

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN FINLAND***April 2002 - February 2003***1. General Issues**

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 task of the FCA is to enhance the efficiency of the economy by promoting competition. It takes measures to abolish competition restrictions and implements merger control. The FCA investigates competition restrictions both on its own initiative and on the basis of complaints received.

3. The FCA and its activities are covered in English on the FCA's home page at [www.kilpailuvirasto.fi/english](http://www.kilpailuvirasto.fi/english). The FCA's home pages e.g. contain English press releases of all the major concentration cases and the complete Yearbook 2002/2003 in English (available in June 2003, at the latest).

**1.1 New Organisation**

5. The FCA's strategy in the coming years is to gradually shift emphasis from reactive competition control to proactive activities and influencing. The FCA's expertise will be put to full use by a re-organisation of the previous industry-based units into new groups based on the type of competition restraint. The new organisation has been effective from 1 October 2002.

6. The organisation reform brought with it three new units.

7. The *Monopolies Unit* deals with abuses of dominant position and merger control.

8. The *Cartels Unit* investigates cartels and other concerted activities between competitors, distribution channels restraints and governmental competition restraints.

9. The *Advocacy Unit* seeks to affect, proactively, the harmful market conduct of the business community and the government.

**1.2 Preparations for new Competition Act**

10. On 1 May 2004, the modernisation of EC competition law procedures will be implemented. The competition authorities of EU member states will form a European Competition Network (ECN). The reform also implies changes in the Finnish national competition legislation so as to enable Finland to fully participate in ECN's activities. Preparations for the reform of the Competition Act have already started. It is the intention that the amendments of national legislation will also be implemented in May 2004.

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### **2 Cartels**

#### **2.1 Asphalt investigations**

11. In March 2002, the Finnish Competition Authority launched a dawn raid on a number of asphalt companies, prompted by the inquiries it had carried out that suggested that the companies had divided the market and were engaged in price and bidding cooperation. The Finnish Competition Authority continues its investigations that are due for completion in 2003.

#### **2.2 Roofing felt investigations**

12. In November 2002, the FCA conducted dawn raids into the premises of roofing contractors and wholesalers operating in the roofing felt business. These dawn raids were also launched as a result of investigations made by the FCA, which suggested that the companies involved were engaged in market sharing, and price and bidding cooperation.

13. The Finnish Competition Authority continues its investigations that are due for completion in 2003.

### **3. Other Horizontal Arrangements**

#### **3.1 Exemption to Savings Banks for Joint Pricing**

14. In May 2002, the FCA granted the savings banks an exemption, which enables them to jointly agree on the pricing recommendations of banking services. The exempted cooperation concerns price recommendations only. The exemption of the savings banks is valid for ten years.

15. Each savings bank is an independent business undertaking and therefore the saving banks group needed an exemption for joint price collaboration.

16. In Finland, competition in the banking business mainly takes places between the banking groups. The savings banks group is one of the smallest banking groups in Finland. The market share of the savings banks is well below 10 per cent. For instance, the joint share of the three largest bank groups is approximately 85 per cent.

17. Generally, competition in the banking sector has increased because customers now have more and more options to choose from with respect to their banking services. The increase is due to the rapid development of banking technology and the spread of IT connections.

#### **3.2 Cooperation in electronic web service (Oikotie)**

18. Four printing houses sought for an exemption from the FCA for cooperation in the electronic web service for advertisements ([www.oikotie.fi](http://www.oikotie.fi)). The Oikotie ("Shortcut") service is the only provider of electronic advertisements in Finland who offers job, housing and car advertisements under the same brand. The exemption was e.g. sought for price cooperation by the printing houses in the market of these electronic advertising services.

19. Although the applicants simultaneously acted as newspapers publishers, the exemption only concerned their cooperation in the electronic Oikotie web service. The applicants stressed that the electronic advertising market and the traditional newspaper advertising market were separate markets. Due to this, the applicants found that their potential market power in the newspaper market should not be a consideration in the assessment of the exemption for the electronic advertising.

20. The FCA also found that the electronic advertising market and the traditional newspaper advertising market were two distinct markets.

21. However, the FCA found that some weight should be given in the assessment to the newspaper advertising market because it composes a closely linked market. The FCA considered that the applicants of the Oikotie exemption were established newspaper houses and hence known providers of advertising services for the customers.

22. The applicants held that the cooperation was necessary above all to share the substantial sunken costs and the risks involved. The FCA found that risk sharing did not require price cooperation between the competitors.

23. The applicants also stated that cooperation would be essential to reach an extensive contact surface and a sufficient cost-efficiency. The FCA found that extensive contact surface did not require the price cooperation that was sought for by the exemption.

