FINLAND

(1999)

TABLE OF CONTENTS

FINLAND

Executive Summary

1. For the first time for an entire year, the provisions on the control of concentrations, effective since 1 October 1998, were applied at the FCA in 1999. The FCA received 86 concentration notifications, which exceeded by twofold the number of notifications predicted, as the reform of the Act on Competition Restrictions (hereinafter the Competition Act) was prepared. The FCA made 81 concentration decisions, and in five cases, conditions were imposed on the acquisition.

2. The so-called key industries whose restrictive practices the FCA had chosen for closer scrutiny in 1999 included the government and the markets; the communications market; energy and public utilities and forest industry and economy. In the assessment of competition restraints, which did not fall within the key industries, the FCA sought to focus on competition restraints, which are essential for the economy and appreciably affect the competitive conditions.

In the field of communications, the major decisions and opinions of the FCA concerned the field of telecommunications. The FCA sought to prevent the exploitation of certain bottle-neck factors prevailing in the market, such as the unreasonable pricing of the local loop and fixed connections by dominant companies, and the binding and discriminatory business terms applied by the companies to their clients. The FCA made proposals to the Competition Council on the banning of the abuse of dominant position in the telecom market and the electricity market, and the banning of a discriminatory distribution policy of a music television channel. The FCA refused to grant an exemption to company-specific agreements in the raw-wood trade. Additionally, the FCA gave its opinions on the conditions of temporary telecom service agreements, terms of offering national roaming and the competitive problems in the weather service sector.

3. In 1999, 253 new matters involving competition restraints were brought before the FCA, and it resolved a total of 251 competition restraint issues. Additionally, the FCA made five initiatives and issued 59 written statements to other authorities in regulatory matters. The FCA made four proposals to the Competition Council. The Competition Council issued eight decisions in 1999. The Supreme Administrative Court issued five decisions on appeals made on Competition Council decisions.

4. In September 1999, the Supreme Administrative Court made a decision on the application of the Competition Act to the conditions of the collective bargaining agreement. By its decision, the Supreme Administrative Court dismissed the complaint of the Electrical Contractors' Association of Finland and ruled that the complaint concerned a labour market agreement to which the Competition Act is inapplicable.

5. The Competition Council found in its decision of September 1999 that the calendar publisher Ajasto was guilty of abuse of dominant position in the market of calendars and almanacs published in Finland in its application of tying and discriminatory criteria while granting basic discounts, annual compensations and market support. The Council imposed an infringement fine of FIM two million on Ajasto.

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

The committee examining the position of the Competition Council

1. As stated in the 1998 report, the Ministry of Justice set up a committee to investigate the possibility of converting the Competition Council into a special court or transferring its tasks to ordinary courts. One option was to combine the Competition Council and the Market Court into a new special court. At the same time, a working group was established to examine the position of the Market Court. The

committee and the working group proposed, in a report published in February 1999, that a new special court be established which would handle all the issues now falling within the jurisdiction of the Competition Council and the Market Court. Two dissenting opinions were recorded in the report: both the FCA and the Chairman of the Competition Council found that the Council should be made into an independent special court. Several parties providing statements shared this view.

2. On the basis of the feedback from the report, the Ministry of Justice established a new working group on 1 June 1999, whose task was to prepare a draft proposal for a Government bill to handle the issues falling within the jurisdiction of the Competition Council and the Market Court. At the start of 2000, the working group proposed in a memorandum, hence contradicting the findings of the previous report, that instead of a special court being established, competition issues would, due to their public law nature, hereinafter be dealt with in regional administrative court with certain special operational arrangements.

3. According to the memorandum, other than competition matters could be solved in an appropriate local court, since these do not require the use of expert members because of their scope, demandingness or other reason nor the use of other special arrangements, due to which the issues should be handled in a special court.

4. In its statement of 29 February 2000 on the working group's memorandum, the FCA presented its doubts on whether an efficient and competent handling of competition issues may be guaranteed in administrative court. The FCA proposed that the matter be referred back for repreparation on the basis of the previous working group proposals.

II. Enforcement of competition laws and policies

1. Action against anticompetitive practices, including agreements and abuses of dominant positions

a) Summary of activities of competition authorities

5. A provision on negative clearance was included in the Competition Act in the context of its reform on 1 October 1998. Under it, the FCA may, upon application, issue a decision wherein it states that an agreement or a procedural decision of the applicant does not fall within the scope of the prohibitions of the law, abuse of dominant position excluded. The year 1999 was the first whole year that the companies had a chance to apply for negative clearance, and the FCA received eleven applications, which was fewer than predicted. In several of the cases, an exemption was also applied for.

