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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN FINLAND

-- 2006 --

This annual report is submitted by the Finnish Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-7 June 2007.

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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 Trade and Industry 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 Act on Competition Restrictions (480/1992, incl. amendment 318/2004, hereinafter the Competition Act) and the EC competition rules. 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 FCA is the first decision-making body in competition law enforcement. The other main bodies responsible for competition law enforcement are two courts: the Market Court and the Supreme Administrative Court.
2. The Finnish national legislation has been harmonised with the EC competition rules. As a result of the amendments, Articles 81 and 82 of the EC Treaty are directly applicable in Finland. The amended Act has been effective from 1 May 2004, i.e. since the Regulation 1/2003 implementing Articles 81 and 82 of the Treaty establishing the European Community and the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings entered into force. Year 2006 was thus the second calendar year when the amendments were fully applied and the effects of these amendments were to be seen in their entirety.
3. In 2006, 506 new domestic matters involving competition restraints and merger control were brought before the FCA. The FCA resolved a total of 533 competition restraints issues and merger cases (incl. one initiative and 83 written opinions to other authorities in regulatory matters). The FCA also made six proposals to the Market Court in order to impose fines on competition law infringements. Three of the proposals concerned cartels and three vertical restraints (resale price maintenance, prevention of parallel trade, infringement in selective distribution). In 2006, the Market Court issued 10 decisions concerning competition restraints. The Supreme Administrative Court issued 9 decisions on appeals made on the Market Court's decision. The most relevant cases of the Market Court/Supreme Administrative Court are summarised below.
4. The number of merger notifications has decreased as a result of the new provisions which became effective in the spring of 2004. There were 42 new notifications made in 2006 compared to 55 in the previous year. Two conditional decisions were taken while other mergers and acquisitions were cleared as proposed.
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 contain e.g. English press releases of all the major cases of international interest. The FCA also publishes the FCA's Yearbook 2007 in English in the summer of 2007. 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.

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

1.1 Summary of new legal provisions of competition law and related legislation

6. No amendments were made to the Competition Act in 2006.

2. Other relevant measures, including new guidelines

2.1 The FCA has not published guidelines or other relevant measures in 2006.

3. Government proposals for new legislation

7. There were no Government proposals for new competition legislation in 2006. A new government was set up in April 2007. According to its agenda, the Government intends to investigate possible needs to amend the current competition legislation.

2. Enforcement of competition laws and policies

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

2.1.1 Summary of activities of the FCA and the courts

8. In the area of abuse of dominance, resources were directed especially to the investigation of infrastructure industries such as the energy and the telecoms which are important to the national economy, and other foreclosure cases impeding competition. In the telecoms market, the main emphasis was on the broadband market where the securing of its competitiveness is integral to the realisation of the information society programme and the national broadband strategy.

9. Cartel enforcement has been one the FCA's priorities during the last few years. In Finland, the Market Court is empowered to impose sanctions (fines) for cartel infringements upon the proposal of the FCA. There are a total of seven cartel cases pending at the Market Court, in which the FCA has proposed fines. In 2004-2006, the total amount of fines proposed by the FCA is EUR 153 million.

10. In 2006, a considerable part of the cartel enforcement resources was also still tied up with procedural matters such as access-to-file disputes (relating to the interpretation of the Act on the Publicity of Official Documents). The FCA was involved in several procedural matters which concern the publicity of documents and which were pending at administrative courts responsible for applying the Publicity Act.

11. In competition advocacy, the emphasis was to be on preventive control conducted on the FCA's own initiative as compared to ex post control. The FCA is a member in several national working groups planning for deregulation or new regulation for a certain economic sector. In 2006, the number of advocacy statements issued by the FCA increased by a third, and the FCA's participation in the parliament hearings doubled compared to 2005.

2.1.2 Description of significant cases, including those with international implications

Cartels and horizontal agreements

12. In 2006, the FCA proposed to the Market Court in three cartel cases that the Court impose an infringement fine for companies suspected of a cartel.