24. The FCA did not grant an exemption for the Oikotie cooperation. The FCA held that some of the applicants would be able to produce the web service independently as well. The FCA also found that the potential efficiency benefits of the cooperation would not be channelled to the customers. The applicants have appealed their case at the Market Court.

### **3.3 *Cooperation/Pocket books***

25. The FCA granted a conditional exemption for four printing houses in the sales and marketing of pocket books through their joint venture Loisto Ltd. Loisto markets both its partners' books and those previously published by other publishers as pocket books under the Loisto brand. The pocket books have a recommended price, whereby a certain price image is created.

26. The applicants stressed that Finland does not yet have a functioning pocket book market and the cooperation is aimed at creating such a market. The applicants found that the joint investment by the publishers on the pocket book market would cut down overlapping costs and offer a chance to produce competitive pocket books for the consumers. The applicants held that the efficiency benefits would be extended to the customers (consumers), since pocket books compete e.g. with other books and magazines.

27. The FCA decided to grant a temporary exemption but several conditions were imposed. Representatives of shareholders of the joint venture cannot act in Loisto's Board of Directors; board members shall be experts independent of the shareholder companies. The shareholder companies shall not exchange information on the prices, terms of sale, sales quotas or market shares of the pocket book market or other closely related markets. The joint venture shall not oblige its shareholder companies or customers to publish their pocket books through Loisto alone. The FCA shall receive an annual account of how competition is maintained in the pocket book market. The exemption is valid until 15 October 2005.

## **4. Abuse of Dominance**

### **4.1 *Helsinki Exchanges***

28. The FCA investigated the pricing of the Helsinki Exchanges (HEX) as a maintainer and service provider of the public stock trading system. Based on its investigations, the FCA found HEX to occupy a dominant position. HEX was not found to have abused its dominance, however, and the FCA concluded its investigations because a dominant position as such is not forbidden.

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29. HEX appealed against the FCA's decision. HEX held that, if seen to occupy a dominant position, special obligations would be imposed on it. Therefore HEX found that it should be allowed to appeal against the FCA's decision on dominance, although nothing implying abuse of dominant position could be found.

30. However, the Market Court did not review HEX complaint. The Court found that companies do not have the right to bring before the Court the mere issue of whether a dominant position exists. The Market Court found that the right of appeal only exists if a company is seen to occupy a dominant position.

31. HEX has appealed against the matter at the Supreme Administrative Court.

### **5. Merger Control**

#### **5.1 *Sonera (competitors right of appeal)***

32. In early 2001, Sonera Oyj operating in the telecommunications business acquired control in Loimaan Seudun Puhelin Oy.

33. The FCA found in August 2001 that the transaction creates or strengthens Sonera's dominant position e.g. in the markets of:

1. lease of copper line of telecom network;
2. lease of trunk network;
3. lease of cable television network;
4. mobile telephony maintenance equipment;
5. mobile telephony services.

The FCA cleared the acquisition as conditional.

34. Some of Sonera's competitors appealed against the decision at the Competition Council (present Market Court) and demanded that the FCA's decision be annulled. The appellants found that the conditions imposed by the FCA were not sufficient to remove the restrictive effects of the acquisition. The appellants stated that the transaction had harmful effects for competition not only on local but also national telecom network and telecom service markets.

35. The appellants (competitors) held that they had the status of a party in the case and hence, right of appeal. They justified the status of a party by saying that the approval of the acquisition (even as conditional) affects their position (direct interest).

36. Finland has not previously had case law dealing with the status of a party and right of appeal in merger control cases.

37. The FCA proposed that the appeal should not be processed because the appellants did not have right of appeal. The FCA found that according to the Competition Act, prohibiting the acquisition could only be brought up upon the FCA's proposal. The Act does not state that a concentration issue could be brought up before the Court by competitors or by an appeal made by them. According to the FCA, prohibiting the acquisition was only possible on the FCA's proposal and other parties do not have the right to demand that an acquisition be prohibited.

38. The Competition Council found in December 2001 that competitors of parties in a concentration case should have the right of appeal against the FCA's decisions, even if this is not directly provided for in the law. The main criterion was that a competitor could have a considerable and tangible interest in a concentration case. The Council held that in the case under consideration the appellants had such an interest.

39. In July 2002, the Supreme Administrative Court held that, in addition to parties to concentration cases, other parties might, in some cases, have the right of appeal against the FCA's merger decisions. However, the Supreme Administrative Court annulled the Competition Council's decision. The Court held that the appellants did not have a sufficient interest as a basis of the right of appeal. The FCA's decision of August 2001 thus became the final decision in the case.