6. In 1999, 253 matters involving competition restraints (deregulation initiatives and statements excluded) were brought before the FCA. Of these, 75 per cent were complaints; nine per cent were applications for either exemption or negative clearance; seven per cent were cases initiated by the FCA itself; and nine per cent were other matters, including inquiries of minor importance (cf. the annexed graphs).

7. In 1999, the FCA resolved a total of 251 competition restraint cases (deregulation initiatives and statements excluded); in 76 cases, by means of a decision, of which 18 concerned exemption applications and two applications for negative clearance. A total of 119 cases were concluded by an administrative letter (cf. the annexed graphs).

8. In 1999, the FCA made four proposals to the Competition Council on terminating a competition restraint prohibited in the law; in three cases, a competition infringement fine was also proposed.

9. The Competition Council issued eight decisions in 1999.

10. The Supreme Administrative Court issued five decisions on appeals made on Competition Council decisions.

General survey of the FCA's activities

11. The so-called key industries whose restrictive practices the FCA had chosen for closer scrutiny in 1999 included the government and the markets; the communications market; energy and public utilities and forest industry and economy. In the assessment of other competition restraints, which were not included among the key industries, attention was paid to competition restraints, which most affect the national economy and appreciably affect the competitive conditions.

Government and the Markets

12. The aim of the government and the markets project was to guarantee the prerequisites of workable competition in the private and public provision of services in a situation where fields of public production are increasingly opening up for competition and expanding into fields where only private firms have previously operated. The new economic operators often enjoy certain unique competitive benefits. The Competition Act is applicable to public service provision after this entered the domain of entrepreneurship referred to in the law.

13. The FCA's investigatory work focused on the markets and market operations of government bodies and facilities and the marketisation of the municipalities' public service provision. With its initiatives, the FCA sought to influence the reorganisation of the public service provision and the reform of regulation and administrative practice. The operators carried out several changes in their practices, which radically improved the prerequisites of workable competition in the markets where marketised public provision of services plays a major role.

14. The next stage in the project involves publicising the problems and initiating the related public discussion.

Communications

15. In the communications market, the intention was to intervene with abuses of dominant position whereby the development of new forms of operations is prevented and entry into the field restricted. The majority of the project's resources were focused in the telecom market and the investigation of already detected competition restraints, due to the rapid development in the telecom market and the integration development of mass communications, telecommunications and information technology.

16. Telecom operations has been characterised by a move from a regulated environment to competitive markets from the end of 1980s. The transition in the markets partially explained the increased number of complaints to the FCA.

17. In the telecom market, the FCA sought to prevent the utilisation of so-called bottleneck factors limiting competition. This has concerned the unreasonable pricing of the local loop and fixed connections

by telecom companies having local dominance and the tying and discriminatory business terms applied by the companies to their clients. In this context, a stand has also been taken to the mutual substitutability of fixed and mobile telecom services. The co-locations and network access points required for the provision of the new package-switched internet services may also be perceived as bottleneck factors.

Energy and public utilities

18. 18. The aim of the energy and public utilities project was to ensure, improve and increase the competitive conditions in the markets of electricity, natural gas, peat and the processed products of the oil industry. Of the public utilities, energy plants, waterworks and port operations were monitored.

19. 19. Introducing competition into the electricity market shifted the focus of competition control to the monitoring of operational units still retaining their monopoly nature, such as electricity transmission and district-heating production. When incumbent operators moved to competed markets, they sought to defend their positions e.g. by the use of binding business terms, leading to competitive distortions in the affected fields. In the sales of electricity, fiercer competition appears to lead to a tighter co-operation between the energy companies.

Forest industry and economy

20. In the forest industry and economy project, the aim was to prevent the industry from using its bargaining power to felling and transport operators in a manner which threatens to lead to a disruption of the wood maintenance chain, or the opposing of the bargaining power by cartel arrangements.

Other industries

21. In the operations of other industrial companies, the investigations focused on fields where buyer or sales operators held a dominant position, where the market structure was otherwise centralised or where the entry or operating possibilities into a field was limited due to public regulation. The various certification and quality control systems and quality labels, whose administration involves horizontal co-operation between incumbent companies and the setting of the level of requirements contains exclusionary features, became a problem in several sectors.

