



COMPETITION COMMITTEE

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS
IN FINLAND**

MARCH 2003 – MARCH 2004

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Executive summary

1. The Finnish Competition Authority (FCA) is an authority responsible for competition law enforcement in Finland. The other main bodies responsible for competition law enforcement are the Market Court and the Supreme Administrative Court.

2. The FCA safeguards economic competition by intervening with competition restraints violating the Finnish Act on Competition Restraints (Competition Act) and the EU competition rules, and by generally promoting efficient competition. Additionally, the FCA attends to merger control and the international tasks falling under its jurisdiction. The FCA investigates competition restraints both on its own initiative and on the basis of complaints received.

3. As a result of the reform of EC competition rules, Finnish national legislation has also been amended. The amendments imply a harmonisation of the national legislation with the EC competition rules. The amended Act is likely to be effective from 1 May 2004, i.e. at the same time that the Regulation 1/2003 implementing articles 81 and 82 and the Merger Regulation 139/2004 will become effective.

4. In 2003, 362 new matters involving competition restraints were brought before the FCA, and it resolved a total of 316 competition restraint issues. Additionally, the FCA made 12 initiatives and issued 47 written opinions to other authorities in regulatory matters. The FCA made one proposal to the Market Court. The Market Court issued 9 decisions concerning competition restraints in 2003. The Supreme Administrative Court issued 8 decisions on appeals made on Market Court decisions.

5. The FCA and its activities are covered in English on the FCA's home pages at www.kilpailuvirasto.fi/english. The FCA's home pages e.g. contain English press releases of all the major cases and the FCA Yearbook 2004 with an English summary (available in June 2004, at the latest).

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

1.1 Summary of new legal provisions of competition law

6. The government bill to amend the Competition Act was brought before the Parliament in February 2004. On 20 April, the Parliament approved the proposed amendments. The amended Act, set to become effective on 1 May 2004, implies a far-going harmonisation of the prohibitive provisions with the competition rules of the EC Treaty. In the new regime, the formulation of the substantive provisions of the Competition Act equal Articles 81 and 82, also in situations where no effect on trade between the Member States is felt. The motivation for the reform was e.g. to avoid confusion arising from differences between the national and EC provisions.

7. Substantially, the biggest amendments are related to the treatment of vertical restraints. The assessment of vertical restraints has so far been based on the so-called abuse principle in Finland. Accordingly, vertical restraints are mainly allowed, unless they have harmful effects for efficient competition. The only explicitly forbidden practice is to request the subsequent sales level to observe maximum or minimum resale price levels (Article 4). Thus, unlike the EC rules, the Finnish rules also prohibit the setting of a maximum price; this is due to the assumption that the maximum price level would easily become the actual price level obeyed by all undertakings covered by the restriction. Other vertical relations are covered by a general rule of Article 9 that enables the FCA to act against competition restrictions not forbidden under other Articles provided that they, “in a manner inappropriate for sound and effective competition, decrease or are likely to decrease efficiency within the economy, or prevent or hinder the conducting of business by another”. Despite the different theoretical approaches, the differences in the practical application of the law are not very big even today: after the new block exemption regulations became effective, the approach applied by the EC court has approached the EC abuse principle.

8. The changes to the horizontal norms are less substantial. Although the present provisions are worded differently from Article 81 of the Treaty, the provisions have already been interpreted largely similarly. The present Competition Act specifically prohibits three types of horizontal competition restraints: 1. collusion in tendering, 2. fixing prices and 3. limiting output or dividing markets. Other horizontal restraints are subject to Article 9 discussed above.

9. As to the abuse of dominant position, even if the list of examples describing forms of abuse contained in the current Article 7 of the Competition Act is different from that of Article 82, there is no significant material difference. The forms of abuse mentioned in the provision are now similar to those of Article 82, and the definition of a dominant position is extended to cover abuses by “one or more undertakings”.

10. In addition to the harmonisation of the prohibitive provisions with the EC competition norms, the reform of the Competition Act implies waiving Article 9. It has been estimated that such a wide general clause would create problems and uncertainty within the new framework of provisions based on the prohibition principle. This means that expediency consideration will decrease in the FCA’s decision-making activities. The move to a prohibition principle and focus on considerations involving matters of law speak for the transfer of the first-instance decision making powers to the FCA.

