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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS COMPETITION COMMITTEE

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN FINLAND

-- 2009 --

This report is submitted by Finland to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 16-17 June 2010.

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1. Background and Executive Summary

- 1. The Finnish Competition Authority (hereinafter the FCA) is responsible for competition law enforcement in Finland. In its decision-making, it is an independent agency but administratively subordinate to the Ministry of Employment and the Economy for budgetary reasons only. The FCA's objective is to protect sound and effective economic competition and to increase economic efficiency by promoting competition and abolishing competition restraints violating the Competition Act and/or the EC competition rules. The Finnish national legislation has been largely harmonised with the EC competition rules. Further harmonisation concerning, among others, the merger test and the competition infringement sanction system are due to be amended (cf. below).
- 2. The FCA investigates competition restraints both on its own initiative and on the basis of complaints. Additionally, the FCA controls mergers and attends to the international tasks falling under its jurisdiction. The other main bodies responsible for competition law enforcement are the two courts, the Market Court and the Supreme Administrative Court.
- 3. The FCA is the first-instance decision-making body in competition issues. There are two exceptions to this, however. The FCA is not empowered to impose sanctions for breaches of the Competition Act but is obligated to make a proposal to the Market Court if it deems it appropriate to impose fines. The FCA is not empowered to forbid the implementation of a concentration notified to it either, and shall make a proposal to that effect to the Market Court.
- 4. In 2009, the FCA solved 448 pending national competition restraints cases and made 34 decisions in merger cases.
- 5. The FCA and its activities are covered in English on the FCA's web pages at www.kilpailuvirasto.fi/english. The FCA's web pages contain e.g. the English press releases of all the major cases of international interest. The FCA also publishes an (electronic) English version of its Yearbook in the summer of 2010. Additionally, the FCA has published a brochure in English on its tasks, activities and staff. The brochure entitled "Efficiency through Competition" is also available on the FCA's home pages.
- 6. The FCA adopted a new industry-based organisation in early 2009 (for more, see the 2008 Annual Report). Following this reform, the FCA has also introduced a case-management advisory board, which acts as the advisor of the case team in the early stages of the investigatory proceedings, in particular. At the same time, the significance of a particular case for the authority's priority policy is also assessed.

2. New Competition Legislation: Forthcoming proposal

7. The Finnish competition legislation is undergoing a reform. The government bill will be brought before the Parliament in the spring of 2010. The report of the working group which was set up to assess the need to reform the law has been described in the 2008 Annual Report.

3. Competition law enforcement

3.1 Courts

8. The following are the most important decisions issued by the Market Court and Supreme Administrative Court which have come out since the previous Annual Report.

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Asphalt Cartel

- 9. According to the decision by the Supreme Administrative Court, a national asphalt cartel operated in Finland during 1994-2002, and all the biggest actors of the field took part in it. The companies which participated in the cartel were sentenced to pay penalties for a total of \in 82.55 million.
- 10. The penalties imposed by the Supreme Administrative Court:

• Lemminkäinen Plc: €68 million

• VLT Trading (former Valtatie Plc): €4.8 million

NCC Roads Plc: €4.6 million

Skanska Asfaltti Plc: €4.5 million

• SA-Capital Plc: €500,000

• Rudus Asfaltti Plc: €100,000

• Super Asfaltti Plc: €50,000

11. Originally, the amount of the fine proposed by the FCA in 2004 was \in 97 million. However, in 2007, the Market Court lowered the penalties significantly and imposed penalties for a total of \in 19.4 million. Due to this the FCA appealed and finds it positive that the Supreme Administrative Court increased the amount of penalties and finds the decision significant for anti-cartel policy.

Timber Purchasing Cartel

12. The Market Court finds in its decision that, during 1997-2004, the forestry companies Metsäliitto Co-operative, Stora Enso Plc and UPM-Kymmene Plc were guilty of forbidden national price fixing and exchange of information in the purchase of timber. The Market Court imposed competition infringement fines for conduct violating the Competition Act totalling €51 million: €30 million to Stora Enso and €21 million to Metsäliitto. The size of the penalties corresponds to the FCA's 2006 Market Court proposal. UPM-Kymmene Plc was exempted from the infringement fine because in May 2004 it disclosed information on the unlawful conduct to the FCA and submitted information regarding the cartel to the authority. Metsäliitto also assisted the FCA in the investigation the matter, due to which its infringement fine was reduced by 30 per cent. Extensive oral hearings were conducted in the matter, and 35 witnesses were heard. It was found incriminating that fines had been imposed on the same companies before for restricting competition in the purchase of timber. The case was not appealed to the Supreme Administrative Court. This was the second instance the Market Court solved a case in which cartel fines were imposed for a cartel disclosed on the basis of the leniency system. The previous decision issued in February 2009 concerned a cartel in the automobile spare parts market.

