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*March 2001 - March 2002***General**

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 implement 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 covered in English on the FCA's home page at www.kilpailuvirasto.fi/english. The FCA's home pages contain, for example, English press releases of all the major cases and the complete Yearbook 2002 in English (available in June at the latest).

Competition Policy - recent developments*New Market Court*

3. A new Market Court was set up in March 2002. It is responsible for dealing with matters that formerly fell within the competence of the Competition Council. The Market Court will deal with the Finnish Competition Authority's proposals on removing competition restraints, imposing infringement fines and prohibiting mergers. Led by a chief justice, the Court is composed of four market law judges. There are also four market law secretaries, who attend to the preparation of cases, and one to three part-time expert members who also participate in the consideration of competition cases.

4. The practise of appealing the Market Court's judgements to the Supreme Administrative Court will still continue as previously. The setting up of the new Market Court will not change the Finnish Competition Authority's competence either.

Competition Policy Evaluation

5. The report of a competition policy assessment working group was published in March 2002 in which the group discussed the competition policy issues it considered important. The themes were connected with the possible need to revise competition policy guidelines and with the authorities' capabilities.

6. As required in its assignment, the working group did not assess legislation development needs. It pointed out, however, that there are factors that suggest a need to consider developing the Competition Act further. According to the group, the most important reason for launching such development measures is the proposal of the European Commission for changing competition supervision (modernisation of EC competition rules). These proposals will apparently require the amending of the national law in order to ensure that the basic regulations in the EU's set of competition norms can be applied effectively. This type of modernisation project will also allow for analysing national statutes more broadly.

7. The working group states that many Finnish enterprises pursue fully open competition in a global market area and that large part of the private sector is within the scope of open competition. In some

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sectors of the economy, however, the intensity of competition has varied. For instance, competition was not possible in traditionally closed sectors, such as agriculture and some major service sectors, such as banking, until the 1990s. According to the working group, the critical assessment of sectors that are still protected must continue, however. This is the case with public sector services, for example, most of which are still protected.

8. The working group considers that the safeguarding of the authorities' capabilities is a future competition policy challenge. With this in mind, it attaches special importance to strengthening sectoral research that addresses administrative needs, and supports the idea of establishing a university-based interdisciplinary competition institute.

9. The group also points out that it is absolutely essential to receive outsiders' opinions on the openness of our economy, on the practical functioning of competition and on the special features of our legislation, public service production and administration. There will be a good opportunity for this in 2002 when Finland will participate in the OECD's regulatory review programme.

10. The working group does not support the claims put forward in the Nordic countries, in particular, that the EU's case law would discriminate against the companies of small EU countries. Nor does it see any grounds for introducing special regulatory measures on SMEs, but feels that their position can be taken into consideration by applying the *de minimis* provision.

Sectoral enforcement

Energy markets

11. The Competition Council issued two important energy market decisions in June 2001. Both of these concerned the possible abuse of dominant market position (possible excess pricing). The Competition Council considered Helsinki Energy and Kuopio Energy not to have abused their dominant market position in the pricing of electricity and district heat. It thus rejected the Finnish Competition Authority's claims for prohibiting over-pricing (excess pricing) and imposing an infringement fine.

12. In the above case, the Competition Council examined electricity network pricing with regard to price comparisons and the profitability of the said energy utilities. The Council decided on the basis of these considerations that the network pricing practices used by the said utilities were not excessive in the manner referred to under the Competition Act. It also stated that such excess pricing did not occur in their electricity transfer and district heat sales either.