Traffic and the Environment

22. Within traffic, a target of special observation was the goods traffic and the related reform projects and the unfair terms of agreement of transportation companies from the viewpoint of small-sized companies. In passenger transport, the major problem was public regulation, blocking the creation of new alternative mass transport solutions and price competition. Additionally, new local price cartels have appeared in the field.

23. Within environmental protection, the expansion of producer responsibility has increased horizontal co-operation between producers and strengthened the position of the different producer associations. The new stricter sorting and handling regulations have also increased costs and centralisation within transport and handling services. This line of development led to complaints about entry barriers and unfair terms in the recycling and handling systems and about the exclusion of competition in the utilisation and transport of waste.

b) Description of significant cases

Cases handled by Supreme Administrative Court

Administering of copyrights

24. The 1998 report records the Competition Council's Teosto decision, according to which it had remained unestablished whether Teosto, which monitors and administers musical and literary copyrights in Finland, had been guilty of forbidden abuse in collecting different sized royalties from the mutually competing public broadcasting company Yleisradio (Yle) and the commercial television company MTV. MTV´s royalties are composed of broadcasting music on television, whereas Yle's compensation mainly consists of airing music on the radio, and to a minor extent only, of supply directed to television viewers. The Council ruled that Teosto had presented sufficient grounds for the differences in compensation and dismissed the demands on price discrimination. The Council found, however, that the confirming of royalties in a manner which does not differentiate between the compensations of music broadcast on the television as opposed to on the radio did not meet with the criteria of clear and transparent pricing referred to in the Competition Act.

25. MTV appealed the decision to the Supreme Administrative Court and continued to find that the compensations collected from it are unreasonable and discriminatory. In its decision of June 1999, the Supreme Administrative Court dismissed the appeal by stating that the Competition Council decision was well founded.

Application of the Competition Act to terms of the collective agreement in the labour market

26. The case of the Electrical Contractors' Association of Finland involved assessing whether the Competition Act is applicable to stipulations of the local collective bargaining agreements on the pricing of labour. Collective bargaining agreements are concluded between employee and employer associations and their aim is to determine the minimum terms followed in an individual employment relationship. Under Article 2(1) of the Competition Act, the Act shall not be applied to agreements or arrangements, which concern the labour market. If the conditions contained in collective bargaining agreements do not concern a central area of the employment contract or working conditions (salary, working hours or other essential issues related to the social position or safety of the employees) and at the same time, they harmfully restrict competition, the Competition Act may be applied. The Competition Act has been applied to those stipulations in the paper industry´s collective agreements, which prevented employer enterprises covered by the agreements from using outside service enterprises for such tasks as cleaning, security and transportation (cf. the 1994 report).

27. The FCA and the Competition Council had found in their decisions that this issue did not fall within the sphere of application of the Competition Act, since the said provisions of the collective bargaining agreement concerned a central area of employment contracts and working conditions. On the basis of the above, the FCA and the Council had dismissed the case.

28. The Electrical Contractors' Association appealed the Council decision to the Supreme Administrative Court. According to the collective bargaining agreement, the application of the stipulations was only allowed by the member companies of the employers' association in the field of electricity and telecoms. The association held that the Competition Act should be applied to the matter as the factual purpose of the stipulations of the collective bargaining agreement was to place companies active in the same field in an unequal position with respect to their competitive prerequisites. The stipulations of the

collective bargaining agreement exhibited harmful effects as defined in the Competition Act on the business activities and price formation of companies applying the collective bargaining agreement on a different basis than the Collective Agreements Act.

29. By its decision of September 1999, the Supreme Administrative Court dismissed the complaint of the Electrical Contractors' Association and ruled that the proposal concerns such terms of the collective bargaining agreement which deal with local agreements on the pricing of labour. Hence, the proposal concerns such an agreement of the labour market to which the Competition Act is inapplicable.

Cases handled by the Competition Council

Abuse of dominant position: Ajasto

30. As stated in the 1997 report, the FCA proposed to the Competition Council that it find the calendar publisher Ajasto guilty of abuse of dominant position and impose upon it an infringement fine of FIM three million.

31. Ajasto had, until 1995, an exclusive right to manufacture, publish, circulate and import Finnish and Swedish almanacs and calendars to the country. This exclusive right was repelled in the beginning of 1995, which removed legal impediments from competition. Ajasto still retained its dominant position in the market.