1. The Market Court proposal made in May 2006 concerned the imposition of competition infringement fines for a price cartel on *household appliance services*. At the time of the infringement, for example retailers of household appliances offered additional guarantees to their customers, which extended the original guarantee period offered by the manufacturers of these household appliances. The FCA found that, during 1997-2003, prices and pricing principles with which these additional guarantee services should be offered by the repair shops were determined within the sphere of the Finnish Federation of Household Appliances. The purpose of the cooperation was increasing the price level of the maintenance and repair services in the guarantee services. The combined sum of the proposed infringements was EUR 270 000. The matter is pending at the Market Court.
2. In July 2006, the FCA proposed that the Market Court impose infringement fines of a total of EUR 3.76 million to four *wholesale firms selling automobile spare parts* (HL Group Oy, Koivunen Oy, Oy Kaha Ab and Örum Ab). The matter was initiated with a leniency application by Arwidson Oy. The FCA found that the companies involved in the cartel had, by mutual agreement, boycotted a resale chain active on the wholesale level, in order for the chain to abandon its cooperation agreement with a firm who was a competitor of the companies involved in the cartel. The FCA found that the purpose of the cooperation was to prevent the entry of a new business model into the Finnish market. No infringement fine was proposed to Arwidsson, as the company confessed its participation in the cartel. This is the FCA's first leniency decision after the possibility of leniency was first introduced in May 2004. The matter is pending at the Market Court.
3. In December 2006, the FCA proposed that infringement fines be imposed on Stora Enso and Metsäliitto Osuuskunta for a buying cartel in timber. The size of the proposed infringement fine is EUR 30 million for Stora Enso and EUR 21 million for Metsäliitto. The FCA finds that, during 1997-2004, the companies were guilty of participating in forbidden price cooperation and exchange of information in the purchase of timber. The matter is pending at the Market Court and investigations began as the result of a leniency application by UPM-Kymmene. No infringement fine is proposed to UPM-Kymmene for participation in the cartel. UPM-Kymmene, Metsäliitto and Stora Enso annually buy approximately 80 per cent of all domestic timber. In 2001, the Supreme Administrative Court previously ruled that the companies were guilty of an unlawful buying cartel.
4. In February 2007, the FCA issued a decision in the matter involving information exchange in the *roofing felt sector*.

The FCA discovered in its investigations that the three biggest companies in the roofing felt sector – Icopal Oy, Katepal Oy and Lemminkäinen Oyj – and the Confederation of Finnish Construction Industries RT were guilty of forbidden exchange of information under the national and EU competition rules primarily during 1996–2001.

The companies supplied the Confederation of Finnish Construction Industries RT on a monthly basis with detailed and current sales information from which the Federation drew up sales statistics for its so-called Roof Bitumen Group. The FCA concluded that this kind of

current information is normally considered a business secret, the information exchange was likely to influence the companies' competitive behaviour and that the arrangement did not produce any efficiency benefits. The combined market share of the companies, which participated in the exchange of information, of the retail sales in the hardware stores exceeded 90 per cent during the period under inspection. The corresponding figure in the contracting sector was roughly 70 per cent.

However, the FCA did not bring the matter before the Market Court, since the applicability of the national competition legislation enforced in 1996–2001 to the exchange of sales information was at the time of the infringement unclear to some extent. From the viewpoint of the EC competition legislation, the conduct of the companies was clearly prohibited. Since prior to 1 May 2004 the FCA did not have powers to impose fines for violations of the EC competition rules, the FCA was unable to propose sanctions retroactively for a violation of these rules.