### **5.2 *Orion/Kronans Droghandel***

40. In May 2002, the FCA cleared an acquisition whereby the Orion Group acquired a majority ownership in the Swedish pharmaceutical distributor Kronans Droghandel AB (KD).

41. Prior to the acquisition, three pharmaceutical distributors operated on the Finnish pharmaceutical wholesaling market: Oriola Oy, Tamro Oyj and KD, whose Finnish subsidiary commenced operations in Finland in 1999. As a result of the acquisition, there remained two full-service wholesalers in Finland.

42. A so-called single channel system is used in the Finnish pharmaceutical wholesaling: only one wholesaling company distributes the products of each pharmaceutical manufacturer. The wholesaling companies compete with each other on the client deals of pharmaceutical manufacturers or their Finnish representatives. Competition has resulted in pharmaceutical manufacturers changing their distribution channels repeatedly.

43. The FCA cleared the acquisition as, according to the FCA's estimate, the creation or strengthening of a dominant position is unlikely in a situation where there exist two almost equally powerful market operators.

44. The FCA also found that the entry barriers could not be seen to be very high. The FCA assessed the possibility of joint dominance but decided to clear the acquisition. The FCA also found that the manufacturers had bargaining power, which efficiently limits the market power of the wholesalers.

### **5.3 *Lännen tehtaat/Avena***

45. In June 2002, Lännen Tehtaat Oyj notified to the FCA an acquisition whereby it obtained control of Avena Oy owned by the Finnish state.

46. Lännen Tehtaat is a food industry company, and its products include compound feeds and raw materials for compound feeds and industrial feed. The Avena Group e.g. contains the subsidiaries Suomen Rehu (industrial feed), Avena Nordic Grain (grain and feed raw material trading), Avena Siilot (processing and stocking of grain).

47. The FCA's investigations indicated that the acquisition would strengthen the dominant position of Suomen Rehu in the industrial feed market. Prior to the acquisition, Suomen Rehu already held a firm position in the market. Additionally, the other company of the Avena Group (Avena Siilot) already owned a market share of more than 60% in the stocking and stockpiling services of the import and export trade of grain.

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48. The FCA held that, as a result of the acquisition, a major contender would exit the market and the Finnish feed market divide more and more clearly between two large operators.

49. The FCA cleared the acquisition as conditional.

50. The FCA found that the acquisition would lead to joint dominance in the feed market between Lännen Tehtaat/Avena and Raisio. The market conditions would be such that they would facilitate the coordination of the market behaviour of these two firms in a manner restricting competition. In its assessment, the FCA considered e.g. the estimates of the different market parties on that entry into the Finnish feed market would not be lucrative (no potential entry), e.g. because there is already enough production capacity and market entry would require considerable investments.

51. The FCA cleared the acquisition only after the parties had provided structural commitments. The acquisition was conditional on e.g. that the concentration give up its plan to acquire a 35% holding in Avena Siilot (the processing and stockpiling company). The aim of the condition is to reduce the competition concerns related to the dominant position and to promote the import of feed raw material.

### 5.4 Merger Statistics

The FCA's merger decisions 2001-2002 (calendar years)

	2002	2001
Decisions	114	104
Lapsed pre-notifications	13	21
Other closed cases	26	23
Total	153	148

Merger decisions according to type of decision:

	2002	2001
Proposal to prohibit	0	0
Cleared as conditional	1	5
Cleared as such in Stage I	110	98
Cleared as such in Stage II	0	1
Acquisition not covered by merger provisions	2	0
Total no of decisions	113	104

Nationality of parties to concentration cases:

	2002	2001
All parties Finnish	56	41
All parties foreign	32	31
At least one Finnish party	23	32

## **6. Sectoral Issues**

### **6.1 Airlines**

52. Together with the Norwegian, Swedish and Danish competition authorities, the FCA participated in a Nordic Task Force on Airline Competition. The Task Force listed several competition concerns typical of airline traffic and considered alternative solutions to them. It is the purpose of the report (cf. [www.kilpailuvirasto.fi/cgi-bin/competitive-airlines](http://www.kilpailuvirasto.fi/cgi-bin/competitive-airlines)) to draw both the national and the EU competition authorities' attention to the competitive problems in the field.

53. The FCA is presently reviewing airline competition in Finland and e.g. the potential competitive concerns in the national carrier Finnair's travel agent agreements and the Finnair Plus frequent flyer programmes.

