td>
<td>Association of Household Appliances*, <em>price cooperation</em></td>
<td>€5000</td>
</tr>
<tr>
<td></td>
<td>Automobile spare parts*, <em>collective boycott</em></td>
<td>€1030000</td>
</tr>
<tr>
<td></td>
<td>Procurement of timber, <em>cartel</em></td>
<td>€5100000</td>
</tr>
<tr>
<td></td>
<td>Tec Service (Tecalemit), <em>RPM</em></td>
<td>€800000</td>
</tr>
<tr>
<td></td>
<td>Children’s supplies, <em>distribution channel violation</em></td>
<td>€15000</td>
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<tr>
<td>2007</td>
<td>—</td>
<td>€</td>
</tr>
<tr>
<td>2008</td>
<td>Finnish Barbers and Hairdressers*, <em>price recommendation</em></td>
<td>€33000</td>
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<tr>
<td>2009</td>
<td>—</td>
<td>€</td>
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</tbody>
</table>

* An appeal process pending at the Supreme Administrative Court

### Table 2.
The competition infringement fines imposed on abuse of dominant position in Finland

<table>
<thead>
<tr>
<th>Year</th>
<th>FCA Proposal</th>
<th>Fines</th>
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</thead>
<tbody>
<tr>
<td>—</td>
<td>Neste</td>
<td>€336000</td>
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<td>—</td>
<td>—</td>
<td>€</td>
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<td>—</td>
<td>—</td>
<td>€</td>
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<tr>
<td>—</td>
<td>Valio</td>
<td>€840000</td>
</tr>
<tr>
<td>—</td>
<td>Ajasto</td>
<td>€336000</td>
</tr>
<tr>
<td>—</td>
<td>Alfons Hákans/Finntugs</td>
<td>€546000</td>
</tr>
<tr>
<td>—</td>
<td>Elisa</td>
<td>€4200000</td>
</tr>
<tr>
<td>—</td>
<td>Turun Puhelin, Salon Seudun Puhelin, Finnish Meteorological Institute</td>
<td>€588000</td>
</tr>
<tr>
<td>—</td>
<td>Gramex</td>
<td>€250000</td>
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<tr>
<td>—</td>
<td>—</td>
<td>€</td>
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<tr>
<td>—</td>
<td>SNOY*</td>
<td>€100000</td>
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<td>—</td>
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<td>€</td>
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</tbody>
</table>

* An appeal process pending at the Supreme Administrative Court
In the *Lastentarvike* case, even passive sales outside their territories were denied of retailers as well as marketing through the Internet. A market leader representing strong brands in the field was guilty of the competition violation. The company had been advised to make the changes required by the competition law in its distribution agreements but this consultation did not lead to changes in terms of agreement.\(^7\)

Maintaining electronic commerce free of competition restraints is an important competition policy objective. It may be considered a relevant issue economically which competition authorities may influence through individual cases. It was done in the above-mentioned cases and case law was created for the development of the Internet trade in Finland.

Lastentarvike were ordered to pay fines for 15 000 euros for the violation. In the Greendoor case, the Market Court stated that a violation had occurred but did not impose an infringement fine mainly because the duration of the restraint was so short. This was due to the fact that the FCA reacted quickly to the complaint it had received.

Cartels operating in a regionally and geographically restricted area may also raise a question on the threshold of intervention of the competition authorities. If the market is wider than regional, the threshold for intervention naturally increases. The cartel does not necessarily reach the desired market impacts when the customers can engage in business relationships outside the cartel. This is not always so, however. On competition law terms, it is a question of the relevant market.

The case on the *Enontekiö taxi cars* is an example of the market power of local bid rigging. The municipality of Enontekiö and the Regional State Office of Lapland had commenced several tenders on transport services directed at the taxi drivers from Enontekiö. Due to geographical reasons, only the taxi drivers from Enontekiö could be considered as bidders. The municipality announced beforehand, in the tender, that it will not approve bids which contain violations of the Competition Act. The matter was subsequently brought before the FCA which proposed infringement fines for bid rigging violating the Competition Act. Almost all the taxi drivers in the municipality were involved.