5. In June 2006, the Market Court issued a decision in the matter involving *insurance brokerage fees*. The Association of Finnish Insurance Companies (SVK) representing the insurance companies issued a recommendation in 2002 according to which the insurance companies should no longer pay the brokers fees; instead, they should collect their fees directly from the customers. The FCA found that this was a prohibited price cooperation arrangement between the insurance companies and did not grant an exemption for the arrangement. The SVK appealed the FCA's decision to the Market Court, which also found that the SVK's price recommendation was covered by the prohibition on price cooperation and that the preconditions for an exemption were not met. The SVK has appealed the Market Court's decision to the Supreme Administrative Court.
6. Public Sector Partnership. In 2006, the FCA commenced cooperation with large Finnish cities in order to detect and prevent cartels. The cooperation is aimed at increasing the cities' awareness of unlawful (bidding) cartels, their harmful impacts and means to prevent them. The purpose is to create a channel which would provide the FCA with constant information on the alleged cartels met by the public sector in its purchasing function. The cooperation commenced in 2006 brought up new cartel suspicions. For further information, see WP3 roundtable discussion in June 2007.

Vertical agreements

1. In March 2006, the FCA proposed that the Market Court impose an infringement fine of EUR 120 000 for Tecalemit Oy for infringing the prohibition on resale price maintenance (RPM). The RPM involved the servicing, repair and installation services of garage equipment imported by Tecalemit and the spare parts needed in these services which are used e.g. in the car service and transport sector. The RPM prevented intra-brand competition in several cities and towns around Finland, and although the infringement was restricting intra-brand only, it was not considered of minor importance due to the company's market position and the geographic coverage of the infringement.
2. In May 2006, the FCA proposed that the Market Court impose an infringement fine of EUR 300 000 to Nikon Nordic AB for conduct violating the competition rules in the *digital camera market*. The investigation of the case commenced when the Internet store Verkkokauppa.com lodged a complaint with the FCA. Verkkokauppa.com is not part of Nikon's official distribution system but engages in parallel imports of Nikon cameras from other EU states. The branch office of Nikon Nordic had refused to provide guarantee repairs for Nikon cameras marketed by Verkkokauppa.com. During 2004 and 2005, Nikon e.g.

refused to extend its product guarantee to Nikon cameras imported by parallel importers. However, Nikon ended the forbidden conduct during the FCA's investigations in the spring of 2005. According to the FCA's proposal, Nikon's conduct impeded the parallel imports of Nikon cameras into Finland and hence decreased competition in the digital camera market. The FCA emphasised the importance of tackling these types of infringements which solely aim to block import competition.

3. In November 2006, the FCA proposed that the Market Court impose a competition infringement fine of EUR 100 000 on Lastentarvike Oy for conduct violating the EC competition rules and the national Competition Act in the retail sales of *baby prams and pushchairs*. The company prevented its dealers from selling the products to consumers outside their own territories, and forbade them from selling and marketing the products in the Internet and national specialist magazines. Although the case involved intra-brand competition, the position of Lastentarvike as the market leader in the bay pram/pushchairs business and that the company represented very strong brands in the markets, emphasised the harmful competitive impacts of the restrictions.
4. *Price competition in medicines*. In March 2006, the FCA finished its investigations on the discount systems in the pharmaceuticals market. They showed that some pharmacies obtained additional discounts from the pharmaceutical firms, if the pharmacies favoured the products of the said pharmaceutical company. The discount practice appeared common in the field. The FCA found that by these discount systems, an individual pharmacy was practically tied to the products of the pharmaceutical firm which granted the discounts in a way which limited the possibilities of competing pharmaceutical firms to get their products in the distribution channels and to the customers' reach particularly because due to national legislation, there are no alternative distribution channels for the pharmacies. The FCA announced as its tentative opinion that the agreements between the pharmacies and pharmaceutical firms restrict competition and do not promote the functioning of the market or increase its efficiency. Following the FCA's opinion, the pharmaceutical firms announced that they would abandon the discounts.

Abuse of dominant position

Broadband markets (pending)

- In 2006, the FCA's proposal to the Market Court on the imposition of an infringement fine of EUR one million to the local telephone company Lännen Puhelin Ltd is still pending at the Market Court.
- In the proposal made by the FCA in 2004, it was argued that Lännen Puhelin has prevented the entry of competitors to its traditional operating area and hence violated the Competition Act between 1 June 2001 and 30 June 2004 by the pricing and technical properties of its wholesale broadband product offered to competing operators. The case was discussed in the 2005 Annual Report on Competition Policy Developments in Finland.