11. The amended Act also proposes waiving the present national exemption and negative clearance systems. In the future, companies will not need to nor can they seek the authorities’ permission for restrictive measures. Business undertakings will have to assess themselves, whether their conduct is in line with the provisions of the law. The FCA’ will shortly publish guidelines to assist in the assessment; these will largely correspond to the Commission’s lines of interpretation.

12. As regards competitive impacts, the amended Act contains an adoption of assessment of significance corresponding to the EC legal praxis: only measures which “significantly” impede, limit or distort competition would be forbidden. The content of provisions of minor importance (*de minimis*) will be further clarified by guidelines issued by the FCA, based on a European Commission notice.

13. In merger control, the changes are related to the notification obligation. The present Article providing on the obligation is amended so as to require from notified mergers and acquisitions a more explicit connection to the Finnish markets. Furthermore, the so-called two-year rule has been waived, as only cases of minor importance involving the provision have been lodged at the FCA.

14. As a substantial change to the former Act, the amended Act introduces a leniency system on the non-imposition of fines in cartel cases. It is the aim of the provision on the non-imposition or reduction of fines to facilitate the investigation of the more serious competition restraints, such as naked cartels, by encouraging the business undertakings involved to cooperate with the FCA. It is vital for the efficient operations of the network of European competition authorities that the Member States adopt efficient and compatible leniency system. In addition to this, the provisions determining the amount of the competition infringement fine have been revised.

15. The amended Act contains no changes in the forms of investigations and powers available to the FCA. However, it follows from Council Regulation 1/2003 that the FCA will have to be able to *assist* the Commission also in case of inspections to other than business premises. This power was hence included in the new Competition Act. Any *independent* power for home searches was not proposed, however. The formulation of the relevant provisions has also been clarified and brought more in line with the terminology used in the EC rules. Also the right to seal premises and to record oral statements is included. One of the objectives is to make sure that the national authorities will be able to effectively assist the Commission.

16. The FCA now has the power to issue cease and desist orders. The sanctioning powers however, still remain to be used by the Market Court, acting on the proposal of the FCA.

1.2 Other relevant measures, including new guidelines

17. The amended Competition Act includes a provision, according to which the FCA may issue guidelines on its application procedure. These will be based on the block exemption regulations and guidelines issued by the EU Commission.

18. The FCA’s forthcoming guidelines concern vertical competition restraints, horizontal cooperation agreements, the revised merger control provisions, competition restraints of minor importance and the leniency system.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant position

a) Summary of activities of competition authorities

19. In 2003, 362 matters involving competition restraints were brought before the FCA. Of these, 66 per cent were requests for action, 6 per cent were applications for either exemption or negative clearance, 3 per cent were cases initiated by the FCA itself, and 25 per cent were other matters, including different inquiries. The number of opened cases rose by 18.7 per cent from 2002 to 2003.

20. The FCA resolved a total of 316 competition restraint cases in 2003; in 43 cases, by means of a decision, of which 15 concerned exemption applications and 7 applications for negative clearance. A total of 185 cases were concluded by an administrative letter.

21. In 2003 the FCA made one proposal to the Market Court on terminating a competition restraint prohibited in the law.

22. The Market Court issued 9 decisions concerning competition restrains in 2003.

23. The Supreme Administrative Court issued 8 decisions on appeals made against the Market Court's decisions.

b) Description of significant cases

Cartels and other forbidden agreements

Proposal for fines in the asphalt cartel case

24. In March 2004, the FCA proposed to the Market Court that it impose a competition infringement fine of a total of 98 million euros to seven asphalt companies and the Finnish Asphalt Association. The FCA has obtained firm evidence that the companies are guilty of forbidden national price and bidding cooperation and allocation of markets at least during 1994-2002. The Asphalt Association is considered guilty of forbidden exchange of information in 1997.

25. According to the FCA's evidence, the allocation of asphalt markets has occurred based on the number of contracts, customers and geographical regions. The cartel has covered the whole country. The combined turnover of the companies involved was 290 million euros in 2002 and their production roughly 4 million asphalt tonnes. The companies' share of the total volume of the asphalt markets has been approximately 70 per cent during the past few years.

26. The social effects of the cartel are especially harmful since the asphalt works are largely public procurements made by the state and the municipalities. Customer shares divided as follows in 2002: the state 38 per cent, municipalities 28 per cent and private companies 34 per cent.