13. In its decision, the Competition Council also expressed its opinion on the application of the Electricity Market Act and the Competition Act in assessing excessive pricing. The Competition Council stated that the fact that company's pricing is not in line with the "fairness requirement" laid down in the *Electricity Market Act* does not mean that the pricing would also automatically infringe the *Competition Act*. On the other hand, prices considered reasonable under the Electricity Market Act, however, and thus acceptable, *cannot* be unreasonable under the *Competition Act* (and thus cannot infringe Competition Act). According to the Competition Council, the competition authorities should affect price levels directly only in cases where other means of competition policy have proved insufficient and when it is apparent that the pricing employed by the enterprise is "obviously excessive". The aim is to ensure that such direct interference should not be among the range of principal instruments available in competition policy in order to prevent the adoption of price regulation. In this respect, the decisions of the Competition Council serve to facilitate the assessment of natural monopolies.

Telecommunication

Abuse of dominance

14. In June 2001, the Competition Council issued decisions on the pricing of subscriber connections and non-switched connections in Elisa Communications Plc, Turun Puhelin Oy and Salon Seudun Puhelin Oy.

15. The Competition Council stated in its decision that each of the above telephone companies enjoyed a dominant market position in supplying fixed subscriber connection networks in its area of operation. The companies had abused their dominant market position by pricing subscriber connections in a discriminating, binding and unreasonable manner. They restricted competition through dual pricing in which they charged much higher prices to new customers, mainly new competitors, than to the existing ones, and employed a discriminatively scaled discount table and applied binding terms of contract in which prices were dependent on the duration of the contract. In addition, the bottleneck commodity price that the companies dominating the subscriber connection network had charged to their competitors wishing to enter the market was substantially higher than the price they offered to their own service provider. As a result of this price squeeze, it was unprofitable for the competitors to enter the local market.

16. The above procedure was also considered to have helped each of the companies to maintain their market share at more than 90% in their traditional area of operation. Through their subscriber connection pricing policy, they prevented new business undertakings from entering the market and protected their own dominant market position. The Competition Council consequently imposed an EUR 4.2 million infringement fine on Elisa, EUR 590,000 on Turun Puhelin and EUR 170,000 on Salon Seudun Puhelin. The Competition Council based the size of the fee on the companies' turnover and, in particular, on the harmful effects of such pricing.

17. Turun Puhelin and Salon Seudun Puhelin have appealed the Council's decisions to the Supreme Administrative Court.

Loyalty rebates

18. In August 2001, the Supreme Administrative Court issued a decision on the ownership rebates granted by Päijät-Hämeen Puhelinosuuskunta (PHP).

19. In its decision of August 2000, the *Competition Council* had stated that the ownership rebates granted by PHP, which enjoys a dominant market position, were comparative to a loyalty rebate. PHP's rebates were considered to restrict competition and prevent the competing telecommunication service providers from entering the local market. It had also pointed out that in principal the company has the right to freely select the criteria on which it determines its organisation type and its means of profit sharing, provided that these grounds are legally permitted. On the other hand, pursuing business in the form of a co-operative and utilising the principle of mutual ownership do not entitle the company to abuse its dominant market position; it must organise its operations and the return of surplus without introducing prohibited or harmful competition restraints. The Competition Council ordered PHP to discontinue the application of a binding, discriminating rebate practise that was not even cost-effective.

20. The *Supreme Administrative Court* rejected PHP's appeal on the Competition Council's decision and confirmed that PHP had abused its dominant market position. The company's owner rebates were considered to have been discriminating and to have bound customers to using PHP's services.

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National Roaming

21. The Competition Council issued a decision, in December 2001, concerning Sonera's suspected competition restriction in its pricing of national roaming. Sonera is the largest mobile operator in Finland. The matter was brought to the attention of the competition authorities by Telia, Sonera's Swedish competitor.

22. In its decision the Competition Council confirmed the stand expressed by the Finnish Competition Authority according to which Sonera does not hold, either alone or together with the second largest mobile operator, Radiolinja, a dominant market position for entering national mobile networks. The Competition Council rejected, however, the part of the Competition Authority's decision and concluded that Sonera's pricing practises had harmed economic competition, although it was not abuse of dominance.