32. In its decision of September 1999, the Competition Council found Ajasto guilty of abuse of dominant position in the market of calendars and almanacs published in Finland in its application of tying and discriminatory criteria while granting basic discounts, annual compensations and market support. The Competition Council found that tying the basic discount and annual compensation to the amounts of the customer's previous year's purchases equalled a prohibited loyalty and target rebate. Additionally, the Competition Council found that Ajasto's discount system during 1996-1998 was discriminatory and lacked the kind of clarity, transparency and cost-accountability, which is required of a company occupying a dominant position. The Competition Council imposed an infringement fine of FIM two million on Ajasto.

33. Ajasto has appealed the Council decision to the Supreme Administrative Court.

Discounts: Otava

34. As stated in the 1997 report, the FCA proposed that the Competition Council find a major Finnish publishing house Otava guilty of abuse of dominant position and order Otava to terminate its discriminatory discount pricing practice in the sales of upper-secondary school books. The FCA also proposed that the Competition Council impose an infringement fine. The bookstore Lukiolaisten Kirjakauppa catering to the needs of upper-secondary school children had requested the FCA to investigate whether Otava was abusing its dominant position in granting Lukiolaisten kirjakauppa a discount which was five per cent smaller than that granted to other bookstores.

35. Under the Finnish competition legislation, it is possible to intervene with the one-sided abuse of market power also under the general clause on harmful vertical agreements, if the criterion of dominance is not fulfilled. The FCA proposed to the Competition Council that unless Otava is seen to occupy a dominant position, Otava's pricing practice poses a harmful vertical competition restraint, which has affected the price formation in the field in a manner unbefitting to sound and effective economic competition.

36. The preliminary question in the case was whether the product market may be defined in such a way as to limit it to school books published by Otava only. In its interim decision of June 1998, the Competition Council found that, in addition to the upper-secondary school books published by Otava, the school books of other publishers in use in Finland shall also be included in the relevant market. The Council found that Otava did not occupy a dominant position in the market of upper-secondary school books in Finland thus more extensively defined.

37. The Competition Council issued its decision on the alleged harmfulness of the discount practice in June 1999. In its decision, the Council dismissed the claims of the FCA. According to the Council, the discount granted by Otava to the bookstores constituted a so-called functional discount, whereby Otava compensates the bookstores for maintaining the distribution network of the books published by Otava. Lukiolaisten Kirjakauppa does not engage in bookstore business as defined by Otava's terms and, hence, does not fulfil the prerequisites of a discount granted to other bookstores. Lukiolaisten kirjakauppa obtains advance orders from schools in co-operation with the student associations of upper-secondary schools and then buys the books either directly from the publishers or from Kirjavälitys, a company offering wholesaling and logistical services, and delivers them to the schools. The discount was shown to have acceptable grounds from a competition-law viewpoint and no connection was shown to exist between Otava's discount practice and the lack of price competition in the schoolbook market. Lukiolaisten Kirjakauppa has not been placed in an unequal position while the discount practice has been applied as compared to other similar distributors. A difference of size quoted did not lead to any measures based on the Competition Act.

38. The FCA has appealed the decision to the Supreme Administrative Court.

Cases handled by the FCA

Telecom operations

Abuse of dominant position: Helsinki Telephone Corporation

39. In its proposal to the Competition Council, the FCA held that the Helsinki Telephone Corporation (HTC) had abused its dominance by pricing its local loop and fixed connections in a discriminatory, tying and unreasonable manner and in tying the lease of the local loop and fixed connections to the purchase of other telecom services. The HTC held a dominant position in the supply of fixed network subscriber lines on a region where it has an unlimited right to the conducting of local telecom operations till the year 1993.

40. The FCA proposed to the Competition Council that it impose a conditional fine to enforce the prohibition of dominance and an infringement fine of FIM 30 million.

41. Local telecom operations were liberalised in 1994 and telecom network companies were obliged to lease the local loop to other companies from 1 August 1996. The HTC had raised the prices of the local loop at a time when the obligation to lease the network became effective. The company had charged other telecom operators a higher price from the loop from than what end customers were paying for the corresponding product. This becomes clear e.g. from the tender on the total service package of the phone centre of the city of Kerava. The HTC offered the service package to the city of Kerava at a lower price than what the competing operators could afford to lease the local loop needed for the realisation of the service. By its activities, the HTC has prevented the entry of new telecom operators into the field and protected its own dominance. Competition restraints realised by the pricing of the local loop have a harmful effect not only on local telecom competition but also on the competitive conditions of all telecom

services used through the fixed telecom network, including those of Internet services, long-distance calls and foreign calls.