Wholesale market of telephone subscriber information (pending)

- The FCA's proposal to the Market Court on the imposition of an infringement fine on abuse of dominant position in the wholesale market of telephone subscriber information is still pending at the Market Court in 2006.

- In May 2005, the FCA issued a decision in which it stated that Suomen Numeropalvelu Ltd (Finnish Telephone Number Service, hereinafter SNOY) had committed forbidden abuse of dominant position. In its decision, the FCA forbade SNOY's conduct as breach of the Competition Act. The decision also imposed a supply obligation on SNOY regarding the telephone subscriber information. To enforce the decision, a running conditional fine was imposed. In addition to the prohibition decision, the FCA proposed to the Market Court that it impose a competition infringement fine of EUR 150 000 on SNOY. The case was discussed in the 2005 Annual Report on Competition Policy Developments in Finland.

Abuse of dominant position in the cement market

- Although, in the area of abuse of dominance, infrastructure sectors have been the key targets of the enforcement, another example of foreclosure cases is the cement (company Finnsementti) case where the selective discount systems applied by a company were found to have potentially foreclosing impacts. After the FCA had intervened with the matter, the company undertook to apply pricing which does not artificially obstruct the import of cement.
- The Finnsementti case was the first case at the FCA where the possibility afforded by Article 13 of the reformed Competition Act was used to solve a detected competition problem by a commitment decision. The commitment decisions were introduced into the Competition Act in May 2004.

Memorandum on the cooperation between the FCA and the Energy Market Authority

- In January 2006, the FCA and the Energy Market Authority (EMA) published a joint memorandum on the practical forms of cooperation between the two authorities related to the monitoring of the electricity and natural gas markets. The objective of the cooperation is to increase the effectiveness of operations by the monitoring bodies. The cooperation focuses on the exchange of information and hence the use of accumulating expertise resulting from the work of the two offices.

2.2 *Mergers and acquisitions*

2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws*

The FCA's merger decisions 2005-2006 (calendar years)

	2005	2006
Decisions	33	39
Lapsed pre-notifications	5	5
Other closed cases	9	9
Total	47	53

Merger decisions according to type of decision:

	2005	2006
Proposal to prohibit	0	0
Cleared as conditional	2	2
Cleared as such in Stage I	30	37
Cleared as such in Stage II	1	0
Acquisition not covered by merger provisions	0	0
Total number of decisions	33	39

*2.2.2 Summary of significant cases***S Group/Spar Finland Plc**

13. In January 2006, the FCA cleared as conditional an acquisition whereby the SOK Corporation (hereinafter S Group) acquired control in Spar Finland Plc.

14. Both the S Group, and Spar Finland Plc are active in the market of daily consumer goods retail trade and in the procurement market of daily consumer goods trade in Finland. The FCA investigated the competitive impacts of the acquisition on the national, regional and local level. Even if the acquisition did not result in particularly high market shares for S Group on the national level, the acquisition had significant impacts on the regional and local level.

15. The threshold for intervention in merger control (dominance test) was exceeded in roughly 30 Finnish localities. The acquisition was subject to the condition that the S Group offer the business of roughly 30 Spar stores to actual or potential competitors in the daily consumer goods trade. This alleviated the competition concerns resulting from the acquisition to the daily consumer goods market. The retailers' possibilities to disengage themselves from the Spar cooperation agreements was facilitated by a commitment package.

16. In the procurement market of daily consumer goods retail trade, S Group would have received, as a result of the acquisition, a 35 per cent ownership of Tuko Logistics Inc. This ownership would have enabled a situation whereby significant market information could have been passed to the S Group on the purchases of competing daily consumer goods chains, specifically on procurement volumes and prices. The FCA ordered that S Group/Spar Finland Plc renounce the ownership of Tuko Logistics Inc shares during a transition period. During that period, representatives of S Group/ Spar Finland Plc cannot participate in the meetings of the board of directors of Tuko Logistics Inc.