23. The Competition Council returned the matter to the Finnish Competition Authority for further investigation. The Competition Council wished to clarify whether Sonera's practise in national roaming (pricing of the use of its network) otherwise is hampering or slowing down its competitors' entry into the sector. In March 2002 Sonera and Telia announced that they will merge. The case has been notified to the EC Commission.

Mobile markets - exemption

24. The Competition Council granted, on 21st January 2002, an exemption that concerns co-operation in the pricing of mobile services between mobile operator DNA Finland Oy and its shareholding companies. The exemption also covers some co-operation in market sharing for mobile service retailing.

25. DNA's shareholders comprise 36 areal telephone companies and its market share in mobile services is approximately 5%. The Finnish Competition Authority estimates that the emergence of this new service provider (DNA) to challenge the two dominating service providers (Sonera, Radiolinja) will increase price and quality competition on the market, thereby benefiting consumers. The exemption will be in force until the end of 2006.

Retail trade

26. Trade in daily consumer goods in Finland is dominated by two groups: the K-Group and the S-Group that together hold an approximate 67% share of this market.

27. Both the groups have features indicative of consortium-like chain control. At the same time, however, they also feature co-operation between dealers in the same chain who act as independent entrepreneurs. In 2001, the Finnish Competition Authority granted exemptions to the S-group and on the other hand to K-group with regard to pricing and purchase collaboration in the chain. The exemptions concerned trade in daily consumable and speciality goods.

28. In assessing the exemptions, the Finnish Competition Authority considered the fact that the centralised market structure typical of the sector can create the kind of buying power that can annul competitive benefits. This was taken into account in the exemption. The Finnish Competition Authority consequently formulated the exemption terms in such a way that they also ensure manufacturers' access to distribution channels and the preservation of alternative logistic systems. The exemptions will remain in force until 2003.

29. The Finnish Competition Authority also issued a separate decision in which it prohibited the S-Group from applying a condition that prevented its members from expanding their geographical area of operation to that of other S-Group members.

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Credit cards - no discrimination rule

30. The Competition Council awarded a decision in May 2001 that concerned the terms applied in contracts between credit card companies and merchants accepting credit cards.

31. The Association of Finnish Travel Agents had originally filed a complaint to the FCA pleading an investigation on whether the terms of contract applied by certain credit card companies were in breach of the Competition Act. The complaint concerned a term of contract in which travel agents were prohibited from charging a separate handling fee to customers paying with a credit card. Some credit card companies had even prohibited travel agents from giving a discount to customers who used a payment means other than a credit card, unless the discount was also made available to the company's credit card customers as well. The Association felt that travel agencies should have the right to charge a handling fee if the customer pays for goods/services using a credit card. It justified this by referring to the costs and expenditures that credit cards entail to travel agents, which is in line with the stand taken by the Finnish Competition Authority earlier.

32. The Competition Council felt, however, that the terms employed by credit card companies are not in breach of the Competition Act. The case has been appealed to the Supreme Administrative Court.

Co-operation in cash management - exemption

33. Automatia Ltd. consists of two companies both owned by the three largest banks in Finland, i.e. Nordea, Okobank Group and Sampo. Automatia companies operate the nation-wide ATM network and the Finnish electronic cash system. The FCA has earlier confirmed this co-operation through individual exemption.

34. In June 2001, the Finnish Competition Authority granted Automatia Ltd. an exemption that also permitted its owner banks to pursue cash management co-operation. According to the Finnish Competition Authority, this co-operation gives Automatia a dominant market position in the supply of cash management services, therefore, the benefits to customers and consumers cannot be considered self-evident. For this reason, the exemption was granted only by conditions.

35. The exemption included certain terms and conditions to ensure that banks, other than the owner banks, could join the cash management system and that all the parties would, in future, have the freedom to choose the best possible cash management partner. Automatia also committed itself to appointing an independent expert approved by the Finnish Competition Authority who will supervise the fulfilment of the said terms and conditions. The exemption will remain in force until 31st May 2006.