42. The case is currently pending at the Competition Council.

Abuse of dominant position: Päijät-Hämeen puhelinyhdistys

43. The FCA made a proposal to the Competition Council on banning the abuse of dominant position by the local telehone company Päijät-Hämeen Puhelinyhdistys (PHP). The FCA found that the ownership discounts (offered to the members of PHP) used by the PHP in the pricing of its subscriptions tied and discriminated against customers and excluded competing telecom operators from the markets. PHP offered to its members a basic charge for their fixed connection which was more inexpensive than that offered to other customers. These loyalty rebates also slowed down the opening up of the local telecom market and complicated the provision of competing services. A new entrant cannot offer an equally inexpensive basic charge as the PHP, since the basic charge collected by PHP from its owners is appreciably lower than the fixed costs accrued to the operator from the subscription.

44. The FCA proposed to the Council that it order PHP to terminate its activities violating the Competition Act upon the threat of a fine. The FCA also proposed to that an infringement fine of FIM 500 000 be imposed on the PHP.

45. The decision will have major importance for the introduction of local telecom competition, since, in addition to PHP, ownership discounts are used in other local telephone companies, too.

46. The case is currently pending at the Competition Council.

Terms of temporary telecom service agreements: Sonera

47. The FCA investigated the restrictive and binding terms of the temporary telecom service agreements of dominant telecom operators with their company clients. The initiative had been made by competing operators offering distant and foreign calls. The FCA found that the leading Finnish telecom company Sonera held a dominant position in local telecom operations in its traditional operating area with respect to all such customers who do not need a connection which transmits double-directionally at two Mbit/s. On the basis of the temporary telecom service agreements, Sonera provided its customers with rebates from the prices of local, distant and foreign calls which could be seen to amount to target and loyalty rebates tying customers. Although Sonera did not occupy a dominant position with respect to its major customers needing a connection of two Mbit/s, the company possessed major market power with respect to them. Due to this, the rebates based on the duration of the telecom agreements were deemed as harmful competition restraints. Since Sonera proposed a commitment to dismiss the use of the tying rebates within a transitional period, the FCA closed the case.

48. The harmful effects caused by the tying rebate system have showed e.g. in that the competing operators have not obtained significant market shares in local, distant or foreign calls, although they have provided e.g. foreign calls to companies at clearly cheaper prices than the traditional operator occupying a dominant position in the local market. Traditional telecom operators introduced long temporary telecom service agreements with tying terms at a time the telecom market was opened up for competition at the start of the 1990s after the amendments of the Telemarket Act.

FINLAND

Mobile communications

Terms of national roaming: Sonera/Radiolinja/Telia

49. The FCA finds that, in the market of mobile communications, the markets of network services and services to end customers can be defined as their own distinct markets. This opinion equals that of the European Commission Notice. The FCA investigated the complaint of Telia Finland, the Finnish subsidiary of the main Nordic telecom operator, on whether the national mobile phone operators Sonera and Radiolinja violated the Competition Act when they offered to Telia Finland the national roaming service on more unprofitable terms than they did to their own end customers. National roaming is a service where a mobile phone operator transmits the incoming and outgoing mobile phone traffic from the subscriptions of another operator active in the same country.

50. In its statement of September 1999, the FCA held that national roaming can be offered by Sonera and Radiolinja, which are the two competing nation-wide mobile network owners in Finland. The slow process of building a mobile network eliminates a quick entry of new competitors, which serves to protect Sonera and Radiolinja's position in the short term. The FCA finds that Sonera and Radiolinja do not, either separately or jointly, hold a dominant position in the market of the facilities that are necessary in order to provide national mobile telecommunications services. They do, however, have a major opportunity to affect the competitive conditions of the field by their market power. The FCA found that the companies priced national roaming so high that it prevented Telia from supplying national telecommunications services in the Finnish market.

51. The FCA closed the case after Telia and Radiolinja concluded a service operator agreement, which gave Telia the opportunity to provide a national mobile phone service.