17. The conditions ensured that consumers had a sufficient number of alternative purchasing places for daily consumer products in every region. The FCA's decision was appealed before the Market Court. The Market Court, however, rejected the appeal.

Fortum/E.ON Finland Plc

18. In February 2006, the FCA cleared as conditional an acquisition whereby Fortum Power and Heat Ltd acquired control in E.ON Finland Plc.

19. The competitive problems which resulted from the acquisition related to the electricity production and wholesale market where both parties operate. The Nordic electricity markets have largely

integrated and the wholesale price of electricity is effectively determined at the Nordic Nord Pool electricity exchange. Due to the restraints in the electricity transmission capacity, the electricity production and wholesale market is national at least part of the time. It is then that Fortum holds a dominant position in these markets. The demand and competing supply of electricity met by Fortum do not effectively reduce Fortum's opportunities to affect the wholesale price level of electricity in these times in particular.

20. According to the conditions, Fortum shall offer to the Finnish market an annual 1 TWh of so-called virtual capacity until 31 March 2011 and lease its share in the Meri-Pori coal-fired power plant until 30 June 2010. The conditions were temporary because the situation in the Finnish electricity market is likely to change by the end of the decade e.g. when the new Olkiluoto nuclear power plant and the new transmission capacity between the Finnish and Swedish electricity networks will be completed. Additionally, Fortum shall sell its peat condensate power plant at Haapavesi and the combined power and heat production plant and gas turbine power plant in Hämeenlinna. Without the conditions imposed by the FCA, Fortum's dominant position would have been further strengthened.

21. The FCA's decision was appealed before the Market Court. The case is still pending at the Market Court in 2006.

Hankkija-Maatalous Ltd/Lännen Tehtaat Plc

22. In March 2007, the FCA decided to commence further proceedings on an acquisition whereby the SOK Corporation's subsidiary Hankkija-Maatalous Ltd acquires from Lännen Tehtaat Plc its agriculture-related business. The target is composed of Suomen Rehu Ltd engaging in the feed business and Avena Nordic Grain Ltd conducting corn trade, and their respective subsidiaries. Both parties to the deal operate in the corn trade where they occupy a firm position. Suomen Rehu is also a major manufacturer of industrial feed and the Agrimarket chain of Hankkija-Maatalous a major seller of feed. The acquisition of corn, the manufacture of feed using corn as fodder and the sales of agricultural products would be combined in the same Group should the acquisition be implemented. The case is pending at the FCA (situation end-April).

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

23. The marketisation of government-owned production continued to be the main focus of the FCA's advocacy activity. General deregulatory activity focused on official working groups in which the FCA was represented. It was also considered important to increase openness in relation to and collaboration with stakeholders in other fields of administration and the scientific community.

24. During 2005–2006, the FCA participated in a project by the Public Management Department of the Ministry of Finance, the task of which was to provide proposals on measures for developing the role of private service production in public service production. The final report of the project published in the spring of 2006 contains several proposals for action on the subject. The FCA also issued several opinions on public service production and was heard by the Parliament on several occasions concerning the role of municipal state-owned companies, the reform of procurement legislation, the municipal and service structure reforms and the organisation reforms of the National Board of Forestry (Metsähallitus) and the Police Technical Centre. At the initiative of the FCA, the Parliament rejected the Government Bill insofar as it would have resulted in power of government authority being awarded to the Police Technical Centre, a market actor.

25. As regards other than public production, the activities focused on issues where the FCA is – or has been – involved in regulatory reform. Such issues include the competition conditions in the trade and

the employment pension sector, the freight traffic on roads and railways, and issues dealing with waste management and the allocation of the emissions permits. Additionally, the FCA participated in the working group following the implementation of the national broadband strategy.

26. During May 2005 and April 2006, the FCA issued several initiatives and opinions e.g. to the various Committees and the Ministry of Social Affairs and Health regarding the *employment pension legislation*. In them, the FCA paid attention to some potentially negative impacts caused by regulation on the employment pension institutions and the practices applied in the field. E.g. the FCA's initiatives in the matter resulted in the Ministry of Social Affairs and Health appointing, in June 2006, a nominee to assess the competition issues in the employment pension system. The core of the investigation published in January 2007 was formed by the issues that the FCA had dealt with in its opinions and initiatives.