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Cartel cases

Raw wood cartel

36. In December 2001, the Supreme Administrative Court passed a decision on a matter concerning a forestry cartel. In 2000, the Finnish Competition Authority had submitted a proposal regarding the imposing of an infringement fine on the three largest forestry enterprises in Finland (Metsäliitto, Stora Enso and UPM-Kymmene). According to the Authority, the said companies had been engaged in price co-operation and the division of sources of supply on the raw wood supply market, of the kind that was in breach of the Competition Act. They had restricted competition by, for example, the mutual exchange of information. Consequently, the Finnish Competition Authority proposed an infringement fine of FIM 3.36 million on each of the companies.

37. The Competition Council confirmed the Authority's opinion of prohibited price co-operation and the division of sources of supply, deciding, however, to reduce the fine to EUR 1.68 million per company. The companies appealed to the Supreme Administrative Court, which reduced the fines to EUR 504,000, i.e. to approximately one seventh of the sum originally proposed by the Finnish Competition Authority.

38. The Finnish Competition Act states that the maximum infringement fine imposed for a competition restraint is EUR 673,000. It is stated in law that this sum can be exceeded, however, if justified by the nature of the restraint and other conditions pertaining to the matter. The infringement fine shall nevertheless not exceed 10% of the turnover of the business undertaking or the conglomeration involved in the restraint order.

39. The Supreme Administrative Court agreed with the Competition Council, where having exchanged such information that can be used to restrict price competition between business undertakings and the competition for sources of supply, the said companies had infringed the cartel provisions laid down under the Competition Act. The Court pointed out that the companies had exchanged such information from 1993 until 1997, and that the exchange had been of the kind that was specifically prohibited in the exemption decision of 1994. These were aggravating issues in determining the amount of the infringement fine.

40. The Supreme Administrative Court was of the opinion that even these aggravating factors were not enough to raise the sum above the EUR 673,000 limit on the normal scale but that the infringement fine should be reduced from the level proposed by the Competition Council. The Court justified the latter by pointing out that the prohibited exchange of information between the above companies had largely taken place upon the initiative of the counter party, that is, the raw wood sellers, and in their presence. It also stated that the operation was regionally limited and included features that the Court also considered to have had positive effects on the raw wood business.

Asphalt cartel - dawn raid

41. In March 2002, the Finnish Competition Authority launched a dawn raid on a number of asphalt companies, prompted by the surveys it had carried out that suggested that the companies had divided the market and were engaged in price and offer co-operation. The Finnish Competition Authority continues its investigations that are due for completion in 2002.

Abuse of Dominance***Copyright Society of Performing Artists - FCA proposal - abuse of dominance***

42. Gramex is the Copyright Society of Performing Artists and Phonogram Producers in Finland. Gramex administers and promotes the rights, prescribed in the Copyright Act, of performers whose performances have been recorded on phonograms and of producers of phonograms. It also collects remunerations under the Copyright Act, and distributes the remunerations among those entitled to them.

43. In December 2001, the Finnish Competition Authority proposed to the Competition Council that an infringement fine of EUR 500,000 be imposed on Gramex for its abuse of dominant market position. The Finnish Competition Authority considers Gramex to enjoy a dominant market position in Finland, of the kind denoted under the Competition Act, as regards the musical rights it administers, and to have abused its dominance (non-transparent pricing / price discrimination). The performance remuneration agreement that Gramex had concluded with a radio station differed from other corresponding agreements. The Finnish Competition Authority considers in its proposal that the performance remuneration tariffs that Gramex uses vary according to radio station and thus places commercial radio stations in an unequal position. The Finnish Competition Authority considers the price discrimination exercised by Gramex to harmfully distort competition on the national market for selling advertisement time on radio broadcasts. The matter is still pending in the Competition Council (now the Market Court).