52. Telia has appealed the FCA's decision insofar as Sonera is concerned to the Competition Council.

Electric communications

Distribution policy of the music-tv channel: MTV Europe

53. The FCA proposed to the Competition Council that the Finnish distribution policies and the related terms and fees of the satellite television channel MTV Music Television owned by MTV Networks Europe is unduly discriminatory of Finnish satellite master antenna television networks as compared to cable television networks. The distribution policies have practically blocked the reception of the MTV channel in households, which have joined the satellite master antenna television networks and, without an acceptable reason, complicated the business of companies selling, installing and administering satellite master antenna television networks. Hence, the FCA proposed that the Competition Council order MTV Europe to terminate the application of the competition restraint.

54. The case is currently pending at the Competition Council.

Energy

Abuse of dominant position: Helsinki Energy

55. The FCA proposed to the Competition Council that Helsinki Energy, the energy company of the city of Helsinki, cease the abuse of its market position and that the Council impose a competition infringement fine of FIM 30 million on the city of Helsinki and Helsinki Energy. According to the FCA, Helsinki Energy enjoys a dominant position in its operating area in the transmission of electricity, in retail sales for users having a power need of less than 500 kW up until 1 September 1998, and in the district heating market.

56. The FCA found that the pricing of Helsinki Energy's electricity transmission and district heating has been unreasonable, partially due to the obligation on the transfer of revenue set on the energy company by the city of Helsinki. The prices charged by Helsinki Energy for the electricity transfer and district heating services have clearly exceeded the costs considered part of the said activities and incurred thereof.

57. The FCA also found that Helsinki Energy engages in cross-subsidisation between the different functions of the electricity operations. The cross-subsidisation practice follows a pattern whereby the sales of electricity is subsidised from the network and district heating operations and the resources related to the said operations.

58. The case forms a precedent in determining the fairness of pricing practice of a business undertaking occupying a dominant position. The decision shall have a major effect for the assessment of the operations of other energy and public service utilities.

59. The case is currently pending at the Competition Council.

Forestry

Refusal to grant an exemption to company-specific agreements in the raw wood trade: the Central Union of Agricultural Producers and Forest Owners

60. By its decision of 6 August 1999, the FCA did not renew the exemption for co-operation between forest owners. The former exemption granted by the FCA to the Central Union of Agricultural Producers and Forest Owners allowed the forest owners to negotiate in temporary committees and to seek agreement on the prevailing market situation and current price expectations with individual forest industry companies (cf. the 1997 report).

61. In its decision, the FCA found that the co-operation between forest owners had not increased the efficiency of the raw wood trade so as to exceed the impediments to competition. The co-operation has not benefited the customers in the manner required in the Competition Act either. The company-specific negotiation system has increased negotiation costs and the uncertainty prevailing within the raw wood trade, artificially streamlined the prices of raw wood and decreased competition both in the sales of wood and between companies purchasing wood. Forest industry companies StoraEnso and UPM-Kymmene reported to the FCA that the negotiation model with the Central Union of Agricultural Producers and Forest Owners is inoperative and that the negotiations of spring 1999 with the representatives of the forest owners had been unsuccessful.

62. The Central Union of Agricultural Producers and Forest Owners has appealed the FCA decision to the Competition Council.

Government and the Markets

Competitive problems in the weather service sector

63. The FCA investigated the operations of the Finnish Meteorological Institute (FMI) and found that some of its procedures contain problematic features from the viewpoint of competition law. The FMI occupies a dominant position in the provision of weather service data. The principal problem is the centralisation of the collection of taxpaid weather service data and the production of the publicly owned, commercial weather service into the same organisation. This serves to raise suspicions of cross-subsidisation and of favouring the FMI's own commercial activities. During 1999, competing weather service organisations informed the FCA that they had faced obstacles in obtaining certain weather service data. For these reasons, the FCA finds that one solution to the problem could be the separation of the commercial weather service activities from the FMI.

64. The FCA's investigations continue.

2. Mergers and acquisitions

a) Statistics on number and type of mergers notified and controlled

65. For the first time for an entire year, the provisions on the control of concentrations, effective since 1 October 1998, were applied at the FCA in 1999. The companies have adopted the provisions well, and the FCA has not been informed of major failures to notify. The FCA received 86 concentration notifications and it issued 81 concentration decisions during the year. In five cases, the FCA imposed conditions to the acquisitions, and one fell outside of the scope of application of the Competition Act. Hence, 75 concentrations were accepted as such, of which 74 during the initial stage of the proceedings and one during the second stage of the proceedings. At the end of the year, seven notifications were pending. In addition to notifications, the FCA was presented with 57 requests for statements in questions of interpretation.