Mobile and fixed telephone subscriber connection database

13. On 6 April 2009, the Market Court imposed a fine of €100,000 to Suomen Numeropalvelu Oy (SNOY) for abuse of dominance. SNOY maintains a national subscriber connection database of mobile and fixed telephone lines. The decision was based on the infringement fine proposal made by the FCA in May 2005 on the abuse of dominant position. SNOY had refused to deal with the subscriber connection database it governed to Oy Eniro Finland Ab. In its own catalogue business, Eniro was dependent on

SNOY submitting the information from its subscriber connection database. SNOY justified its refusal by appealing e.g. to information safety issues. The Market Court held that there were no grounds for the refusal. Case SNOY is pending at the Supreme Administrative Court.

Grocery Retailers

14. In the decision issued on 21 December 2009, the Market Court imposed an infringement fine of €100,000 to Kesko Plc and €10,000 to the K Retailer Association. The case involved resale price maintenance on the daily consumer goods market during 1997-2000 (to impose certain maximum retail prices). The Market Court decision followed the FCA's proposal in all respects.

Trade organisations

- 15. The Market Court imposed fines on two trade organisations for restricting competition. By its decision issued on 22 December 2009, the Court imposed an infringement fine of €5,000 on *Suomen Kodinkonehuoltojen liitto* (the Finnish Household Appliance Maintenance Association) for forbidden price fixing and information exchange which took place during 1997-2003. The Market Court reached the same conclusion as regards the violation as the FCA in its 2006 proposal, but the fines imposed by the Market Court remained lower than those proposed by the FCA. The forbidden co-operation concerned the prices and pricing principles on which the repair shops in the association were prepared to offer maintenance and repair services to the firms granting warranties for household appliances. The purpose of the co-operation was to raise the price level of warranty services and repair prices. The FCA also proposed that an infringement fine be imposed on 17 repair shops which sat in the board of directors of the association during 1997-2003 and whom the FCA found to be the main actors in the implementation and execution of the price fixing cartel. The Market Court dismissed the FCA's proposal to this effect. The matter is pending at the Supreme Administrative Court.
- 16. Another case involving trade organisations took place in the barber and hairdresser industry. A competition infringement fine of €33,000 for a breach of the Competition Act was imposed on the trade organisation *Suomen Hiusyrittäjät ry*. The Market Court's decision corresponds to the FCA's 2007 proposal. During 2000-2006, *Hiusyrittäjät* gave their members recommendations on the price increases to be made to the service prices of barbers and hairdressers. In its newsletters and press releases, *Hiusyrittäjät* combined information on the wage increases agreed in collective bargaining to its own estimates about the impacts of the cost increases on the service prices. The organisation also proposed its own estimates and recommendations for price increases calculated on the basis of the above and suggested that the businesses increase their prices. The Market Court found that, by its press releases, *Hiusyrittäjät* had sought a certain annual percentual raise in the prices of the hairdressing services above all to safeguard the income level of the trade. The Market Court found that it was a case of forbidden price recommendations.
- 17. The FCA finds that in their entity, these decisions contain an important message. The Market Court decisions signal to the trade organisations that they cannot fix prices or otherwise involve themselves in the pricing of their members. Price recommendations are also forbidden because they harmonise the pricing in the field and spur companies to raise prices irrespective of their cost development. The recommendations also harmonise the timing of the price increases which makes it difficult for customers to avoid the raise by switching service provider or trader.