Finnish Composers' Copyright Society - CC judgement - abuse of dominance

44. Teosto is the Finnish Composers' Copyright Society that administers the copyright of Finnish music creators. The copyright owners that Teosto represents are composers, lyric writers, arrangers and music publishers.

45. Through the reciprocal representation contracts made with foreign copyright societies, Teosto also represents foreign copyright owners in Finland, and vice versa, foreign copyright societies represent Finnish copyright holders in their territories.

46. In its decision of February 2002, the Competition Council stated that Teosto had abused its dominant position by adopting a new copyright remuneration, i.e. a minimum tariff, for commercial radio stations. The Council repeated its earlier stand according to which Teosto holds a real monopoly in the collective administration of musical copyrights in Finland. It also stated that the minimum tariff must be considered a form of unreasonably high, discriminating monopoly pricing that is prohibited under the Competition Act.

47. The Competition Council took into consideration the fact that the relatively high minimum tariff prevented newly established radio stations from entering the market. Another form of abuse was the substantial, unexpected increase made by Teosto to the copyright fee. Teosto had not produced any grounds for the increase, of the kind that would be acceptable in terms of competition law.

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Distribution cases

Nokia mobile phones - distribution

48. The Finnish Competition Authority launched an investigation on the competition restraints possibly connected with the distribution of Nokia's mobile phones. Nokia uses a selective distribution system in Finland. The Finnish Competition Authority had received numerous complaints of Nokia's reluctance to grant mobile phone representation rights to retailers operating in the field. The wording of some of Nokia's retailer selection criteria made it possible to interpret the terms of delivery in such a way that they could be considered to infringe the Competition Act. This inconsistency involved, for example, business transactions between dealers in the selective system and the minimum turnover requirement set for them. However, the procedures were not found to be in breach of the Competition Act. Nokia announced that it will revise the dealer agreements to remove any ambiguity in them. The Finnish Competition Authority felt that after the changes, at least, Nokia's terms for selective distribution complied with the Competition Act.

Merger Control

49. The Finnish Competition Authority submitted a total of 104 decisions on mergers in 2001. In five cases, conditions were set for approval of the merger. One of the cases was handled in the Competition Council, which in the end prohibited the merger (Sonera/LSP/TP discussed below).

50. The Finnish Competition Authority usually handles merger cases within an average of some 20 days (Phase I decisions). The shortest decision-making time was 4 days and the longest 31 days. In Phase II cases, it took four months to formulate a decision on a matter, which is the maximum laid down by law.

51. The most important merger decision submitted by the Finnish Competition Authority involved the telecommunications sector (Sonera/LSP/TP). Sonera is the leading telecommunications enterprise in Finland, and together with its subsidiaries offers a wide range of services to both corporate and private customers. The Finnish Competition Authority had earlier stated that Sonera holds a dominant market position in providing mobile services in Finland as well as in those parts of the fixed telecommunications network in which it had held the sole right to pursue local telecommunications operations by the end of 1993. In addition, it enjoys a significant market position in data transmission, Internet services and international calls.

52. In February 2001, Sonera Plc notified the Finnish Competition Authority of a merger through which it gained actual authority in LSP, a telephone company in Southwest Finland that operates in 11 municipalities and the ownership of which is in the hands of some 11,500 persons who had obtained their subscriber connections from the company. The merger was to be implemented on condition that before subscribing to the shares, LSP must purchase from the City of Turku 33% of the share capital of Turun Puhelin (TP), which is a telecommunications group operating locally in many important sectors of electronic communications. Thus the merger involved all-round arrangements in which Sonera gained authority over LSP and LSP over TP.

53. LSP and TP hold a considerable market power in hiring telecommunications network subscriber lines, the local backbone network and the cable television network and on the market for local telecommunication services offered to private customers and SME's. The ending up of subscriber networks and cable television networks in the hands of the Sonera Group, which at the same time dominated the

mobile communication market would have increased its market power. In addition, LSP and TP had acted as major distribution channels for some of Sonera's competitors' products.