Forbidden information exchange

27. According to the FCA's decision of February 2004, four Finnish trading groups (Ketjuetu Oy, Ruokakesko Oy, Suomen Osuuskauppojen Keskuskunta (SOK) and Suomen Spar Oyj) had engaged in cooperation violating by the Competition Act by exchanging confidential information in the advisory board of the store register of the daily consumer goods trade. The store register contains information on single daily consumer goods stores and the advisory board monitors its activities.

28. As members of the advisory board, companies had obtained each other's register information regarding individual stores. In the FCA's estimate, companies had then exchanged information which could be considered critical and classified and not normally given to competitors.

29. The problems involved in the operations of the register had been removed, however, as the companies concerned had announced they would cease the forbidden collaboration within the advisory board. Hence, making a proposal to the Market Court on the imposition of a competition infringement fine was not considered necessary.

Other cartel investigations

30. In September 2003, based on the tips it has obtained, the FCA launched dawn raids into companies active in the steel *ventilation pipe* and terminal business. The inspections concerned the three biggest operators and seven locations in all. Following the inspections, the FCA has heard the companies and interviewed parties who have been active in the business. In 2003, a further inspection was made into the head office of one of the companies. The matter is still pending.

31. Based on a tip-off, the FCA also investigated cartel allegations related to the *generic substitution of medicines* in 2003. To investigate the allegations, dawn raids were launched into two companies in April 2003. The investigations were closed down in June 2003, as the information obtained did not point to the existence of a cartel.

32. The FCA also made a decision on an alleged cartel in the pricing of *motor fuels* in the district of Keski-Uusimaa. According to the investigations of Southern Finland's Provincial State Office, the retail price of fuel and diesel oil has largely varied within the region, and no evidence of cartel activities was obtained.

Proposal to the Market Court on alleged resale price maintenance

33. The FCA proposed to the Market Court in April 2003 that it find Neste Markkinointi Ltd, Neste Marketing, guilty of forbidden resale price maintenance from 1996 to 2002.

34. According to the FCA, Neste Marketing has unlawfully imposed minimum and maximum limits for the resale prices of the basic product range of the Neste Quick Shop retailers in 1996 - 2002, imposed fixed resale prices for so-called key products in 1996 - 1999 and imposed minimum and maximum limits to the resale prices of so-called fast food products in 2001- 2002. Additionally, Neste Marketing has forbidden the retailers to undercut the imposed campaign prices during 1996 - 2001 and hence violated the specific order contained in the FCA's exemption granted in 1999.

35. However, by its decision of 24 February 2004, the Market Court dismissed part of the proposal and rejected the rest. The FCA has appealed against the decision at the Supreme Administrative Court.

Extension for exemption on electronic cash cards

36. In May 2003, the FCA extended the deadline of the exemption concerning cash card cooperation till the year 2005. The applicant of the extension, Automatia Rahakortit Oy, Automatia Cash Cards, also requested that the exemption be extended to cover the cooperation on the development and implementation of the mobile cash system. Automatia Cash Cards is a joint venture established by credit card institutions operating on the same level of production and distribution.

37. The applicant stated of the present state of the cash card cooperation that the card operations has not expanded from what was announced in the previous application dated 12 May 2000. The commencement of the operations has taken longer than what was expected at the start but the applicant still believes that card cash activities will be a major method of everyday payment and that the investments so far made in its development will turn out to be profitable.

38. In the FCA's opinion, the development of the planned cash card services promotes technical progress and channels the benefits to consumers and companies in the form of new and more efficient payment methods.

39. The FCA found that the competitive conditions prevailing in the supply of cash cards have not changed to the extent that the extension of the previously granted exemption should be rejected. As previously, the exemption was subject to the condition that the system remains transparent and non-discriminatory also in the future. Competing operators shall have a genuine possibility to join the system on fair and equal terms.

Negative clearance for mobile payment cooperation

40. In June 2003, the FCA granted an exemption for mobile payment cooperation. In a cooperation agreement concluded between Nordea Bank plc and Sampo Bank plc, the parties agreed on cooperation, as a result of which mobile customers are able to pay electronically by using the Radiolinja Metropolis service platform developed and implemented by Radiolinja Ltd. The applicants maintain that the objective of the cooperation is to develop and produce a cost-efficient real-time system of electronic payment in a mobile environment, where the customers of Radiolinja and other mobile operators are able to pay for products by a mobile phone.