66. Of the concentration decisions made in 1999, 26 were such where all parties were Finnish. In the majority of cases, i.e. in 55, a minimum of one party to the concentration was foreign. The appreciable share of foreign concentration cases is due to the fact that, although the obligation to notify requires that the company engage in business in Finland, the law does not provide a minimum limit for the turnover accrued from Finland.

67. The concentration decisions made in 1999 may be classified as follows:

Acquisition of control	41
Acquisition of business activities	33
Merger	1
Joint venture	6

b) Summary of significant cases

68. In the Danisco/Cultor case, the Danish Danisco A/S acquired majority control in Cultor. Cultor is Finland´s and Danisco Denmark and Sweden's sole sugar producer. Although Danisco had not previously operated in the Finnish sugar market, it was Cultor's significant potential competitor. As proposed, the concentration would have meant the strengthening of the monopoly in the Finnish sugar market.

69. The conditions attached by the FCA were related to the non-competition clauses between Cultor and Lännen Tehtaat, which the companies had set while combining their sugar production in 1990. Danisco committed to removing the provisions, which prevented Lännen Tehtaat from purchasing sugar from other parties than Cultor. The FCA found that, as a result of the conditions, the possibilities for potential import competition impeding the market power of the Finnish monopoly increase sufficiently in order for the concentration to be approved.

70. The parties in the Tieto/Enator case operate in the markets of professional IT services of large organisations, processing and network services and personnel management systems. In addition to the overlap, other factors strengthening the market power of the concentration affected the assessment.

71. The conditions imposed on the acquisition included the selling of Enator's Finnish subsidiary. Sonera Corporation, Tieto's principal owner, was required to halve its ownership and the number of seats in the board of directors of the new Tietoenator. The FCA also imposed several behavioural conditions on Tietoenator regarding the Finnish market.

72. Both parties of the York/Sabroe concentration manufacture ammonia compressors used in industrial refrigeration equipment. Sabroe is also a partner in a joint venture contracting in the industrial refrigeration business.

73. Prior to the acquisition, Sabroe already possessed two of the commonest ammonia compressor brands in Finland and, as a result of the acquisition, the number three brand transferred to the ownership of the same group as well. Only one, slightly smaller independent industrial refrigeration contractor remained in the market. In the conditions imposed, the FCA required that the availability of the commonest ammonia compressors in Finland and their spare parts to third contractors be guaranteed.

74. In the Talentum/Sonera case, the FCA imposed conditions on a concentration whereby the leading Finnish telecommunications company Sonera acquired joint control in the media company Talentum´s WOW Web Brand Corporation, which maintains and develops various web services. Sonera enjoys a particularly strong position as a provider of mobile communications and Internet services in Finland.

75. As a content packager and telecommunications operator, Sonera is important for many content providers with respect to entry to the web content market and the new mobile content market, in particular. The primary competitive problem was the risk of Sonera focusing its content production and know-how related to information transfer and consumer behaviour to its joint venture. Sonera committed to treating the joint venture and its competitors on an equal footing in the purchase and distribution of network content and not centralising its know-how for the use of the joint venture only. The parties also committed to removing certain exclusive rights arrangements from their concentration agreements.

76. In the Checkpoint Systems, Inc/Meto AG merger, both parties of the concentration manufacture Electronic Article Surveillance systems (EAS). The EAS systems are used in the retail trade as anti-theft device. After the concentration, Checkpoint obtains a market share of more than 60 per cent in the Finnish

EAS market. Checkpoint and Meto have a large stock of delivered EAS systems in Finland, for which they can easily sell alarms.

77. After Checkpoint proposed commitments to the FCA, the concentration could be approved conditionally. To guarantee the transparency of the systems, Checkpoint was obliged to provide its Finnish competitors with information on the technology of its RF alarm gates and deactivating equipment to ensure the compatibility of their alarms with the Checkpoint equipment.

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

Deregulation initiatives and statements

78. In 1999, the FCA made five deregulation initiatives and issued 59 written statements to other authorities in regulatory matters.

79. An initiative was made to the Ministry of Finance on the discrimination caused by the intransparency of the car taxation system. Transparency would require that the calculation criteria of the car tax be altered in such a way that the amount of tax would be itemised. The consumers of other EU countries have lodged various complaints with both the European Commission and the FCA on how their right to obtain a car from a Member State of their choice is not fulfilled in Finland because of the dual pricing of cars: different calculation criteria are applied to foreign customers than domestic. In an additional statement, the FCA drew attention to the right of the owners of parallelly imported cars to receive the appropriate guarantee services.