54. The Finnish Competition Authority approved the merger on condition that LSP and TP relinquish the majority of the mobile communication infrastructure they had earlier hired to Sonera's competitors and that Sonera sells the fixed metropolitan area network it had set up in Turku. In addition, TP agreed to sell one of its telecommunications areas switching centres and to hire some of its cable television network capacity to its competitors.

55. The parties were also assigned other conditions concerning the supply of infrastructure for the fixed network and mobile network, and the distribution of certain products. An independent expert, approved by the Finnish Competition Authority, was assigned to supervise the parties' commitment to these conditions.

56. The Finnish Competition Authority stated that without the conditions set, the merger would have led to the introduction or strengthening of a dominant market position on the local market for hiring the physical equipment required for maintaining the telecommunications network subscriber line, the backbone network and the cable television network and mobile networks, and on the national mobile services market. It also pointed out that this type of dominance would have restrained competition considerably. Without the conditions set, the merger would have led to a situation where one group of companies in LSP's and TP's area of operation would simultaneously have administered all major customer interfaces and the infrastructure required for the supply of competing mobile services and fixed network services.

57. The decision submitted by the Finnish Competition Authority was appealed to the Competition Council, which consequently rejected the Authority's decision and prohibited the merger altogether. Both the Finnish Competition Authority and Sonera have appealed the Competition Council's decision to the Supreme Administrative Court where the matter is still pending.

Merger Control Statistics 1.1 -31.12.2001

Proposal for prohibiting merger	0
Approved on certain conditions	5
Approved as such in a continued (Phase II) consideration	1
Approved as such in Phase I consideration	98
Merger beyond the field of application of the law	0
Total number of decisions	104

Nationality

All parties Finnish	41
All parties foreign	31
At least one of the parties foreign	32

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Regulatory reform

Government and Markets Project

58. The Government and Markets project, which commenced in 1998, 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.

59. The aim of the project is to secure 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 would have operated. The objectives here are 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.

60. The Finnish Competition Authority published, in 2001, a broad report on the marketisation of municipal service production, based on its surveys of the reform of municipal service production. The related process of change has already been set in motion at the municipal level.

61. The purpose of the report is to give decision-makers information on how marketising procedures and competition can be used to improve the cost-efficiency and quality of municipally funded services and to encourage innovativeness. The report aims to give decision-makers a more organised view to the process of developing the competition and market environment for municipal service production. It contains a number of concrete examples of marketisation trends in municipal service production in certain municipalities. The Finnish Competition Authority will continue the Government and Markets project.

Commercial weather services

62. The weather service market is currently in a state of transition where the new service competition has begun to threaten the traditional dominant position of the Finnish Meteorological Institute (FMI). 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 charge uniform prices for meteorological data to all parties.

63. The 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.

64. In the summer of 2000, the FCA made a proposal to the Competition Council 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 deliberate activity to which there were no acceptable financial or technical grounds, the proposal was made even though the FMI had already quit the practice. The FCA also proposed that an infringement fine of

EUR 33,000 be imposed on the FMI. The Competition Council confirmed the fine in January 2002, but reduced it to EUR 20,000.

65. Additionally, the FCA proposed, in the early spring of 2001, that the commercial weather service activities of the FMI be incorporated and separated from the production of meteorological data and products.

Resources

66. The Finnish Competition Authority is divided into seven units. The units are responsible for the following (as at 1 January 2002):

- Merger Control
- Markets 1:
 - telecommunications;
 - electronic and graphic mass communications;
 - finance;
 - energy and public service utilities.
- Markets 2:
 - Trade;
 - Industry;
 - 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.

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FCA resources: statistics

Year	No. of FCA officials	Budget expenditure
2002	66 (estimate)	EUR 4,571,000
2001	62	EUR 3,891,000
2000	61	EUR 3,596,000
1999	57	EUR 3,363,000
1998	55	EUR 2,949,000