41. According to the accounts received by the FCA, it is possible for all market operators to join the system on fair and equal terms after the initial development phase, and no such competitive advantage will be created to Nordea and Sampo, which competing banks could not obtain in a reasonable time after the development period. The FCA found that an efficient development of technology might justifiably require that, in the planning and testing phase, other market operators will not be included in the cooperation. According to the information supplied by the applicant, pricing cooperation is not included in the mobile payment cooperation to any extent.

Abuse of dominant position

FCA's ADSL Project

42. During the year 2003, the FCA forcefully intervened with the terms for network access applied by local telecom companies. The aim of the project has been to secure the equal treatment of ISPs in the fast-growing broadband Internet service market and to ensure that competition is functional on the retail level. New ISPs have now begun to appear in the traditional operating areas of the major local telecom operators.

43. All the companies investigated so far have appreciably decreased the broadband access charges they collect from competing ISPs. Prior to the start of the FCA's project, almost all the local telecom companies collected such high broadband access charges that the entry of competing operators into the retail market was virtually impossible. This so-called price-squeeze and refraining from a business relationship maintained the dominant position of local telecom companies within the broadband service market in their respective areas with the result that there was only one operator offering broadband services in several regions.

44. For consumers, the increased competition brings with it e.g. more versatile and faster Internet connections and lower prices. The spread of new, technically more advanced services will be quicker and probably lead to competition in new markets as well.

Other control of abuse of dominance

45. Alleged predatory pricing has been investigated in connection with several cases. The FCA investigated the pricing of liquid dairy products by Valio Ltd. Valio was suspected of application of pricing which foreclosed competitors from the markets. Additionally, the FCA estimated that the offers made by Valio to certain customers might have been discriminatory in regard to its other customers. However, the

FCA's investigations did not support the allegation of competition restraints and the case was closed. Similar investigations were also made in 2003 regarding the Finnish national airline Finnair, VR-Track Ltd and the Finnish news agency Suomen Tietotoimisto Ltd. The investigations on these firms are still pending.

46. The FCA's investigation on Suomen Numeropalvelu Ltd, Finnish telephone number service, was completed in June 2003. The phone companies backing the firm were suspected of abuse of dominance in requesting unreasonably high charges from delivering subscriber information for the publication of commercial telephone catalogues. During the investigations, in May 2003, the Finnish telephone number service lowered its prices by more than 75 per cent. The FCA found that making a detailed investigation was no longer necessary for safeguarding competition after the price cut, and the case was closed.

47. Other decisions made in 2003 involved the raw wood markets; the musical performance compensations collected by Teosto, the copyright society of composers, lyric writers, arrangers and music publishers; the pricing of the local network by Satakunnan Puhelin; the competitive problems in the CUTE check-in system jointly used by the airlines and the position of the Population Register Centre in the certificate service market.

Decision by the Market Court in a case involving abuse of dominance

48. By its decision in August 2003, the Market Court confirmed the FCA's position on that Gramex, the Copyright Society of Performing Artists and Phonogram Producers in Finland, maintains a dominant position in administering the copyrights of performing artists and phonogram producers. The Court also ordered that Gramex pay to the state a competition infringement fine of 250 000 euros and forbade it to use the prohibited practices.

49. The Market Court found that Gramex had abused its dominant position by applying to Radio Nova a discriminatory 5 million minimum tariff and a different definition of advertising income than to other commercial radio stations. Gramex had also been guilty of abuse of dominance when it made agreement proposals to FM, Classic FM, Groove FM and Star FM. The proposals differed from each other and from the confirmed tariffs.

50. The Market Court held that as a company in a dominant position Gramex has a duty to ascertain that the tariffs are transparent and fair. According to the decision, the discriminatory tariffs caused over a million mark's damage to Radio Nova. The Court found that differing terms of agreement applied by Gramex had complicated the planning of business operations, investments and the entry of new operators into the commercial radio business.

Decision by Supreme Administrative Court on right of appeal

51. By its decision of 5 August 2003, the Supreme Administrative Court defined the limits of right of appeal in competition matters. The case concerned the appeal made by private citizens on the abuse of dominance.

