



COUNTRY STUDIES

Finland – Updated Report 2004

Introduction

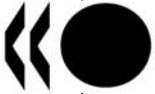
This Report examines the state of competition policy in Finland in 2004. It focuses particular attention on developments since the 2003 “Report on the Role of Competition Policy in Regulatory Reform”, prepared as part of a larger OECD study of regulatory reform in Finland.

Overview

Related Topics

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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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FINLAND - REPORT ON COMPETITION LAW AND INSTITUTIONS (2004)

The attached report updates information on the current state of competition policy in Finland. It was edited after the Competition Committee discussion (Item VII) in October 2004, which compared experiences in ten countries. It is circulated FOR INFORMATION.

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**UPDATED Report ON COMPETITION LAW
AND INSTITUTIONS (2004)**

FINLAND

1. Finland's competition policy was reviewed in the Competition Committee in 2002, and the regulatory reform report based on that review was published in 2003. A special chapter on product market competition is included in the *Annual Survey* now in progress; the EDR Committee reviewed Finland in September 2004.

2. Competition policy was at the centre of market-driven reforms since the late 1980s that restructured Finland's network monopolies and eliminated the many vestiges of corporatist control. The pace of change is slower now, as the role of market institutions in providing traditional government services presents novel and difficult issues about quality, equity, efficiency, and choice. The role of the competition body, the Finnish Competition Authority (FCA), is also changing. In the previous stages, its principal path of influence, after it made a mark with a strong early enforcement program against tolerated price fixing, was through advice and advocacy. As competitive markets are better established, competition law enforcement is becoming more important again. Methods and institutions of competition law enforcement are being improved and the FCA is paying more attention to abuses such as horizontal collusion in locally-provided products and services.

3. Finland brought its law into full substantive conformity with EC competition law as of 1 May 2004, the effective date of the modernised EC enforcement system. (The legislation was introduced in Parliament 19 February 2004.) In addition to conforming Finland's rules more closely to those of the EC, the new law tries to establish clearer authority to impose higher sanctions against violations. Fines can only be imposed by the Market Court. The new law expands the role of the enforcement agency, the FCA, by giving it the power to issue cease and desist orders controlling conduct in the future. Underlining how competition policy is increasingly conceived in terms of enforcement, the law does not follow the recommendation of the 2003 Report to formalise consultation with the FCA about the competitive impact of other legislation and regulatory actions.

Substantive law

4. The new law completes the transformation of Finland's enforcement system from the "abuse" approach, of direct application of general principles to identify and correct abuses, to the EC system of prohibiting particular restraints and exercises of market power. Much of Finland's law was already generally consistent with EC rules, but the heritage of Finland's early competition policy legislation survived in a provision which restated the law's fundamental policy standards: a restriction that was deemed to have harmful effects through decreasing efficiency or preventing or hindering the conduct of business in a manner "inappropriate for sound and effective competition" could be enjoined (Art. 9). The new legislation repeals this link to the past, because too many amendments and corrections would have been needed to maintain it. In addition, under a legal framework based on prohibition, it is thought that a general clause such as this, which invites policy balancing, would lead to uncertainty. Under Finland's law, provisions for exemption from the prohibitions could already apply directly, as in the EC's modernised system. All provisions for deciding individual applications for exemption are now repealed. Finland's previous rules about vertical restraints also anticipated recent EC reforms. With the substantive law consistent with Art 81-82, the "effect on trade" criterion will make no difference to the application of competition principles.

5. For horizontal restraints, the new formulation in parallel to EC Article 81 replaces a listing of particular prohibited practices: bid rigging, price fixing, and output limits and market division. This listing had been supplemented by reliance on the “abuse” approach of Article 9 for dealing with joint ventures and other non-hard-core practices. Despite the difference in terms, Finnish law about horizontal restraints had been interpreted to follow EC law in practice, so the change is only formal. For vertical restraints, adopting the EC system will produce some subtle changes. Most such restraints were subject only to Art. 9. They are now prohibited, but the prohibition is moderated by the EC block exemption regulation. Here too, because this EC regulation substantially relaxed the prohibition, Finland’s previous approach already had about the same practical effect as the current EC approach. Finland did have one clear prohibition, against both maximum and minimum resale price maintenance. Moving to the EC system will relax this prohibition slightly, to the extent that the EC system permits maximum RPM (where that does not in effect lead to a fixed price level).

