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(2000)

1. The Finnish Competition Authority (FCA) is responsible for competition regulation in Finland. The task of the FCA is to enhance the efficiency of the economy by promoting competition. It takes measures to abolish competition restrictions and implements merger control. The FCA investigates competition restrictions both on its own initiative and on the basis of complaints received.

2. The FCA and its activities are extensively covered in English on the FCA's home page at <http://www.kilpailuvirasto.fi/english/index.html>. The FCA's home pages e.g. contain English press releases of all the major concentration cases and the complete Yearbook 2001 in English (available in June).

I. Changes to competition laws and policies, proposed or adopted

3. During 2000, there have been no major legislative amendments in Finland.

4. However, headed by competition minister Mr Kimmo Sasi, a working group was set up with the task of examining the possibilities to develop Finnish competition policy and, as a result of it, making possible initiatives for its development. The working group does not prepare actual amendments to the competition law but proposes initiatives to develop the central programme issues of national competition policy. The group focuses on the following:

- examining introduction of competition into public service production and municipal welfare services, in particular
- developing market definition in the state of the new economy and globalisation,
- increasing analytical awareness on the state of the product market,
- assessing the special problems of the small and medium-sized sector and
- developing competition-related research and university degree education within field of competition.

5. Representatives from both the economy and public administration are included in the working group. One of them is FCA's Director General Mr Matti Purasjoki. The working group is set to finish its work in early 2002.

6. Although there have been no changes in national competition legislation, through Finland's EU membership, several legislative reforms in the EU competition legislation have had an effect on national competition policy as well. The most important legislative reforms in the EU are the block exemption regulations on vertical and horizontal competition restraints.

7. The biggest individual change in the EU competition rules - the reform of Regulation 17 - would, upon implementation, have a significant effect on national competition policy. The Finnish government

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gave the Parliament a report in November 2000, where the advantages, effects and problem issues of the reform were assessed.

II. Enforcement of competition laws and policies

8. So-called key industries are annually confirmed by the FCA. The key industries are chosen with the aim of focusing the FCA's activities on fields, which are essential for the efficiency of the economy. In addition to any particular sectors of the economy, the key industries may also include special competition restraints or procedural issues.

9. In recent years, the FCA's key industries have come to include not only the traditionally monopolistic sectors but also fields where the structural change is especially rapid due to the development of technology or the structure of supply or demand and where the competition restraints may have far-reaching effects for the general development of the national economy. Public production and service provision are also increasingly entering the sphere of private business.

10. In 2001, FCA's key industries were:

- the promotion of the marketisation of public service production (see section III below)
- the investigation of competitive problems with respect to energy and public service utilities,
- mass communications
- telecommunications
- financial markets
- retail markets in the grocery sector

Energy and public service utilities (natural monopolies)

11. There are currently three FCA proposals pending at the Competition Council regarding power plants and public service utilities. The proposals concern the banning of abuse of dominant position and include:

- unreasonable pricing of electricity transmission and district heating by Helsinki and Kuopio Energy
- unreasonable customer fees collected by the Port of Helsinki.

12. The forthcoming Council decisions in these cases will be major precedents in the assessment of the abuse of dominance by so-called natural monopolies.

13. In the FCA's proposal on the Kuopio power plant (Kuopio Energy), it was found that the pricing of the power plant's electricity and district heating services has been unreasonable at least during 1997-99.

Since the power plant has not taken steps to alter its pricing practice in spite of several requests to do so, the FCA proposed in December 2000 that the Competition Council order that the city of Kuopio/Kuopio Energy terminate the conduct violating the Competition Act and impose on the city/the power plant a competition infringement fine of FIM 5 million (USD 730.000). A corresponding proposal to the Competition Council on Helsinki power plant (Helsinki Energy) was made in 1999 already. The competition infringement fine proposed therein for the abuse of dominance amounted to FIM 30 million (USD 4.4 million). Both these cases are still pending at the Competition Council.

14. The Port of Helsinki was also found to have abused its dominant position. The FCA made a proposal to the Competition Council to ban the conduct of the Port of Helsinki. It was found to have abused its dominant position by pricing its port services unreasonably at least during 1997-1999. The FCA also found that the pricing of the port and passenger traffic services was intransparent and did not correspond to the actual costs incurred.

15. The Vapo Group is a company operating e.g. in the biofuels, energy, waste processing and timber markets. In a FCA decision made in September 2000, Vapo was found to have abused its dominant position in the energy peat market when it applied to its customers so-called tying pricing practice showing as marginal pricing. Vapo's pricing, where the price of peat varies according to usage, was considered unreasonably discriminatory of its customers and it did not fulfil the principle of cost-accountability. The pricing of peat was not considered sufficiently clear and transparent. Vapo has appealed the decision to the Competition Council.

16. With regard to local power plants, in its decision made in December 2000, the FCA found that the regular customer schemes applied by some local power plants in the retail sales of electricity did not seem to include forbidden tying nor were the discount systems found to exhibit harmful effects. Although the FCA did not find the systems and the related conduct an abuse of dominance or a harmful competition restraint, the FCA found it important to increase the clarity and unambiguity of the regular customer schemes and the pricing and discount principles granted on the basis thereof.

Telecommunications

17. One of the FCA's main objective in the telecommunications sector is to ensure that the unreasonable pricing of the fixed subscriber lines (leased lines) or the tying seasonal discounts of telecom service agreements do not prevent the opening up of competition in the telecom market or block the entry of new telecom service operators to the market. The FCA also promotes the co-location of local telecom companies, which increases an efficient and open supply of Internet connections. The aim is also to ensure free access to the cable networks for the purposes of different data communications services.

18. During 2000-2001, telecommunications has proved to be FCA's biggest project area measured by the number of cases. In 2000, 48 cases altogether were solved in the project; 11 of these were decisions, five exemptions and 16 statements. In the beginning of 2001, there were 26 open cases. In addition to the investigations concerning Finland, the FCA is also participating in the regulatory reforms underway within the EU.

19. Of the cases concerning the pricing of fixed connections, three are presently pending at the Competition Council. Below, descriptions of these and summaries of the other major cases involved in the project:

- In the FCA's proposals to the Competition Council in February 2000, the local telephone companies Turun Puhelin and Salon Seudun Puhelin were found to have abused their dominant position by pricing the subscriber lines of the fixed network and the fixed

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connections in a discriminatory, tying and unreasonable manner. The FCA also proposed that the Competition Council impose on Turun Puhelin an infringement fine of FIM 5 million (USD 730.000) and on Salon Seudun Puhelin an infringement fine of FIM 1 million (USD 145.000). The Competition Council has not yet issued its decisions.