Maintenance Services

18. By its decision issued on 29 January 2010, the Market Court imposed a €80,000 fine on A-Tec Service Oy (former Tecalemit Oy) importing machinery and equipment for a breach of the ban on RPM contained in the Competition Act. The RPM which had been targeted at one contracting party (Pohjolan

Laitehuolto Oy) had spanned several regions in Finland and lasted for approximately seven months. The practice which had led to the imposition of penalties took place in 2004. The FCA made a proposal for an infringement fine to the Market Court in March 2006. In the case, Tecalemit which also installed and maintained the machinery and equipment it imported itself had included an item in the service authorisation contract concluded with Pohjolan Laitehuoto according to which the company was not allowed to compete with Tecalemit as regards the prices collected for its own maintenance work and spare parts; instead, it had to follow the prices set by the importer. At the same time, this limited the possibilities of parties who had acquired machinery and equipment from the importer to tender the services of the importer and Pohjolan Laitehuolto.

3.2 FCA

3.2.1 Cartels and horizontal agreements

19. The FCA has been involved in a number of cartel processes in the courts, which has usurped a great deal of resources from the investigation of new cartel cases. The extensive cartel proceedings have taken a major part of the working hours used for cartel cases. The end results achieved from these trials have corroborated a plausible "hard core" anti-cartel policy in Finland.

ATM's in Banking

- 20. The three biggest banks in Finland (Nordea, OP, Sampo) jointly own Automatia Pankkiautomaatit Oy (Automatia ATMs) which maintains the most comprehensive ATM network, the Otto-ATM network, in Finland. Approximately 80 per cent of the cash needed by customers is withdrawn from the Otto-ATMs.
- 21. Pertaining to the case, the FCA received a complaint from a new ATM business Suomen Käteisnosto Oy. The content of the complaint was that Nordea, OP and Sampo did not collect a fee from their own credit customers if the customers withdrew cash from an Otto-network ATM governed by these banks. If the customers withdrew cash from other domestic ATM networks, the fee collected from the credit customers was e.g. 1 euro plus 2 per cent from the amount of the cash withdrawn. The banks justified the different pricing by claiming that the withdrawals collected from competing ATM networks incurred costs to the banks and the prices collected from the customers were based on that.
- 22. The FCA proposed as its preliminary view that Automatia and its member banks have a joint dominance within the meaning of Article 82 EC. The FCA found that e.g. a fee based on the amount of the withdrawal favours the Otto-ATMs unjustly. The FCA found in its initial analysis that the pricing of the banks complicates or even prevents the entry and activities of new ATM business in the market. The pricing has therefore discriminatory and exclusionary aspects. The FCA found in its preliminary statement that the case also involved forbidden price co-operation within the meaning of Article 81 EC.
- 23. The banks contested the FCA's analysis concerning the abuse of joint dominance and found that the co-operation increased efficiency within the meaning of Article 81.3 EC. However, each bank made a commitment to the FCA to change the pricing of their credit customers. The FCA found that these commitments terminated the discrimination of the other ATM networks acting beside the Otto-ATM network and closed the file. The decision does not take a final stand to the alleged joint dominance of the banks and the related potential abuse.
- 24. The FCA finds that due to decision, the number of ATMs in Finland will increase and the costs collected from the use of other than Otto-ATMs will decrease. The expanding ATM-network will increase choice for customers and the trade. Cash will also remain a viable option to the payment cards which are

likely to become more expensive with the arrival of SEPA. A more comprehensive ATM-network will spur the banks to differentiate their service provision and increase the competition for customers.

3.2.2 Abuse of Dominance

- 25. In May 2009, the FCA issued its decision in case **Elisa** concerning the broadband market. The case was closed when Elisa lowered the network rental fee it collected from customers to remove the competition problem. By renting the network, competitors now have the chance to access the broadband market in Elisa's fixed network.
- 26. In the context of the Elisa case, the FCA defined how to make a so-called price squeeze assessment in the broadband market. On the basis of this, the FCA submitted guidelines which seek to ensure that the fixed-network operators will not apply pricing practices which restrict competition.