80. In the Finnish National Road Administration's (FNRA) case, particularly the freezing of the organisation reform has caused competitive problems. A working group examining the reorganisation of road maintenance and the tendering of production proposed that, instead of FNRA's present dual-role (administrator – service provider), the production side be organised as a state-owned enterprise and competition be gradually increased: all the new road planning, contracting and building projects should be open to public tender in 2000 and maintenance projects by the end of 2001. In its initiative to the Ministry of Transport and Communications, the FCA hurried the increase in tendering and the reorganisation of the FNRA. The objective should be that the production of the FNRA would operate as a limited liability company in 2002.

81. At the start of 2000, the Finnish government proposed unanimously that, instead of the present FNRA, two separate organisations be formed: the Road Administration acting as a government office and a state-owned enterprise called Tieliikelaitos engaging in business activities. The Road Administration would handle the present official and administrative duties and procure, via tendering, the necessary products and services required for the development and maintenance of the public roads from market operators. It would be the duty of the state-owned enterprise to provide the products and services of the present FNRA.

IV. Resources of competition authorities

1. Finnish Competition Authority

Resources overall

a) Annual budget: FIM 21 million/USD 3.4 million for 2000 (FIM 20 million/USD 3.2 million for 1999).

b) Number of employees (person-years):

	Enforcement practices and control against anti-competitive of concentrations	Support activities, incl. international affairs, information services, administration and secretarial services
Economists	13	4
Lawyers	13	1
Other professionals	8	5
Support staff	-	10
All staff combined	34	20 = S 54

Human resources (person-years) applied to:

a) Enforcement against anti-competitive practices:	29 person years
b) Merger review and enforcement:	6.5 person years
c) Advocacy efforts:	1.0 person years
d) Total:	36.5 person years

Period covered by the above information: Year 1999.

2. Competition Council

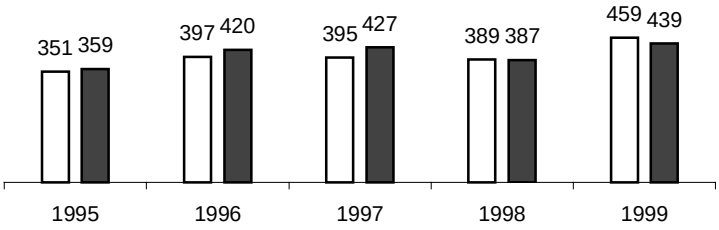
Resources overall and their application

The secretaries of the Competition Council prepare and present the issues to be handled by the Council. In 1999, Competition Council had recourse to three person-years (secretaries), of which less than one person-year (c. 20 per cent) was used in enforcement against anti-competitive practices, as the Competition Council also processes public procurement issues. All secretaries of the Competition Council are lawyers.

FINLAND

Annex 1999: Enforcement Statistics

Graph 1. All opened and closed competition restraint cases (no) during 1995-1999*.



Graph 2. All cases opened during 1997-1999*.

Opened cases, no	1997	1998	1999
All cases (concentration excluded)	395	366	316
- Complaints	178	192	189
- Applications for exemption and negative clearance	24	31	23
- Requests for statements	64	68	63
- Cases opened at own initiative	44	29	17
- Others	85	46	24
Concentration cases	-	23	143
- notifications	-	6	86
- others	-	17	57

Graph 3. All cases closed during 1997-1999*.

Closed cases, no	1997	1998	1999
All cases (concentration excluded)	427	369	315
- Decisions	59	49	56
- Exemption decisions	9	31	18
- Negative clearance			2
- Administrative letter	165	139	119
- Statements	64	63	59
- Deregulatory initiatives	6	5	5
- Others (e.g. resolved through negotiation)	124	82	56
Concentration issues		18	124
- concentration issues		4	81
- others		14	43

* Deregulation statements and initiatives are included. The figures for 1998 and 1999 include concentration issues. The provisions on the control of concentrations became effective on 1 October 1998.

Graph 4. Cases closed according to type of competition restraint 1998-1999 (%):

Cases closed by type of competition restraint (%)	1998	1999
Horizontal	30	25
Governmental	25	30
Dominance	23	29
Vertical	14	12
Procedural	8	4
All	100	100