52. A couple with the status of consumers had originally requested an estimate from the consumer complaint board on the pricing of a local energy and water co-operative. The board referred the matter to the FCA. The FCA found that the conduct of the co-operative did not qualify abuse of dominance and closed the case.

53. The citizens appealed against the FCA's decision at the Competition Council, the present Market Court, which rejected the complaint after finding that the pricing of the co-operative was not unreasonable or restrictive of competition.

54. The FCA appealed against the Council's decision, however, and requested that the Supreme Administrative Court overrule it as it held that the persons in question had no right of appeal in the matter. The Supreme Administrative Court shared the FCA's view and found that the FCA's decision did not set an obligation to the persons in question or dismiss a benefit nor did the decision affect the persons' right, obligation or benefit in any other way. Hence, they had no right to appeal against the FCA's decision and the Competition Council should not therefore have investigated the complaint.

55. The Supreme Administrative Court overruled and annulled the Council's decision and dismissed the complaint.

2.2 *Mergers and acquisitions*

a) *Statistics*

The FCA's merger decisions 2002-2003 (calendar years)

	2002	2003
Decisions	114	93
Lapsed pre-notifications	13	15
Other closed cases	26	29
Total	153	137

Merger decisions according to type of decision

	2002	2003
Proposal to prohibit	0	0
Cleared as conditional	1	2
Cleared as such in Stage I	110	90
Cleared as such in Stage II	0	1
Acquisition not covered by merger provisions	3	0
Total number of decisions	114	93

Nationality of parties to concentration cases:

	2002	2003
All parties Finnish	56	33
All parties foreign	32	36
At least one Finnish party	23	24

b) *Summary of significant cases*

Nokia R/D Limited/Symbian Limited

56. In March 2004 the FCA cleared an acquisition whereby Nokia R&D (U.K.) Limited acquired control in Symbian Ltd. Symbian is a supplier of open operating systems for mobile phones, communicators and palmtop computers. The FCA investigated the effects of the acquisition e.g. for the competition between manufacturers using Symbian products. Based on the information obtained on

Symbian's licensing and R&D, the FCA found that there was no cause for further measures and therefore cleared the deal.

Lohja Rudus /Abetoni

57. In December 2003, the FCA approved an acquisition whereby Lohja Rudus Ltd, part of the Irish CRH plc, acquires the entire stock capital of Abetoni Ltd from the Heidelberg Cement Group.

58. Abetoni is one of the biggest concrete product manufacturers in Finland. Finnsementti Ltd is the sole domestic cement manufacturer. Lohja Rudus is a major operator in the aggregates and ready-mixed concrete market.

59. The FCA was particularly concerned about the effect of the strong market position of Finnsementti in relation to Abetoni's similarly firm position in the ready-mixed concrete market. The FCA also examined whether the acquisition favours Abetoni in the raw material purchases with regard to its competitors. Moreover, the FCA examined whether Finnsementti's position will be further reinforced when Abetoni transfers to the same group. In addition, the FCA examined the strengthening of Lohja Rudus' market position in the closely related ready-mixed concrete market. The possibility of Lohja Rudus to tie the sales of ready-mixed concrete and aggregates to the sales of Abetoni's products in land construction projects was also under review.

60. In its investigations, the FCA could find no evidence that the transaction would cause any of the above-mentioned problems. It was approved as such without conditions because it does not lead to the creation or strengthening of a dominant position, which would significantly impede competition.

Finland Post Ltd / Leijonajakelu

61. In August 2003, the FCA conditionally cleared an acquisition whereby Finland Post Ltd acquires from the Sanoma Corporation part of Leijonajakelu's early morning delivery business. Leijonajakelu is the sole operator in the early morning newspaper deliveries of the former Uusimaa province. Leijonajakelu is Sanoma Corporation's subsidiary and e.g. manages the early morning delivery of the Helsingin Sanomat.

62. The conditions of the deal included Finland Post Ltd amending its delivery contracts so as to enable its customers to transfer to possible alternative distributors. In addition, Finland Post shall abandon its cross ownerships and mutual direct delivery contract with Janton Ltd. Finland Post and the Sanoma Corporation also undertook to lifting some restrictive terms included in the mutual delivery contract made in connection with the deal. Conditions were also imposed on Finland Post's market behaviour.