- During 2000-2001, several cases on Helsinki Telephone (presently Elisa Communications), in particular, have been opened at the FCA. The cases have involved the pricing of IP calls, the Diana telecom service agreements and the pricing of the preselection of telephone and ISDN connections and foreign calls.
- In FCA's spring 2000 decision on the pricing of IP calls by Helsinki Telephone, it was required that the company should offer competing telecom operators interconnection of telecom networks and telecom services in places found appropriate by the competitors, including the local call centres of Helsinki Telephone. In addition, connections should be offered on equal, transparent and reasonable terms. The FCA also found that Helsinki Telephone had abused its dominant position, when it had not offered interconnection to local centres for other operators. The pricing of the IP call within the single operator's network was not found to have harmful effects, however.

20. Co-location was considered a precondition for competing operators being able to offer corresponding packet switched Internet call. Non-discriminatory and reasonable supply and co-location enable the introduction of more efficient packet switched Internet calls onto the market. Additionally, the FCA found that the company's information policy on the introduction of the IP network had not met the demands set on a company in a dominant position, which prevented competitors from preparing themselves beforehand for the changes required by the new pricing.

21. Following the FCA's decision, Helsinki Telephone published its interconnection price list in a manner required by the FCA. The unreasonable pricing perceived as potential abuse of dominance contained in it is being investigated further, however, on the basis of a new complaint lodged with the FCA.

22. A decision on the so-called ownership discount system applied by Päijät-Hämeen Puhelinyhdistys was obtained in December 2000. The Competition Council found in favour of the FCA's proposal that Päijät-Hämeen Puhelinosuuskunta occupied a dominant position in local telephony operations conducted in the fixed network and that it had abused its position by applying a tying and discriminatory discount practice, which did not correspond to actual costs incurred, in the form of so-called ownership discount. The Council also ordered Päijät-Hämeen Puhelinosuuskunta and Päijät-Hämeen Puhelin to discontinue the abuse of dominant position upon the threat of a FIM 2 million (USD 292.000) conditional fine. The Competition Council did not impose on the company the FIM 0.5 million (USD 73.000) infringement fine proposed by the FCA, however.

23. Although regulation in the telecommunications market has been dismantled in Finland, there has not been much competition in the provision of local telephone services. The ownership discount systems applied by the telephone companies have been considered one obstacle, as these have tied the service users to business relations with local telecom monopolies. In this respect, the pricing of companies in a dominant position has undercut the costs incurred from the service provision, which has blocked the entrants' business activities. Hence, the Competition Council's decision described above forms a major stand, which, according to the FCA, obliges other companies using ownership discounts to adjust their conduct. A statement to this effect was sent to the Finnet companies immediately after the Council decision had been issued.

Mass communications

24. In electronic and graphic mass communications, the FCA seeks to secure that the companies do not use exclusionary or unreasonably customer-friendly practices. In postal operations, the aim is to promote competition in postal activities covered by the Act on Postal Operations and in the arrangement of postal transports. In electronic and graphic mass communications, the FCA has recently taken a stand e.g. to the conduct of dominant communications companies considered abuse of dominance.

25. The Competition Council issued a decision in a case involving newspaper advertising and found in favour of the FCA's proposal regarding the conduct of Lapin Kansa in the advertising market of its own publication area. The decision was significant, from a competition policy viewpoint, because for the first time, the Competition Council took a stand therein to the dominant position of a regional newspaper. The Council found in favour of the FCA's view that the company had, during 1992-97, abused its dominant position in a forbidden manner by applying a tying and discriminatory pricing and discount practice.

26. According to the FCA's decision, the discount system in question had unduly placed advertiser-customers in an unequal position with respect to each other and impaired the competitive position of customers who had negotiated less favourable terms. The intransparency of the advertising prices had also prevented customers from comparing different alternatives. The tying terms, which had implied concentration of advertising, had also complicated the operations of competing advertising media.

27. A major problem, from a competition law perspective, in Lapin Kansa's case was the definition of the relevant market. The FCA held that the relevant market was comprised of the newspaper advertising market in the publication area of Lapin Kansa, because there are no major media alternatives that are sufficiently interchangeable in Rovaniemi or its near regions. The Competition Council confirmed the FCA's market definition but did not review the potential abuse of dominance in any more detail because the FCA and Lapin Kansa had already agreed on the adjustment of pricing and the discount system.

28. In postal operations, the FCA's statement issued in February 2000 supported the licence application of Suomen Suoramainonta and considered it important that the licence be granted to a company competing with Finland Post Ltd on fair and reasonable terms. Last year, the FCA also gave a statement on a Government bill for a Postal Service Act. The FCA e.g. drew attention to a compensation fund planned to be established to safeguard general services in the postal operations, which, according to the FCA's view, may cause similar obstacles to competition as the current tax-like fee to secure the postal operations in sparsely populated areas.

29. With regard to **cable television markets**, on 8 February 2001, the Competition Council issued a decision on the FCA's proposal concerning MTV Networks Europe (MTVNE). According to the proposal, the Finnish distribution policies of MTV Europe (MTVE) and MTVNE, which place Finnish cable television and Finnish Satellite Master Antenna Television networks in an unequal position as distributors of MTVE, comprise a forbidden competition restraint under Article 9 of the Competition Act. MTVNE had concluded direct inexpensive reception rights agreements with its major and long-standing customers whereas the new and small customers measured by volume were forced to do business on more expensive terms through a distribution company authorised by MTVNE and free to decide on its own prices. The European Commission has issued a comfort letter to the agreement wherein it is agreed that the satellite distribution business of MTVNE is assigned to MTG/Vasat. The comfort letter would not have prevented the Council from finding, if necessary, that the arrangement violated national competition legislation, however. The Council dismissed the FCA's proposal on the basis that commercially rational and acceptable grounds, from a competition law viewpoint, had been presented for the distribution channel solution and pricing, and it was not a question of arbitrary or unequal treatment of customers.

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30. In the finance market, the FCA intervenes with competition restraints whereby incumbents seek to defend their established market positions while the operating environment is internationalising further and the structure of the field changing e.g. as a result of the integration of the finance and insurance market.

31. In 2000, the FCA continued its investigation of the effects of the amendment of the exchange pricing of the Helsinki Stock Exchange and began its investigation of the market position of the Finnish Central Securities Depository Ltd and the pricing of its clearing services. Both investigations were completed in the beginning of 2001.

32. With regard to the Helsinki Stock Exchange (HEX), the FCA was requested to investigate whether the amendment of the exchanges fees planned by HEX could be considered abuse of dominant position under the Competition Act. In its decision, the FCA found that HEX presently occupies a dominant position as an upkeeper and service provider of the public stock trading system in Finland. Following the introduction of the alternative pricing model, the new pricing has not been found discriminatory nor an abuse of dominance. The decision has not been appealed to the Competition Council.