### **6.2 Telecom Markets**

54. In May 2002, the FCA gave the Ministry of Transport and Communications a statement on the reform of the Telecommunications Act. It is the objective of the reform to nationally implement the new EC Directives on electronic communications. The FCA supported the aims of the draft bill but wished to draw attention to certain special questions.

55. In its statement, the FCA was critical of the Proposal for the new Telecommunications Market Act insofar as it would provide the FCA and the Finnish Communications Regulatory Authority (FICORA) with parallel powers in competition control.

56. The FCA found, in general, that sector-specific competition control should be kept to a minimum and be used only in situations where the general competition rules cannot be efficiently applied. The best and clearest option would be that, in telecommunications too, competition control would remain solely with the FCA, and FICORA would monitor the activities of the telecom companies in other respects.

57. Should the legislation be passed in the proposed form, the FCA found it important to safeguard the uniform application of the competition rules, irrespective of industry. The Competition Act is a general Act, which shall be fairly applied to all companies conducting business in Finland. FICORA's decisions on market definition and the competitive position of telecom companies should hence be in line with the general rules of application of the Competition Act.

58. The FCA held that, for the sake of clarity, it should be added into the commentary to the Government bill that the new tasks of FICORA would not exclude the possibility of national authorities making case-specific decisions, which might differ from FICORA's decisions, when reviewing competition restraint cases.

59. Firm and regular cooperation between the FCA and FICORA would best secure a uniform competition law interpretation. This would also enhance the possibilities for the removal of competition restraints and maintaining sound competition in the telecom market.

### **6.3 Broadband Service Market**

60. The FCA has examined the potential competition restraints in the broadband service market. Problems have occurred particularly in the wholesale markets. To remind all telecom operators of the claims of competition legislation, the FCA delivered a report to the telecom operators providing ISDN or broadband services in Finland.

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61. The FCA commenced its investigation of the broadband market after having received several contacts from consumers and companies in which it was proposed that accessibility and pricing problems occur in the broadband data access market and these would give reason to doubt that competition was being restrained.

62. Broadband connections exploit the ADSL technology and are faster than the digital ISDN telephone network. By using the broadband network, companies can e.g. connect several offices to one another; such services are used e.g. in telecommuting solutions. In households, broadband is used primarily for Internet access. There are approximately 100'000 ADSL subscriptions in Finland.

63. There are both wholesale and retail markets for broadband Internet services. Consumers and private firms purchase Internet access from a service operator, which forms the retail market for broadband services. To access the Internet, the service operator obtains network capacity from the network operator. This forms the wholesale market of broadband services. Network services are sold by telecom companies, who have a legal obligation to rent network access also to outside service providers.

64. Competition concerns arise due to the dominant position of local telecom operators: they own the local fixed network and are thus able to govern their competitors' access to the telecom networks. At the same time, telephone companies themselves act as competitors of service providers in the retail market.

65. In its report, the FCA found that the main problems in the wholesale markets involve pricing. Telecom companies do not necessarily have a public price list for the operator product and the pricing of the service may be discriminatory or otherwise unreasonable to competing service operators. The delivery terms of services may also contain conditions unduly restricting the operating freedom of competitors.

66. The report showed that competition on the broadband market functions well in some areas only. There are usually several retail service providers in the city but in sparsely populated areas, local telecom companies often have a regional monopoly on the retail level, too, i.e. in the sales of ADSL connections to consumers and corporate customers. The competition restraints on the retail level are mainly related to the bundling of products. The Internet service, access to the service via the network and the necessary equipment are sold together and separate prices for them have not been specified. It is also not always possible for the customer to purchase the product and services separately.

67. The FCA found that, in the future, it is important that both on the wholesale and retail level, customers obtaining broadband services have available to them a sufficient number of alternative services, service providers and the equipment needed to use the services. Even if the legislation provides a good basis for sound competition with the forthcoming Telecommunications Market Act, attention should be paid to the pricing models, terms of delivery and operating modes used by incumbent operators.

68. The FCA continues its investigations. Should the FCA discover restrictive practices in the broadband market in the future, it shall take the necessary action.

## **7. Regulatory Issues/Advocacy**

### **7.1 Waste management - FCA initiative**

69. In Finland, the waste management arranged by the municipalities has traditionally been realised in such a way that the municipalities have tendered the waste transports needed. The market situation has changed since then, and the municipalities have set up corporations, which still remain under their control. These municipal waste management companies usually act as a monopoly in the utilisation and management of housing waste. The situation has created suspicions on cross-subsidisation and predatory pricing.