The Market Court stated the existence of a cartel but dismissed the infringement fine due to the longevity of the proceedings. In this context, what is relevant is the Market Court’s finding that bid rigging could not be considered a minor competition restraint, although it was limited regionally and temporally. In the future, the illegality of minor importance can be examined against this assessment.\(^8\)

**Individual cases as questions of principle**

A credible application of the Competition Act entails that the decisions issued by the supervisory authorities are followed and that the prohibitions imposed are efficient, in principle. The other parties active in the market must rely on the fact that conduct forbidden by the authorities shall not be continued in the market.

This matter of principle was prevalent in the *Kesko/K Retailers* case. Although the FCA had dismissed the exemption application of the group as regards the RPM of certain foodstuffs, the conduct was still continued. The Market Court imposed an infringement fine of a total of 110 000 euros on the parties involved.\(^9\)

There has been a ban on RPM regarding the lowest retail prices since 1964. The first infringement fine for this ban was imposed in the Tecalemit decision in February 2010.

\(^7\) Market Court decision 13.2.2009, diary no 336/06/KR, no 81/2009

\(^8\) Market Court decision 31.12.2008, diary no 230/05/KR, no 642/2008

**Tecalemit** has a 30 per cent market share in the service market of repair shop equipment and 30-40 per cent market share in the related equipment sales. The company forbade its resellers from undercutting the minimum price it had imposed. This affected competition horizontally as resellers were prevented from competing not only with Tecalemit but also with other authorized resellers. The case concerns the service market, which has been considered a sector of weak competition in Finland in different international studies (EU, OECD). Due to this reason, the sector has been recommended as a point of focus for competition policy.\(^{10}\)

The Supreme Administrative Court is currently assessing the *Nikon* case.\(^{11}\) The case involved the parallel imports of brand cameras past the official Nikon imports. The EU competition legislation takes rather a harsh view to the prevention of parallel imports in the common market. At the moment, the Swiss competition authorities also investigate Nikon’s potential role in the prevention of parallel imports.

The critical reviewers may find Nikon a case of minor importance and justify their view e.g. by saying that competition in the camera market is functional as a rule. On the level of the national economy, however, parallel imports have an important role in the safeguarding of competition, which is why the theme is a key issue for the competition authorities of many states.

In a distant country like Finland with concentrated markets in many parts, it is hard to find justification for why the illegal prevention of parallel imports should be the focus point of the implementation of competition law. The financial crisis emphasizes dismantling the obstacles to the common market.\(^{12}\) Competition – parallel imports included—is also a way to support the revival of the national economies.\(^{13}\)

**Trade organisations**

Perhaps a little surprisingly, trade organisations are still quite prominent in the application of the competition law. In recent years, they have participated in the organization of and promoted the implementation of several forbidden competition restraints:

In December 2009, the Market Court the Court imposed an infringement fine of 5,000 euros on the Finnish *Household Appliance Maintenance Association* for forbidden price fixing. The FCA presented evidence that the illegal price cooperation had been conducted in the district organizations as well. The matter is pending at the Supreme Administrative Court.\(^{14}\)

The Supreme Administrative Court is also processing a pricing recommendation by the trade organization of *barbers and hairdressers’* to their members for which the Market Court imposed an infringement fine. The recommendation occurred at a time the value added tax base was amended and the association wanted to inform its members of how the change in the tax base should show in the consumer prices in the field.\(^{15}\)

A decision by the FCA in 2007 concerned the recommendation issued by the trade organisation in the *photography business* to its retailer members to exclude themselves from a price campaign of a photography business, because according to the organization, the margins and prices in the field would collapse. The organization sought to get photography businesses to set their pricing at a point considered to be right by the association.\(^{16}\)