33. The position and pricing of Finnish Central Securities Depository Ltd were investigated on the FCA's own initiative. The relevant decision held that the Finnish Central Securities Depository Ltd. occupied a dominant position at least as the provider of clearing services of the public stock trading conducted at HEX in Finland. The FCA also held that the penalty fees collected by the Central Securities Depository from delays in deliveries were discriminatory and did not correspond to actual costs incurred, hence constituting a prohibited abuse of dominance.

34. However, the investigations revealed that the Finnish Central Securities Depository Ltd. was not aware of its own dominant position or of the prohibited nature of its penalty fee system. Additionally, the Central Securities Depository has sought to develop its pricing system to be more fair and cost-accountable. On the basis of the above, the FCA found that making a proposal to the Competition Council for the imposing of an infringement fine was not justified. According to the decision, the Central Securities Depository shall, by 31 December 2001, eliminate all the restrictive measures collected from delayed deliveries and to supply the FCA with an account of all the changes it has made within the penalty fee system. This decision has also been appealed to the Competition Council.

Forest industry

35. The cartel investigations open in the forest project were solved in spring 2000 and the FCA made a proposal to the Competition Council. The Competition Council issued its decision in November 2000.

36. On the basis of the FCA's proposal, the Competition Council imposed a competition infringement fine of FIM 10 million (USD 1.46 million) each on the forest industry companies Metsäliitto Osuuskunta, Stora Enso and UPM-Kymmene for the cartel co-operation conducted in the region of Mikkeli during 1993-1997. The co-operation consisted of price negotiations and agreements on purchasing objectives and the exchange of information related to them in so-called follow-up meetings and meetings between the companies held in the regional purchasing districts. The Competition Council found that the parties had also agreed on prices. The FCA had proposed an infringement fine of FIM 20 million (USD 2.92 million) each for the companies.

37. In its decision, the Council held that the three forest industry companies buy the majority of the available raw wood and that, in such a market, co-operation between the buyers is particularly harmful.

The Council found that the case was a typical example of forbidden information exchange and its harmful nature could not be unclear. The proceedings on the case are pending at the Supreme Administrative Court.

38. At the same time as the cartel decision, the Competition Council made another major decision concerning the wood market. The case concerned the appeal made by MTK, the Central Union of Agricultural Producers and Forest Owners, on the FCA's refusal to grant an exemption where the Union had requested that an exemption be granted to improve the bargaining position of the wood sellers in relation to forest industry companies.

39. The Competition Council dismissed the appeal because the negotiations systems and the related competition restraints could not be perceived to promote effective operations on the wood market. On the contrary, the negotiation system had rather slowed down the commencing of the wood trade and to have distorted the price relations between the different types of wood and different regions.

40. The Competition Council decision also found that the problem in the wood market is its asymmetric market structure and that the operations of the market and the position of the forest owners can best be improved by an efficient application of the Competition Act, by promoting the competitive features in the market and by increasing the commercial information on offer to wood sellers. In practice, the Competition Council's decision implies the termination of the concentrated negotiation system, which has long continued in Finland.

41. Both the decisions described above define in a major way the permitted conduct in the raw wood market in Finland. The common feature in the decisions is the Council's finding that the operations of the wood market cannot be built on competition restraints on either the buyer's or the seller's side.

Grocery markets

42. In the grocery retail trade, the FCA investigated e.g. the **retail price maintenance** related to the reform of the K Group's chain operations and the exemption **application for horizontal co-operation** by the S Group. To secure the comprehensive assessment of the daily consumer goods market and the fair treatment of customers, the applications were reviewed in close parallel. The objectives included the prevention of the retailer's buying power and its abuse and the promotion of efficient competition in the sales and distribution chains of the daily consumer goods trade. The decisions in both cases were given in January 2001.

43. The chain-like operations themselves were estimated to be efficient but the concentrated market structure was seen to create such buying power, which could eliminate the advantages brought by competition. With its decisions, the FCA wanted to secure intra-group competition and the access of manufacturers to distribution channels, to safeguard the survival of alternative logistical systems and, by limiting the maximum duration of the pricing periods, to prevent an unnecessary stiffening of pricing.

44. Since it was estimated that major changes were likely in the market of daily consumer goods, the period of validity of the exemptions was ordered shorter than what had been sought. Conditions were also imposed on both exemptions, with the aim of securing that the retail level would retain the possibility to use their own competitive methods and to tender the own chain organisation. The conditions were aimed at suppliers having the possibility to sell their products to the trade, past the chain organisation.

Competition and Environment

45. In environmental protection, the expansion of producer responsibility has increased horizontal co-operation between producers and strengthened the position of different producer communities, in addition to which the tightened sorting and handling provisions have increased costs and concentration in transport and handling services as well. Due to this, the FCA has received complaints e.g. about entry barriers, unreasonable terms in the **recycling systems** and handling services and the exclusion of competition in the utilisation and transport of waste. Some of the competitive distortions are also caused by public regulation.

46. One example of the competitive distortions caused by public regulation is the beverage tax system. Gaining access to the recycling systems of packages has proved problematic, and it has been heightened by the impossibility of one company to arrange an extensive recycling system. The FCA has proposed that companies engaging in minor packaging operations be freed from the tax because the profit of the packaging tax has not been directed at redressing the damages caused to the environment by the packages and because the tax prevents small packagers from entering the market. Even though the producer responsibility is similar with respect to all packages, one group of products (beverage packages) is treated more severely than others. Additionally, the packaging tax distorts competition between the different beverages because the content of the package has a decisive influence on the tax treatment.

Mergers and acquisitions

47. The objective of the control of concentrations is to protect the market from concentration resulting from mergers and acquisitions. The mergers are assessed according to domestic effects and attention is also paid to the future development of the markets. The FCA intervenes with a concentration, if, as a result of it, a dominant position is created or strengthened which significantly impedes competition in Finland.

48. Since the control of concentrations began at the FCA, i.e. following October 1998, the FCA has examined more than 300 concentration cases altogether and made approximately 200 decisions. In 2000, 14 conditional decisions were made, and, in addition, one proposal to ban a concentration.