27. The FCA is also represented in the follow-up group to the *construction policy programme*, which has several points of investigation important for competition: statistical cooperation, standards and the concentration in the field, profitability problems and detected competition restraints, charting, real estate fund systems and the market behaviour of public real estate owners and builders. The FCA also commenced its own investigation on the construction sector.

28. In competition advocacy, the most concrete results were established regarding *waste management and the freight traffic on railways*. A major part of waste management will be opened up for competition due to the reform of the Waste Act from 1 June 2007. The government proposal given by the Government to the Parliament in 2006 on the reform of the Waste Act was based on the proposals of the Ministry of the Environment working group founded on the FCA's initiative. The national freight traffic was opened up for competition already at the start of 2007. The reform relates to the implementation of the second EU railway package.

29. Regarding the deregulation of trade, the FCA has participated e.g. in the discussion on opening hours, the regulation on the relocation of the stores and the sales channels of self-help medicines. The FCA also participates in the working group set up by the Ministry of the Environment, whose task it is to investigate the impacts of the current legislation on the competitive conditions of the retail trade.

30. More opinions were invited from the FCA than during the previous years. The number of the opinions provided (80) increased by almost 50 per cent from the previous year and by approximately one fifth from the year before. Approximately one third of the statements were issued on the request of the different Committees of the Parliament. Per administrative sector, the most opinions were invited by the Ministry of Transport and Communications and the Finnish Communications Regulatory Authority.

4. Resources of the FCA

4.1 Resources overall (current numbers and change over previous year)

4.1.1 Annual budget (in euros and USD)

Year	No. of FCA officials	Budget expenditure euros
2006	68	5.057.000
2005	65	5.074.000 (6.153.240*)
2004	67	4.688.000 (5.646.000**)
2003	68	4.593.000 (5.196.000***)
2002	67	4.571.000
2001	66	3.974.000

- * According to the euro exchange rates published on 11 April 2006.
- ** According to the euro exchange rates published on 19 April 2004.
- *** According to the average rate of euro in 2003.

4.1.2 *Number of employees (person-years):*

- Economists: 20
- Lawyers: 17
- Other professionals: 12
- Support staff: 19
- All staff combined: 68

4.2 *Human resources (person-years) applied to:*

- Enforcement against anticompetitive practices (Cartel Unit): 19
- Merger review and enforcement (Monopoly Unit, which deals with both merger control and cases concerning abuse of dominant position): 20
- Advocacy efforts: 8

4.3 *Period covered by the above information:*

Year 2006.

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

31. In May 2006, the FCA hosted the fourth European Forensic IT meeting in Helsinki. In June 2006, Finland and Austria, who shared the EU-Presidencies in 2006, organised the European Competition Day 2006 Conference in cooperation with the European Commission in Vienna. The European Competition Day 2006 was titled “*Competition Law and its Surroundings – Links and New Trends*”.

32. In December 2006, the FCA and the European Commission jointly organised a conference which brought together policy officials responsible for regulating the professions in the Member States and representatives from the European-level professional bodies. The conference was titled “*The Economic Case for Professional Services Reform*” and its key aim was to discuss recently published economic studies, which have examined the case for reform in the area of professional services.

33. On 23 August, the Nordic competition authorities published a report on the retail banking markets in the Nordic countries. The report evaluates the structure of the market, the possibilities of new banks to gain access into the market and the possibilities of the consumers to tender the banks against each other. The competition authorities find that sound and effective competition requires an unrestricted access to the interbank payment systems and the ATM and payment card systems. The conditions of access to the payment systems should be transparent and non-discriminatory and the owner and client roles of the systems should be separated. The other recommendations issued by the working group aim at promoting the comparability of the services and prices and a smoother switching process for the consumers. A full report can be downloaded at www.kilpailuvirasto.fi/english.