63. Barring conditions, the acquisition would have lead to an appreciable strengthening of Finland Post's total position, the removal of potential competition in the early morning deliveries of newspapers and the strengthening of Finland Post's position with respect to advertisers.

64. Although the parties of the acquisition have not previously competed with each other to a significant extent, they have formed a potential threat of competition in the market. The conditions imposed on the deal ensure that at least a similar situation prevails in the market.

65. Prior to the deal now made Finland Post had - and still has - an extremely strong position in the Finnish delivery market. Due to this, the FCA shall monitor that Finland Post will not abuse its dominant position in violation of the competition law.

Helsingin Osuuskauppa HOK / Osuusliike Elanto

66. In June 2003, the FCA cleared a merger in which the two co-operatives Helsingin Osuuskauppa HOK and Osuusliike Elanto fused into a new co-operative called Helsingin Osuuskauppa Elanto.

67. The parties operate on largely the same retail markets of daily consumer and utility goods, the procurement market of the retail trade of daily consumer and utility goods and in restaurant business. In the FCA's view, in the competitive impact analysis, it was possible to primarily concentrate on the (retail) market of daily consumer goods where the combined market share of the concentration in the total market is roughly 34 per cent.

68. The daily consumer goods trade is the biggest sector of the trade. The markets can be divided according to the size of the stores. The concentration has 10 department stores, 57 super markets and over 50 smaller stores altogether in the capital city area. In addition to the K block and its market share of 40 per cent, the biggest competitors of the concentration include the Tradeka and Spar blocks. Competition has increased as foreign trading groups have established themselves in Finland. Special goods stores, kiosks and petrol stations also compete with the daily consumer goods trade to some extent.

69. The market operators heard by the FCA did not disclose views which would have shown that the acquisition causes major competitive problems. In the FCA's estimate, the merger did not create or strengthen a dominant position, which would have significantly impeded competition in the Finnish market.

OM AB / HEX plc

70. In June 2003, the FCA approved an acquisition whereby OM AB (publ.) acquired rule over HEX plc (Helsinki Stock Exchange). According to the FCA, the acquisition does not create or strengthen a dominant position as a result of which competition in the Finnish market would be significantly impeded.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

3.1 Participation in several working groups

71. Networking and interaction with various interest groups is one of the key ideas of the FCA's Advocacy Unit. Creating such contacts was in the forefront in 2003. Networking has focused on the municipal sector but has expanded to cover business organisations and other administration on both ministerial and central agency level.

72. In August 2003, the Ministry of the Environment set up a working group to investigate issues of responsibility and competition regarding municipal waste management. Its aim is to guarantee the organisation of the waste management in accordance with the Waste Act and the objectives set in the national waste management plan and to secure equal opportunities to all operators. The FCA is represented in the working group.

73. In September, the Ministry of Trade and Industry established a working group to prepare the total reform of the procurement legislation, which is intended to be in force from the start of 2005. The FCA participates in the work of the group. The pressures to reform the law are caused by the new EU Directive and national case law and needs to reform.

74. In October, the Ministry of Trade and Industry supplemented its working group on the allocation criteria of rights of discharge set up in the spring of 2003. The allocation of rights of discharge affects the competitive conditions of companies in Finland, EU and more widely, and hence the competitive issues have become a priority in the group's work. The FCA is represented in the group.

75. The FCA also participates in the follow-up group set up by the Ministry of Trade and Industry at the start of 2003 whose duty it is to follow the progress of the national construction political programme approved in January and to make initiatives regarding it. It is also the task of the follow-up group to promote the development of the building and construction sector.

76. The FCA is also represented in the follow-up group of the Finnish Road Administration set up by the Ministry of Transport and Communications in 2000. Its term will be completed in December 2004. - The works on the construction and maintenance of common roads related to the organisation reform of the Road Administration were entirely opened up to competition by the end of 2002. As regards the maintenance contracts and planning work on common roads, the opening up to competition is planned to take place during 2004.

77. The FCA also participates in the work of the Nordic working group set up in August 2003 to analyse the competitive conditions of the telecommunications market. The group's task is to present proposals and recommendations to improve the competitive conditions in the Nordic countries. The group is set to publish its report in September 2004.

3.2 *FCA and Finnish Communications Regulatory Authority to Co-operate More Closely*

78. The FCA and Finnish Communications Regulatory Authority (FICORA) have agreed to tighten their co-operation. The objective is to promote competition in the telecom market as efficiently as possible. The resources of the two authorities should be used appropriately in cases where their powers overlap.