49. Since early 2000, the FCA has intervened with the following concentration cases:

Parties to the concentration	Date of decision
Fritidsresor Holding Ab / Oy Finnmatkat-Finntours Ab	5 April 2000, dno 1076/81/1999
Säkkiväline Puhtaanapito Oy / WM Ympäristöpalvelut Oy	10 April 2000, dno 49/81/2000
Helsingin Puhelin plc / Tampereen Puhelin plc, Keski-Suomen Puhelin plc, Oy Finnet International Ab	27 April 2000, dno 1056/81/1999

Valio Oy / Kainuun Osuusmeijeri, Osuuskunta Maito-Pirkka, Aito-Maito Fin Oy	20 June 2000, dno 1151/81/1999
Sonera plc / Yleisradio Oy, Digita Oy	FCA's proposal to ban the concentration of 17 April 2000, dno 1010/81/1999 and the Competition Council's conditional decision of 10 July 2000, dno 53/690/2000.
EQT Scandinavia Ltd / Rosenlew Retail Products	3 November 2000, dno 565/81/2000
Finnlines plc / Transfennica Oy	Acquisition cancelled after negotiations on a package of commitments with the FCA in December 2000.
Carlsberg A/S / Orkla ASA	2 January 2001, dno 573/81/2000
Georgia-Pacific Corporation / Fort James Corporation	30 January 2001, dno 830/81/2000
Finland Post Ltd / Atkos Printmail Oy	2 February 2001, dno 2/81/2001
Metsäliitto Osuuskunta / Vapo Oy	8 March 2001, dno 1021/81/2000

50. In the following, descriptions of the most important cases.

Fritidsresor Holding Ab / Oy Finnmatkat-Finntours Ab

51. On 10 December 1999, Finnair and Fritidsresor of the British Thomson Travel Group agreed on the sales of Finnmatkat and the related business activities to Fritidsresor. After the acquisition, there are three major tour operators arranging package tours on the Finnish market: Finnair (Aurinkomatkat, Top Club, Etumatkat), the Thomson Group (Fritidsresor, Hasse, Tema Tours, Finnmatkat) and the Airtours Group (Tjäreborg, Spies). The joint market share of the two first groups exceeds 70 per cent and that of Airtours amounts to approximately 15 per cent.

52. In the context of the acquisition, the parties made a co-operation agreement under which Fritidsresor undertook to obtain the flights needed by Fritidsresor, Hasse, Tema Tours and Finnmatkat from Finnair. The high market share jointly obtained by Fritidsresor and Finnair and the agreement on flights concluded in the context of the acquisition led, combined with other factors, to a creation of a joint dominance in the package tour market.

53. In the negotiations with the FCA, Fritidsresor and Finnair undertook to rephrase the agreement on chartered flights so as to the exclusive purchasing clause only concerning the need for flight seats corresponding to the present capacity of Finnmatkat. Additionally, the parties undertook to shorten the period of validity of the agreement. The conditions imposed on the acquisition also contained a commitment to an equal treatment of tour operators.

54. The commitments were sufficient to remove the major competitive problems related to the joint dominance of Fritidsresor and Finnair on the package tour market. In its decision, the FCA found that

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Finnair and Fritidsresor's abandoning of the exclusive purchasing clause improves the possibilities of the new charter company to enter the Finnish package tour market. After the transition period, shortening the period of validity will expose Finnmatkat's flight capacity need to competition. The FCA also held that the commitments ensure the equal opportunities of other tour operators to obtain flight capacity from Finnair.

Helsingin Puhelin plc (present Elisa Communications), Tampereen Puhelin plc, Keski-Suomen Puhelin plc and Oy Finnet International Ab

55. Helsingin Puhelin (HPY) announced in December 1999 that it had acquired control in Tampereen Puhelin (TPO), Keski-Suomen Puhelin (KSP) and Oy Finnet International Ab (FNI) through a stock exchange deal made through the Exchanges.

56. It is the nature of the telecommunications market that many telecom and network services are vertically integrated. An operator governing the fixed telecom network and the fixed connections, in particular, may affect the operations of many markets, which are separate as such. A company engaging in local telecom operations may affect e.g. the markets of distant or foreign calls or the Internet services, as the provision of these is also related to the use of the local telecom network. For these reasons, the assessment of the market position of the concentration was not limited to just one market at a time.

57. By acquiring control in FNI, HPY integrated to the wholesale and retail market of foreign telecom services, as a result of which the Finnet companies are both customers of the HPY group and its actual or potential competitors. Through the acquisition, it became possible for HPY to adjust the conduct of FNI in favour of its own business operations. In its pricing or other terms of trade, it may favour Finnet companies which do not aggressively compete with it for major retail customers. Additionally, FNI may e.g. offer inexpensive foreign calls to the major companies which acquire from HPY the national calls within the single operator's network, or mobile connections and services for company customers and collect from the Finnet companies higher wholesale prices. This may impair the Finnet companies' ability to compete on the market segment of large company customers.

58. During further proceedings in the case, HPY presented the following commitments to the FCA:

- A minimum of two members appointed by shareholders other than HPY or the Finnet companies shall be appointed to FNI's board of directors.
- HPY shall retain the terms of FNI's representation, distribution and retail agreements with respect to pricing and structure of compensations. This commitment is effective for two years from the approval of the acquisition.
- HPY shall report to the FCA the realisation of point 2 each year for two years.
- Additionally, HPY found that there is no impediment to Finnet companies starting to develop and offer products which compete with FNI.

59. The commitments ensure that the concentration does not affect the competitive conditions on the wholesale market of foreign calls for two years. According to the FCA's estimate, the Finnet companies have the possibility to establish a foreign operator competing with FNI or negotiate on co-operation with an incumbent operator if the threat arises that the terms of agreement applied by FNI weaken their possibilities to compete e.g. on the markets of large companies. In its decision, the FCA found that the commitments provided by HPY removed the doubts about the competition concerns arising as a result of the acquisition and the FCA was thus able to accept the arrangement.

Sonera plc / Yleisradio Oy, Digita Oy

60. On 19 April 2000, the FCA proposed to the Competition Council that it forbid Sonera's acquisition of joint control in Digita, the subsidiary of the Finnish Broadcasting Company. The FCA found that, in the market of:

- 1) the digitalised public broadcasting network's technical services,
- 2) the public broadcasting network's transmission services,
- 3) mobile communications services,
- 4) digital network service systems,
- 5) Sonera's local subscriber connection network services and
- 6) Sonera's regional cable network services

the acquisition will lead to the creation or strengthening of a dominant position which significantly impedes competition in Finland or major parts thereof.

61. According to the FCA's estimate, the acquisition would have had major exclusionary effects and protected Digita and Sonera's dominant position from competition. The FCA found intervening with the acquisition important for safeguarding competition because a public broadcasting network extending to every household shall, in a few year's time, function as an important distribution and reception channel of new Internet type content services, in addition to the basic transmission of television and radio programmes. Additionally, the convergence trend will lead to a flexible parallel and cross use of different digital networks being a major competitive factor.

62. The competitive problems of the acquisition were due to the market power of the parties, in particular, which is attested by the extremely high market shares in the following, closely connected markets:

- transmission services of Digita's public broadcasting network: 100 per cent
- Sonera's mobile services: 65 per cent
- Sonera's Internet connection services: 40 per cent
- Sonera's data transmission services: approximately 50 per cent
- Sonera's trunk network services: particularly high market share (exact information a business secret)
- Sonera's local subscriber connection network market: over 90 per cent
- cable networks located on an overlapping regional market with Sonera's subscriber connection market: 100 per cent
- Sonera's share of the turnover in the entire field of Finnish telecommunications: approximately 50 per cent.