70. The matter involves regulatory issues, which the FCA is not empowered to directly intervene with, however. This resulted in the FCA issuing an initiative in October 2002 about the solving of competitive concerns related to waste management. After having discussed the matter with the various parties, the FCA maintained that several market operators supported establishing a working group.

71. The FCA found it extremely important that efficient market conditions be created to the exploitable waste but in such a way that the environmental conditions set on the system can be met. The intention is that the working group prepares rules to ensure efficient competition in the waste management business. If rules could be determined to be more precise it would help create functioning market conditions in the waste management business, and these would ensure the market entry of new business undertakings.

## **7.2 Beverage package market**

72. In February 2003, the FCA gave a statement to the Ministry of Finance in which it paid attention to the competition distortions in the beverage package market. The statement was given to a working group, which considered the environmental guidance system of beverage packages. Generally, the FCA found the proposals of the working group to be correct but insufficient for safeguarding competition.

73. The FCA found that the tax treatment of refillable and disposable beverage packages should be the same. When the primary concern is cutting down on the amount of waste, it makes no difference whether the bottles are recycled and filled anew or whether the waste will be reused.

74. At the moment, disposable plastic bottles lack a functioning recycling system, which has complicated the entry of imported products. It is possible to remedy the defects in the Finnish recycling system by using the right kind of incentives. The FCA finds that a working recycling system for disposable plastic bottles — e.g. spring water bottles— should be introduced into Finland. This could be achieved if the taxation of disposable plastic bottles and aluminium cans would be harmonised with that of refillable packages.

75. The FCA also pointed out that, in 2002, the European Commission issued Finland an official complaint on the national implementation of the Directive on packaging and packaging waste. The Commission criticised the Finnish recycling system for its lack of transparency and non-discrimination.

## **7.3 State Enterprises**

76. In October 2002, the FCA issued the Ministry of Finance a statement on the report of the working group reforming the State Enterprise Act. One difficulty is that, occasionally, state enterprises have both business activities and administrative duties. The role of state enterprises is therefore in somewhat unclear on several markets.

77. The FCA finds that the state enterprise format is justified only in cases where the enterprise has such a public service duty that cannot be obtained from the markets. Hence, the FCA found it important that the public administrative duties of the state enterprises and their appropriateness be carefully assessed. Then, the public administrative duties possibly decreed to the state enterprise must always be separated from their business activities.

78. When necessary, the establishment of a separate office should be considered for handling the administrative duties or, alternatively, the transfer of these duties to an existing office. The FCA finds that

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this could credibly prevent any cross-subsidisation suspicions and ensure the realisation of the principles of good administration.<sup>1</sup>

### 7.4 Railways

79. In June 2002, the FCA issued the Ministry of Transport and Communications a statement on its draft proposal for a new Railway Act.

80. The FCA stated that the government bill for a new Railway Act would still open up railway competition in Finland regrettably slowly. The Act would only implement the obligatory changes caused by EU rules, i.e. competition was proposed to be opened up for competition in intra-EU international traffic only. Domestic cargo and passenger traffic and the traffic between Finland and Russia would still remain the sole right of VR Ltd.

81. It was the FCA's assessment that Finland is sufficiently prepared to open up for competition e.g. the markets of domestic cargo traffic and commuter traffic at a clearly faster speed than what is proposed now. The FCA has previously proposed opening up competition in the cargo traffic between Finland and Russia and passenger long-distance traffic.

### 7.5 Recommendation on competitive behaviour of vocational institutions

82. In early 1990s, the FCA received several complaints from within the hotel and restaurant business and the barber and hairdresser business on vocational institutions selling their apprentice work and other products and services, which had been subsidized by the state, at prices that were too low, hence distorting competition.

83. The FCA, the Ministry of Education, the Association of Finnish Local and Regional Authorities and the Federation of Finnish Enterprises signed, in 1998, a joint recommendation on the pricing of apprentice work and the products supplied by the Finnish vocational institutions. The recommendation acknowledged that it is highly important that the institutions price their products and services commercially viably to avoid competition problems.

84. The FCA's investigation of 2002 showed that the vocational institutions have both become aware of the pricing recommendation and primarily accepted it. The investigation shows that the recommendation has considerably decreased competitive concerns in the recent years. It also showed that the recommendation is still necessary and topical.

## 8. Resources

Year	No. of FCA officials	Budget expenditure (euros)
2003	67	4.511.000
2002	67	4.571.000
2001	66	3.974.449
2000	62	3.596.000
1999	61	3.363.000
1998	57	2.949.000

1. For State Enterprises in Finland (see also Regulatory Reform in Finland/Chapter 5/State Owned Enterprises/Daffe/Comp/Wp2(2002)7.