In a matter concerning brokerage fees, the trade organisation of *insurance companies* had issued a fee recommendation to its members. The FCA and the Market Court found that the recommendation was illegal. The Supreme Administrative Court dis-

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\(^{10}\) Market Court decision 29.1.2010, diary no 92/06/KR, no 58/2010

\(^{11}\) Market Court decision 31.12.2008, diary no 147/06/KR, no 643/2008


\(^{16}\) FCA decision 18.12.2007, diary no 1123/61/07
missed the case due to the lack of right of appeal by the trade organisation.\textsuperscript{17}

In the rules of the Finnish Association of Architects, prohibitions were imposed on the \textit{architects} to participate in planning competitions if these were not national architectural competitions approved by the Association.

The FCA ordered that the conduct be discontinued as an output limitation and issued an interlocutory injunction requiring the Association to amend its rules. The Association subsequently withdrew its appeal to the Market Court in which it previously found that the conduct fulfilled the efficiency criteria of the Competition Act.\textsuperscript{18}

The Osaset case also concerned the common reaction of the trade, as the \textit{wholesalers of automobile spare parts} faced the challenge of foreign competition by a collective boycott. The boycott was decided on a tight schedule among the main wholesalers of the field. The Market Court imposed an infringement fine on the parties, and the matter is now pending at the Supreme Administrative Court.\textsuperscript{19}

The major role of trade organisations in the application procedure of the past few years arouses questions mainly because the FCA has long sought to secure by its guidance – at the start of 1990s for the first time – that trade organisations are aware of the content and provisions of the Competition Act. Now, in addition to guidance, they also have recourse to clear national case law on conduct forbidden by the Competition Act.

To conclude

Based on the above, it may be stated that since exemptions were cancelled, the FCA has been able to focus its resources on the investigation of the most serious competition restraints. In this respect, the nature and emphasis of competition control have shifted to the direction the legislator has wished.\textsuperscript{20}

On the other hand, the amount of work required by the court proceedings has considerably increased and taxed own-initiative investigative work.\textsuperscript{20} This will continue in the future as well, and this will also go for trials cases dealing with abuse of dominant position.

The level of sanctions has increased. In addition, there now exists more versatile national case law on competition law cases than before. This is important particularly in a situation where companies themselves ultimately have to assess the legality of their actions from a competition law perspective. The message from the economy that competition legislation is considered the most problematic area of legislation emphasises the meaning of established case law as aid to self-evaluation.

Although the Competition Act is applied in accordance with the EC case law, national application procedure has its own important position. The national case law from the past few years shows that phenomena which are harmful for competition may be affected through individual competition restraints. This cannot change the fact that competition control should focus on the investigation of cases which are the most significant for the national economy. Reaching a balance between these objectives will remain among the main concerns of competition policy.

\textsuperscript{17} Market Court decision 22.6.2006, diary no 141/04/KR, no 129/2006
\textsuperscript{18} FCA decision 11.10.2004, diary no 669/61/02
\textsuperscript{19} Market Court decision 20.2.2009, diary no 216/06/KR, no 91/2009
\textsuperscript{20} For example, the oral hearing of the Market Court in the asphalt cartel case held in December 2006 lasted for 18 days, during which 48 witnesses were heard. The oral hearing of the Market Court in the timber cartel case lasted for 14 days, during which 32 witnesses were heard. In the automobile spare parts cartel cases, 24 witnesses were heard by the Market Court. The requests for information under the Publicity of the Official Documents Act and the subsequent trials have required a considerable amount of work. For example in 2005, the FCA was party to roughly 10 trials involving the interpretation of the Publicity of the Official Documents Act at the Supreme Administrative Court and various administrative courts. In 2006 when the FCA made 6 infringement fine proposals to the Market Court, almost 50 separate requests for information were made to the cartel cases under investigation by the agency based on the Publicity of the Official Documents Act.
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