63. As a result of the acquisition, the various content distribution channels and customer connections having the largest clientele would have concentrated on the same Group. The acquisition would have led to a situation where Sonera and Digita's transmission networks would no longer have been competing alternatives to content producers and consumers.

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64. According to the FCA's estimate, the acquisition would have provided Sonera with unique competitive advantages. As a result of the acquisition, Sonera would have become a supreme multi network operator in Finland and obtained a permanent head start over its competitors in different product and service development. Additionally, Sonera would have benefited from the strong position of the Finnish Broadcasting Company (FBC), Digita's joint owner, in the supply of television and radio programmes, particularly since the digital television operations shall commence in the bundle of channels owned by FBC and since the company is the only one who currently has the right to national digital radio operations in Finland.

65. In its assessment of Sonera's increased market power, the FCA paid attention to Digita being indispensable in the development, fitting and testing of the technical solutions and new content services of the digitalised public broadcasting network. Sonera's position would have been further strengthened by Digita's distribution system being able to affect the service concepts realised in the network. Hence, the acquisition would have led to Sonera being able, with Digita's aid, to affect the competitive possibilities of other incumbents in the operating environment of digital television and radio. In its proposal, the FCA found that the possibilities to develop the field would appreciably improve if Digita could cooperate more equally with several operators and resources would not be heavily concentrated through the acquisition.

66. The FCA concluded several negotiations with the parties on the commitments on the basis of which the acquisition could have been conditionally approved. The proposals of the parties left so many of the above-mentioned competitive problems open, however, that the conditional approval of the acquisition was not possible.

67. On 10 July, the Competition Council accepted the concentration as conditional. Departing from the commitments originally offered by the parties, the Council imposed on Sonera e.g. an obligation to refrain from seeking a licence for digital television broadcasts. In the beginning of August 2000, Sonera announced that it would not acquire control in Digita and that it would reserve the right to obtain a licence.¹

Finnlines plc / Transfennica Oy

68. Finnlines notified to the FCA its planned acquisition of the entire stock capital of Transfennica from UPM-Kymmene plc, Metsä-Serla plc, Myllykoski plc and Oy Metsä-Botnia Ab by an agreement concluded in June 2000. The selling companies have also been major customers of Transfennica.

69. The FCA did not make a decision containing a detailed analysis, as the parties cancelled the acquisition after negotiations on a package of commitments conducted with the office. The estimates that follow are based on the FCA's September 2000 decision on the commencement of further proceedings.

70. Finnlines' business divisions include sea transports and port services. The company is a liner shipping company specialising in freight transports, with principal operations in the Baltic and the North Sea. Finnlines' route network covers all the major ports in Finland and approximately 20 ports abroad. In 1999, approximately 66 vessels were in service. The majority of the vessels are ro-ro freight vessels and ropax (freight-passenger) vessels. Finnlines offers port services and related information services in Helsinki, Turku and Naantali.

71. Transfennica specialises in the sea transports of forest industry products, which has approximately 20 ro-ro vessels in its use. The vessels of Transfennica deliver e.g. paper from Finland to the major ports of Northern and Western Europe.

72. According to Finnlines, the relevant product market is comprised of the sea transports of goods carried in large consignments in the routes between Finland and various European transport areas. Goods carried in large consignments refer to goods which are transported or may be transported in the freight unit, which include e.g. trailers, containers and various platforms. The transport areas in question are the German coast, the Polish coast, Scandinavia, the British Isles, the Benelux Countries and the Bay of Biscay. According to the notifier, ro-ro linear traffic conducted by the parties compete with transports conducted as non-linear traffic and with transport specialising in container shipping. The notifier finds that road transports are also a major competitor of ro-ro linear traffic

73. However, the market definition of the notifier could not be accepted as a basis of the assessment of the competitive effects of the concentration. The FCA held that, from the customer's perspective, container traffic does not replace ro-ro traffic because the ro-ro vessels ability to load and unload moving trailers cannot be utilised therein. The FCA found in its investigations that the shipping companies specialising in the use of trailer traffic should adjust their shipping systems to be able to use containers in their transports. Major differences between containers and trailers were also found in the loading and unloading of goods. Additionally, many consignees in the southbound traffic do not have the necessary docks for the unloading of goods. Container traffic was also found cheaper than ro-ro traffic. Road transports to Central Europe are much more expensive than both forms of sea transports. E.g. for these reasons, the FCA came to the conclusion in its initial estimate that the ro-ro linear traffic should be separated from container traffic as its own relevant product market.

74. The preliminary estimate of the geographical market was that the German Baltic Sea traffic, the German North Sea traffic, the Benelux Countries' traffic, the British Isles' traffic, the Bay of Biscay traffic and the Polish traffic each formed their own market further divided into southbound and northbound traffic.

75. In its preliminary estimate, the FCA held that the concentration was likely to lead to the creation of a dominant position in the market thus defined. The market shares of the concentration would have been extremely high in most transport areas, particularly in the traffic between Finland and Germany's Baltic Sea ports. The assessment also considered the long-term freight agreements of the concentration, which ensured a certain freight volume, and the frequent schedules of Finnlines and Transfennica, their numerous routes and the operations of Finnlines as a producer of port services.

Carlsberg A/S / Orkla ASA

76. Carlsberg founded Carlsberg Breweries A/S and, with a contract dated May 2000, 40 per cent of its shares to the Norwegian Orkla ASA. In the arrangement, Orkla transferred the Pripps Ringnes Ab Group to Carlsberg Breweries as well as the shares of Baltic Beverages Holding Ab (BBH) owned by Pripps Ringnes. I.e. parties to the transaction agreed on the merging of their brewery operations under the name of a new company called Carlsberg Breweries A/S of whose shares Carlsberg owns 60 per cent and Orkla 40 per cent. The acquisition was approved conditionally in January 2001.

77. Without the conditions stipulated in the decision made by the FCA, the merger would have resulted in powerful links between the two leading competitors on the Finnish markets, namely Hartwall and Sinebrychoff, and in leading to a situation where these companies would have obtained a joint dominance on Finland's beer, cider, long-drink and soft-drink markets. Sinebrychoff and Hartwall's combined market shares regarding beers and ciders are just below 90 per cent, in long drinks over 90 per cent, and in soft drinks and mineral waters approximately 75 per cent.

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78. The principal approval condition for the transaction was that Orkla renounces its Hartwall shares and does not appoint any representatives to the board of directors of Hartwall nor to other company bodies. However, this alone was not enough to eliminate the competition concerns caused by the transaction, because Carlsberg and Hartwall would still retain a close connection with one another via their joint ownership of Baltic Beverages Holding (BBH) operating on the fast-growing Baltic and Russian markets. Additional conditions were therefore included in the decision with the purpose of preventing the naming of the same persons to the board of directors and executive positions in Sinebrychoff and BBH. The aim in doing so is to hinder the transfer of information on competitive conduct between Hartwall and Sinebrychoff.