79. On 14 March 2003, the authorities signed a co-operation memorandum, which clarifies the division of labour between the two bodies and encourages customers to turn directly to the authority which is best equipped to handle a potential competition concern. The authorities will also be able to make better use of each other's special expertise in their own investigations. In the end, the co-operation will benefit the users of telecom services.

80. The offices have concluded that FICORA is better equipped to assess questions related to reasonable pricing and the FCA competition restraints such as price discrimination, in particular. However, it is not always possible to avoid processing the same cases in the two offices. This is why the offices have agreed on an exchange of information within the limits of confidentiality obligations set in the law. When necessary, any conflicting decisions will be avoided by postponing decision-making till the decision of the other body or a court of law has been obtained.

3.3 *Opinions given*

81. The FCA gave 47 opinions in 2003, for example regarding proposed amendments to legislation.

82. In May 2003, the FCA gave its opinion on the *amendments to the Waste Act* to the Ministry of the Environment. General provisions on the waste management based on producer responsibility are proposed to be added to the Act. The FCA did not find it justifiable that the State Council could order that all producer communities or producers in a certain product sector co-operate. The coercion could result in harmful competitive effects in the end product market. The FCA found it sufficient to require that the operations of the producer community be transparent and non-discriminatory.

83. The FCA gave two opinions to the Ministry of Finance on the *environmental guidance system* of beverage packages. The FCA stressed that the main objectives of the packaging directive are best met if the taxation of re-fillable bottles and those recycled for raw material is the same. This would promote the creation of a logistically viable system suitable for beverage packages used as raw material.

84. In April 2003, the FCA gave its opinion to the Ministry of Transport and Communications on the proposed revision of the *transport fees in taxi traffic*. The FCA suggested that the Ministry take a critical stand to the preamble and found that maximum tariffs decrease competition and raise the price level considerably.

3.4 Research

85. In 2003, a proposal was outlined at the FCA for the competition authorities' own competition research strategy. The proposed research programme seeks to reinforce the connections between competition study and the competition authorities' actions and to increase the share of competition-related research of the research activities financed by the Ministry of Trade and Industry.

86. According to the proposal, the development of competition-related research requires that the Ministry and the FCA tighten their collaboration. In the future, it is necessary to have good working relations with the new Competition Institute and with universities and research centres.

4. Resources of competition authorities

4.1 Finnish Competition Authority

1. Resources overall

a) Annual budget

Year	No. of FCA officials	Budget expenditure euros (and US Dollars)
2004	68	4.688.000 (5.646.000*)
2003	68	4.593.000 (5.196.000**)
2002	67	4.571.000
2001	66	3.974.000
2000	62	3.596.000
1999	61	3.363.000
1998	57	2.949.000

* According to the euro exchange rates published on 19 April 2004.

** According to the average rate of euro in 2003

b) Number of employees

- economists: 18
- lawyers: 18
- other professionals: 9
- support staff: 23
- all staff combined: 68

2. Human resources (person-years) applied to:

- a) Enforcement against anticompetitive practices (Cartels Unit): 18
- b) Merger review and enforcement (Monopoly Unit, which deals with both merger control and cases concerning abuse of dominant position): 16
- c) Advocacy efforts: 7

3. Period covered by the above information: Year 2003; for b) situation on 31 December 2003

5. Summaries of or references to new reports and studies on competition policy issues

87. In 2003, the FCA's Publications series published a study on companies' competitive strategies and their implementation by mergers. The study has been written by the FCA's research officer *Valtteri Virtanen* as his MA thesis in Engineering for the Lappeenranta University of Technology.

88. According to the thesis, a competitive advantage holds the key to success for a company on the free market. As a concept, it is firmly related to competition strategy. Competitive advantages refer to features of a company, by which the firm may make a better result than its competitors in the same line of business. A competitive benefit is born from the firm's capability to mould, renew and concentrate its resources and know-how in a manner which satisfies its customers' needs.

89. The applied section of the study examines the case of Sonera plc and the two mergers implemented by it in 2000 and 2001. The main sources of information are the FCA's public decisions, and the study charts the analysis of Sonera plc's competitive strategy in general and in relation to the said mergers.