3.2.3 Mergers

- The Alma Media/Talentum merger concerned two-sided markets. The FCA investigated the competitive impacts of the merger particularly as regards Alma Media's newspaper Kauppalehti and Talentum's magazine readers as well as the advertisers using the said publications. In addition, the FCA investigated the competitive impacts of the merger on job advertising. Based on its investigations, the FCA estimated that the merger may strengthen the position of the parties in the reader markets. When the impacts of the merger were investigated, however, attention was paid e.g. to the lack of competition between the Kauppalehti and Talentum magazines prior to the merger, the long descending circulations and the number of news sources replacing the newspapers of the concentration. In addition, it was notable that major subscribers of the Talentum magazines were able to negotiate on the subscription prices. On these grounds, the FCA found that no such dominant position will arise in the news reader markets which would significantly prevent competition. As regards the sales of advertising space for decision-maker advertising, the FCA found that the position of the parties may be strengthened as a result of the merger. However, after examining how the different printed media reach the decision-makers, the contact prices and the relation of the print media to alternative advertising channels, the FCA found that there is no evidence as to the merger causing major competition problems in the sales of advertising space in Finland. In electronic job advertising, there are alternative services to those offered by the parties. In the assessment, newspaper advertising was also taken into account. After the investigations, the merger was approved as such at stage II.
- 28. In 2009, the FCA made 22 merger decisions. No merger was proposed to be banned.

The FCA's merger decisions 2007-2009 (calendar years)

	2007	2008	2009
Decisions	35	23	14
Lapsed pre-notifications	3	0	1
Other closed cases	12	11	7
Total	50	34	22

Merger decisions according to type of decision

	2007	2008	2009
Proposal to prohibit	0	0	0
Cleared as conditional	0	1	0
Cleared as such in Stage I	34	22	13
Cleared as such in Stage II	1	0	1
Acquisition not covered by merger provisions	0	0	0
Total number of decisions	35	23	14

4. Advocacy

- 29. The FCA was a member of the Ministry of Employment and the Economy working group examining competition neutrality between public and private production activities. The working group report was published in 2009. The present government programme says that the government will investigate to what extent there are competition neutrality problems between private and public service production. According to the report, the main problems concern the state-owned and municipal enterprises which, compared to private operators, can act in the market (produce products and services to the market) e.g. in a more favourable tax system (enjoy tax benefits compared to private actors) and operate without the threat of bankruptcy, which e.g. reflects itself as better financing conditions. The working group suggests that the legal status of state-owned enterprises should be changed into similar company forms which are used by the private sector. With these measures, the competition neutrality between private and public market operators will be implemented. The said report mainly focuses on the assessment of competition neutrality in the state-owned business. A new working group on competition neutrality has since been established, focusing of the assessment of competition neutrality issues in the municipal sector business.
- 30. As regards municipal enterprises, the FCA is currently investigating the pricing practices of municipal district heating companies. The investigations focus on whether there is excess pricing in the field as defined in the Competition Act and whether the pricing of district heating should be examined in detail for potential abuse of dominance. In Finland, there is no special legislation or supervisory authority in the district heating sector, unlike in the electricity market for example. The supervision of the pricing of the industry is therefore based on the Competition Act.
- 31. The FCA participated in a development project for forestry promotion organisations. The report suggests that the Ministry of Agriculture and Forestry should establish a legislative project to amend the legislation of the field in order for the activities of the Forestry Centres, Forestry Development Centre Tapio and Forest Management Associations to meet the requirements of competition neutrality. The aim is that there would be no distortive legislative methods in the supply of forestry services.
- 32. At the start of August 2009, the Act on the service vouchers in social and health services became effective in Finland. The use of the service vouchers will expand to all social and health services excluding emergency services and involuntary treatments. The municipalities decide on the introduction and service range of the service voucher system and approve the producers for whose services the voucher may be used. The FCA has long acted to promote this reform.

5. Resources of the FCA – Key figures

Year	No. of FCA officials	Budget expenditure, €
2009	67	5,769,400
2008	69	5,360,000
2007	70	5,153,000
2006	68	5,057,000

6. New Reports and Studies

33. The Nordic competition authorities published a report on the role of competition policy in the financial crisis. Securing sound and effective economic competition is particularly important in an economic crisis. The previous crises have taught that vigorous competition enforcement and deregulation contribute to a fast economic recovery and ensure that the market structure will develop in a more viable direction in the future. Moreover, economic research shows that effective competition increases general

welfare even in a recession and reinforces the ability of an economy to break away from the recession. Compromising competition policy goals may lead to a lengthening of the crisis, according to some studies. Special attention shall be paid to the dismantling of entry barriers from new business. For example these thoughts are included in the report published by the Nordic competition authorities in Reykjavik, Iceland. It contains a number of recommendations concerning the competition authorities themselves as well as political and municipal decision-makers. The publication includes reviews on the impacts of the crisis and the challenges of competition policy in the different Nordic countries, and a summary of the experiences learnt from previous crises.