79. Furthermore, the conditions stipulate on decision-making procedures in certain matters connected to BBH. Should Carlsberg and Hartwall disagree on certain investments or the distribution of profits at BBH, Carlsberg shall, for its part, submit the matter to an independent trustee approved by the FCA. This is intended to prevent Carlsberg from acting in BBH in a way likely to induce Hartwall to hold back from competition on the Finnish markets.

80. Furthermore, the decision includes a condition whereby Carlsberg undertook to see to it that AB Pripps Bryggerier terminates its distribution agreement with Hartwall regarding the beer Lapin Kulta in Sweden, terminates its import agreement with Hartwall regarding importing of Ramlösa to Finland, and terminates its licence agreement with Hartwall regarding the soft drink Pommac. Additionally, Carlsberg undertook to terminate its agreement with Hartwall on the licence-based production of Tuborg.

81. In case the parties to the transaction fail to fulfil these commitments, Carlsberg is required in the decision either to sell its Sinebrychoff shares or alternatively to implement such an arrangement as will result in the companies belonging to either the Carlsberg or Hartwall Groups not owning shares in BBH. The purpose behind this condition is to ensure that Carlsberg and Orkla fulfil their commitments. The fulfilment of the commitments is monitored by an independent trustee, whose appointing, rights and tasks have been set out in the decision.

82. Decisions concerning the merger of Carlsberg and Orkla were previously issued in December 2000 by the competition authorities of Sweden and Norway. In Sweden, Carlsberg undertook to give up some of its trademarks and to terminate its co-operation with the Coca-Cola Company of Sweden. In Norway, too, Carlsberg undertook to terminate its co-operation with Coca-Cola.

Georgia-Pacific Corporation / Fort James Corporation

83. In July 2000, Georgia-Pacific Corporation and Fort James Corporation signed an agreement with the aim of merging Fort James Corporation into the existing tissue production of Georgia-Pacific Corporation.

84. The Georgia-Pacific Corporation (GP) is an American Group, which manufactures and delivers e.g. building materials, paper and pulp. To the Finnish tissue market GP delivers hygienic control dispensing systems.

85. The Fort James Corporation (FJ) is likewise an American Group, which manufactures and delivers e.g. bathroom and tissue products to consumers for “away from home” purposes. FJ manufactures and sells tissue products to the Finnish market and currently has production facilities in the Finnish cities of Nokia and Ikaalinen. The company is known in Finland for its Embo, Emilia, Nessu and Luonnonystävä brands.

86. As a result of mutual arrangements between GP and its Finnish main competitor Metsä-Tissue, such major links were formed between GP and Metsä-Tissue that they could not be perceived to exist in a normal competitive situation with each other. The FCA found that the co-operation arrangements could lead to the creation of joint dominance for GP and Metsä-Tissue. The companies' joint market share in several segments of the Finnish tissue market is extremely high, 85-100 per cent.

87. The above-mentioned companies have cooperated particularly with respect to dispensing systems and the related products in the European market. In practice, this has meant co-operation in product development, marketing, sales and strategy within the joint venture of GP and Metsä-Tissue.

Metsäliitto Osuuskunta / Vapo Oy

88. In March 2001, the FCA approved as conditional a concentration whereby Vapo Oy transfers from the state's control to the joint control of the state and Metsäliitto Osuuskunta. A central condition for the approval of the transaction was that the parties partially divest the business activities related to wood based fuels (sawdust, bark and industrial wood residues and forest residues). Additionally, the conditions include some behavioural commitments set on the parties and conditions related to the supervision of their implementation.

89. The starting point of the investigation was that the Vapo conglomerate holds a dominant position in the energy peat market and that it is active in the wood based fuel market. Biowatti Oy, a nation-wide bio energy company and also a subsidiary of the Finnish forest industry enterprise Metsäliitto, specialises in wood based fuels. In practice, wood based fuels are the sole energy form competing with peat and they are used particularly in the production of heat and energy by the industry. The share of Metsäliitto of the approximately 6.4 TWh wood based fuel market is approximately 30 per cent and the share of Vapo approximately 20 per cent.

90. If conditions had not been imposed, the concentration would have led to the strengthening of a dominant position significantly impeding competition in the peat market and the creation of a dominant position in the wood based fuel market. The central condition for the approval of the concentration was that, in practice, Vapo divests all of its raw material purchases for wood fuels and wood based fuel deliveries from outside the Vapo Group in Finland. Metsäliitto undertakes to divest some of Biowatti's wood fuel delivery agreements with customers outside of the Vapo Group and some of the raw material supply agreements for wood fuels from outside the Vapo Group.

91. The functions to be divested from the concentration form a viable, competitive and regionally extensive business entity, whose share of the total market of wood based fuels is 20-40 per cent. The acquirer of the business activities shall be independent of the parties of the transaction and shall have the necessary financial and other resources. The acquirer shall be approved by the FCA, and an independent trustee shall be appointed to monitor the implementation of the conditions.

92. The behavioural commitments are aimed at limiting the parties' possibilities to artificially connect the purchases of energy peat and wood based fuels, on the one hand, and wood based fuels and raw material procurements, on the other.

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Merger control statistics

Issues examined in merger control in 2000

(figures from 1999 in parenthesis)

Total of merger control decisions	Pending merger notifications 31 December 2000	Pending prenotifications 31 December 2000	Cancelled prenotifications	Other closed issues
114 (81)	9 (7)	10 (13)	27 (18)	35 (25)

Merger decisions made in 2000 by the type of decision

(figures from 1999 in parenthesis):

Proposal to ban	1 (0)
Approved conditionally	5 (5)
Approved as such during Stage II	1 (1)
Approved as such during Stage I	103 (74)
Other merger decisions	4 (1)

Merger decisions made in 2000 by the type of concentration

(figures from 1999 in parenthesis):

Acquisition of control	60 (41)
Acquisition of business operations	43 (33)
Merger	3 (1)
Joint venture	8 (6)

Nationality of the parties in merger decisions made in 2000

(figures from 1999 in parenthesis):

All parties Finnish	49	(26)
All parties foreign	40	(32)
Minimum of one foreign party	25	(23)

III. The role of competition authorities in the formulation and implementation of other policies (regulatory reform)

FCA's Government and Markets Project

93. Commenced in 1998, the Government and Markets project and its section on government offices focus on influencing the reorganisation of production activities and the reform of regulation and administrative practice. With respect to the marketisation of the municipal service production, the FCA aims at the prevention of potential competitive problems, providing information on the possibilities of workable competition and locating measures limiting and distorting competition.

94. The aim of the project is to secure to possibilities for sound economic competition between private and public production in a situation where fields of public production are opened up for competition and where public production expands into fields where previously only private enterprises have operated. The objective here, too, is to increase economic efficiency, to secure the benefits of the customers and to develop and expand the trading opportunities of business undertakings. In the context of the project, the FCA has sought to create sustainable principles, from a competition policy viewpoint, for the assessment of public business.

95. From the viewpoint of competition, the problems still centre on the ongoing partial protection of public production from competition, which brings with it both possibilities and incentives for artificial restriction of competition. The different parties involved in FCA's project work have found it necessary and are of the opinion that it has benefited both the public organisations themselves engaging in business and private companies.

96. The initiatives and statements related to the project have, in several cases, resulted in genuine changes in the conduct of the relevant actors. Due to the project, the monitoring authorities of the public sector have become much more aware of the existence of the problems and their economic significance.

97. Representatives of the FCA have discussed the role of government and markets in several public seminars and training sessions. Participation in different legislative and other reforms has also been typical. An example of the latter form of advocacy is the participation of FCA's representatives in the preparation of legislation concerning the reform of the Finnish National Road Administration and the tendering of the maintenance of the railway track in 2000.

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98. In accordance with the project principles, complaints have been primarily dealt with through consultation instead of Competition Council proceedings. In the following, summaries of the major cases investigated within the project during 2000-2001:

Government offices

99. The organisation and activities of the **Finnish Road Administration** (hereinafter Finnra) have been developed in accordance with the March 1999 initiative of the FCA. A separate office ordering road maintenance works (Finnra) and Finnish Road Enterprise offering road maintenance commenced operations on 1 January 2001. The FCA also participates in the follow-up of the reform. The FCA's statement from 2000 finds that, during the transition period, Finnra has to explore the use of total and subsequent financing more extensively than before in major infrastructure projects and to extend tendering to smaller building and maintenance works. In addition, any changes shall occur systematically and predictably to enable private companies to engage in organisation reform and the development of their conduct, and subsequently, to participate in road building and maintenance work.

100. With regard to the **Avena Group**, the FCA made an initiative in June 2000 where it proposed that the reserve supply services of grain be tendered to secure that the company responsible for the swapping of grain would solely manage the reserve supplies and obtain the necessary storage services from suppliers approved by the National Emergency Supply Agency. Hence, in the summer of 2000, the Agency arranged a tender on the reserve supplies services of grain.

101. The FCA also investigated whether Avena Siilot Oy artificially supported Avena Nordic Grain part of the same group while pricing its cargo handling and storage. The investigation resulted in Avena Siilot announcing, in December 2000, that it would adjust its RPM usage and delivered to the FCA a price list effective from 1 July 2001, which enables workable competition.

102. Avena Siilot was also found to have abused its dominant position by keeping its pricing system confidential. However, when the company published its price list during the investigation, the FCA did not make a proposal to the Competition Council. The pricing of storage services by Avena Siilot was also suspected to be unreasonable, but the investigation was discontinued after the company has reduced the storage prices of its inland reserves by 20 per cent.

103. In the **Finnish Meteorological Institute** (FMI) case, the FCA made a proposal to the Competition Council in the summer of 2000 with regard to meteorological data where the FMI was found to have abused its dominant position when lowering the quality level of the radar images it delivered for international distribution. Because it was a question of wilful activity to which there were no acceptable financial or technical grounds, the proposal was made even though FMI had already quit the practice. The FCA also proposed that an infringement fine of FIM 200 000 be imposed on FMI. The case is still pending at the Competition Council.

104. The weather service market is presently in a state of transition where the new service competition has begun to threaten FMI's traditional dominant position. A corresponding development is also underway elsewhere in Europe. It is characteristic of the market that national meteorological institutes produce weather observations (meteorological data), which the commercial units of the institutes themselves and private weather service providers use when producing weather services. To maintain competition neutrality, it is vital that the national institutes collect uniform prices for meteorological data from both parties.

105. FMI still has major operating areas which are protected from competition and which provide it with strategic possibilities to affect competition in the Finnish weather service market. These include the

production and distribution of meteorological data and some of the services. As a solution to these problems, the FCA proposed, in the early spring of 2001, that the commercial weather service activities of FMI be incorporated and separated from the production of meteorological data and products. A complaint has been lodged with the FCA on weather services where FMI is suspected of predatory pricing in autumn 2000.

106. With regard to the **Finnish Maritime Administration (FMA)**, the FCA issued a statement in 2000 where it supported the development of the FMA's organisation and activities on the basis of a uniform state enterprise model. The statement emphasised that the maritime commerce should pay FMA for services rendered only, and this should not be used to subsidise the costs of the other operations of FMA. Creating conditions which give rise to and promote competition in the central operating areas of FMA was found problematic, however. According to the FCA, the customer-funded business could also be incorporated.

Welfare service and health sector

107. On the basis of complaints received, the FCA has also investigated the conduct of the various public health care units while these are expanding their operations into service production considered conducting of business. The problem is that public service production is being created in an area protected from competition, which provides it with an economies of scale benefit compared to the private sector. Since public health care units do not follow similar commercial pricing principles as private business undertakings, the competitive scene may become distorted, even though direct under-pricing or other artificial transfer of resources would not be involved. The FCA investigated e.g. the following cases related to health care last year:

108. The **Turunmaa hospital** was found to have expanded its service provision to occupational health services but not to have priced the services on commercial grounds, although this would have been possible. The result was that the prices of occupational health examinations were considerably more inexpensive than the corresponding services offered by the private sector. The hospital was not found to occupy a dominant position, however, and its pricing did not indicate a direct under-pricing or predatory pricing. More generally, the FCA found that the pricing conduct of such a public institution may, when becoming more common and extensive, have significant effects on competition and the functioning of the market.

109. In the case involving the laboratory centre of the **Pirkanmaa hospital district**, the cost price followed by the centre does not appear to fulfil the demands of competition neutrality of the open market. The hospital district was asked to announce which measures it shall take on the basis of the FCA's observations. At the same time, the hospital district was asked to assess what the significance of the provisions given on the customer fees of social welfare and health care is for the competitive situation of the service providers. The provisions provide on the laboratory and X-ray investigations in hospitals and health care centres, and prescribe that a maximum fee corresponding to the costs incurred in the production of the services may be collected for them.

110. In its response, the laboratory centre pointed out the competitive effects of the health insurance system of Kela, the Social Insurance Institution of Finland, which supports the private sector, and some other reasons limiting competition in the laboratory field. The FCA has requested that private laboratory service providers give a statement about the matter.

111. During the investigation, the laboratory centre and the Pirkanmaa hospital district have demonstrated that they seek to adopt market-based practices and, at the same time, to achieve genuine

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economies of scale and efficiency with organisation arrangements. Similar conduct is becoming the norm in other hospital districts, too. If the barriers between public and private service provision are removed from the laboratory field and the possibility for similar profit seeking is provided to private business undertakings, the development of the field may be perceived to be healthy.

112. The case involving **Oulu university hospital** has similar features to the Pirkanmaa case, and the FCA aims to make co-ordinated decisions in the two cases. The Oulu case involves the pricing of X-ray and other photography services offered to the private sector and the economies of scale enabled by the hospital's protected position having the potential to distort competition without actual cross-subsidisation and under-pricing. The hospital district of Northern-Ostrobothnia itself has considered that the current pricing covers the production costs involved.

113. Generally, the competitive situation may only improve if it is possible for the private sector to compete on the public health care services. During the investigation, the hospital district of Northern-Ostrobothnia has announced that it follows the chances to obtain X-ray and other photography services from outside providers as well. However, at the moment, private service providers are not able to meet the demand without major investments. On the other hand, the hospital district has not found it profitable overall to make parallel investments elsewhere in Northern-Ostrobothnia.

114. The **pharmacy sector bidding cartel** decision made by the FCA in autumn 2000 considerably boosted the competitive conditions of the pharmacy field. The case was opened following a complaint by the city of Helsinki where the Finnish Pharmacy Association and almost all the pharmacies participating in the tender arranged by the city of Helsinki were found to have engaged in co-operation, which violated the Act on Competition Restrictions (hereinafter the Competition Act). The investigation of the case was not continued or referred to the Competition Council, because the forbidden practice was found to have been partially caused by the monitoring authorities actively interpreting the price list for medicines as a system implying identical prices. The FCA also paid attention to the fact that the pharmacies had not been previously tendered.

115. The majority of the pharmacies which participated in the tender had adhered to the maximum prices confirmed by the State Council. However, according to the statement issued by the Ministry of Social Affairs and Health, the price list for medicines confirmed by the State Council shall be considered a maximum price system for medicines and hence cannot be appealed to, in order to prevent competition in the medical field. In the future, parties making medical and nursing supply purchases have the basis and legal right to tender pharmacies.

116. In February 2000, a new decision was issued by the FCA on **the single channel distribution of medicines**. The FCA did not take a stand to the individual competition restraints proposed therein; it examined the single channel system as a whole. The main finding was that, at this stage, the FCA does not intervene with the single channel system, as the structure of the relevant wholesale business is currently undergoing a change from inside the field. The decision also found that the exclusive rights agreements in medicine wholesale business may require that they be notified to the European Commission, as the Commission Regulation (EC) No 2790/1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices cannot, according to the FCA, be applied to the exclusive rights agreements. The single channel system has not in itself been found to harm the position of parallel distributors.

117. The competitive effects of the support granted by **Finland's Slot Machine Association RAY** to charitable organisations were investigated both on the basis of a complaint and several inquiries and the FCA's own investigations. Home assistance services for the elderly, service home activities for the elderly

and disabled, provision of catering services to other than the prime target group and patient transport operations were targeted, in particular.

118. RAY's support to charitable organisations in the field of social and health care is considerable each year and may thus have appreciable effects for competition. E.g. for 2001, the support received by charitable organisations amounts to FIM 2.1 milliard altogether, making an increase of 8.8 per cent to 1999. RAY and the Federation of Finnish Enterprises drafted a recommendation in spring 2000, which lists several of the FCA's views and the FCA also continued its co-operation with RAY after the recommendation had been issued. In November 2000, the FCA delivered to the RAY its proposal for principles whose following would relieve the distortion of the competitive scene between the charitable organisations receiving support and the other service providers. RAY's stand to the proposal was positive. The FCA's final statement was given in January 2001.

Distortions of value added tax

119. With respect to the business operations of the state and the municipalities, the FCA proposed in its initiative to the Ministry of Trade and Industry in May 2000 that the Ministry of Trade and Industry would start negotiations with the Ministry of Finance to redress the competitive distortions caused by value added tax. The initiative was based on business undertakings in different sectors complaining to the FCA about the competitive problems involved with value added tax. Competitive problems have been created e.g. in the production of food, health care, training and social services.

120. Corresponding competition concerns may appear in all the fields where some business undertakings are able to sell their services duty-free on the basis on the Value Added Tax Act. In its initiative, the FCA found that the municipalities' own production units and private companies producing supplementary services related to the duty-free service production of the municipalities shall either both sell their services with or without the value-added tax.

IV. Resources of the Finnish Competition Authority

121. The Finnish Competition Authority is divided into seven units headed by the Director General. The units are responsible for the following (situation 1 January 2001):

- Merger Control
- Markets 1
 - telecommunications
 - electronic and graphic mass communications
 - finance
 - energy and public service utilities
- Markets 2
 - trade
 - industry

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- transport
- services

- Markets 3
 - governmental competition restraints
 - construction
 - environment

- International affairs: EU co-ordination and other international co-operation, co-operation with Provincial State Offices

- Communications and Personnel Development: communications, personnel development, information services and translation services

- Administration: personnel and financial administration, information management.

122. The FCA's operating budget for 2001 is FIM 23 million (USD 3.35 million). The amount of personnel budgeted for 2001 is 58 person-years.

123. The FCA's staff may be classified as follows (January 2001)

Economists	19
Lawyers	16
Other professionals	13
Support	10
Total	58

124. Of these, approximately 40 employees work in enforcement against anticompetitive practices and approximately ten in merger review and enforcement.

NOTE

¹ The Competition Council issued an interim decision on 9 May and on 9 July a final decision on the FCA's proposal regarding the banning of the Digita acquisition between Sonera, the leading Finnish telecommunications company, and Yleisradio, Finnish Broadcasting Company (FBC). This was the first time that the Competition Council issued a decision in a concentration case. FBC and Sonera agreed on an acquisition whereby FBC undertook to sell and Sonera to buy 34 per cent of Digita's shares. Digita is FBC's subsidiary, which offers national broadcasting and transmission services of television and radio programmes as well as technological services related to telecommunications operations. The Competition Council found that, if implemented, the concentration would have appreciably strengthened Sonera's dominant position. The competition concerns were related to the rising possibility of the two parties to prevent their competitors' equal access to Digita's services holding a key position. Digita owns the radio towers and infrastructure needed in national television and radio broadcasting. The Competition Council also explored the future possibility to use digital television not only for interactive services but also for the distribution of Internet services for the consumers. The Competition Council found that imposing conditions on the acquisition took precedence over its banning. Since the Council found that the conditions and sector-specific regulation were sufficient to insure equal access to the network, it dismissed the FCA's proposal to ban the concentration. The Council accepted it e.g. on the condition that Sonera does not apply for a licence for digital television operations. Sonera waived the acquisition.