Box 1. Horizontal violations and sanctions

Apply enforcement resources to horizontal issues.

The 2003 Report recommended more attention to horizontal restraints, and the FCA recognises the need to address horizontal problems. The wood products litigation dealt with a characteristic and important kind of problem for a national enforcement agency in Europe, namely claims that major firms are colluding at the expense of providers of raw material in local markets. Experience elsewhere strongly suggests that problems of horizontal collusion are likely to be found in non-traded services. The FCA has already dealt with overt constraints in the professions and other services. The Report observed that covert constraints are likely to be found in construction and related markets such as construction materials and contract services.

The FCA has been finding the kinds of cartels that the 2003 report described. After a 2-year investigation of collusion in the asphalt industry, the FCA concluded that firms had been rigging the market for at least 8 years and in March 2004 asked the Market Court to impose fines on 7 firms totalling EUR 97 million. Investigations are under way into claims of collusion involving roofing felt and ventilation pipe. Under the old competition law, horizontal issues had typically come up in the context of applications for exemption or compliance with the terms of an exemption, rather than enforcement investigation. In the asphalt case, there were tip-offs from former industry insiders and customers, and other Nordic enforcers were finding similar cases. As these other cases became public, the larger Finnish firms cleaned out their files, so investigative dawn raids there produced little. But the small companies did not follow suit, so the FCA was able to obtain insider information even without offering leniency. Asphalt prices came down 25% since the investigation started. The FCA believes there are other markets under similar conditions, but that it will be hard to get information about them without a leniency program.

6. Individual exemptions are no longer possible under the new enforcement system. This change may be particularly important concerning distribution arrangements, and it may be unusually important in Finland because the consumer-goods distribution sector there is unusually concentrated. Several major distributors of household products may not fall clearly within the EC block exemption regulation. In the absence of a process for advance clearance of an exemption or for a declarative judgement, the big distribution co-operatives will have to rely on their lawyers’ advice.

7. Finland will embrace the EC’s *de minimis* principle, which follows from the EC language that only prohibits conduct with significant effects. An FCA guideline will clarify the scope of treatment of restraints of minor importance. This guideline will be based on the EC’s notice about the same subject. In addition, the FCA intends to retain its present characterisation of *de minimis* treatment, under which the FCA will not intervene if competition is functional in the market as a whole. That principle had been added to Finland’s law in the 1998 amendments, and the FCA interpreted it in light of detailed proposals that had been discussed during the debate over those amendments. For example, a restriction has been considered minor if the parties’ market share is under 5%; however, naked restrictions (those designed solely to limit competition) would not be considered minor regardless of market share. Retaining the familiar language is

evidently intended to reassure Finnish firms that decisions and exemptions which had been based on this formulation are still sound under the new system.

8. Adopting the EC substantive approach will also have the effect of adding the concept of joint dominance to Finland's law. Finnish law about dominant firms had long been interpreted consistently with EC law in other respects, although its list of particular abuses differed. Finland has used the general prohibition against abuse of dominance to target abuses in network sectors that escaped regulatory oversight. A principal, recent example is a 2003 FCA initiative to address price-squeeze tactics preventing ISPs from getting into the broadband business. The telecoms legislation did not clearly cover this service yet. The FCA investigated over 40 local operators, confronting them about how their pricing policies for wholesale bitstream access were preventing retail competition. In effect, they were charging more at wholesale than they were charging themselves at retail. The FCA negotiated resolutions with nearly all. One case was taken to the Market Court, where the FCA has asked for an order and a fine.

Box 2. Article 81 and 82 powers

Complete the changes needed to allow the FCA to apply Article 81 and Article 82.

Giving FCA the complete range of tools will increase flexibility and facilitate co-ordination with other enforcers in Europe. Adaptation should be straightforward, since Finland's approach under national law was already what the EC adopted as a reform: direct application of relevant criteria, rather than mandatory notification and exemption.

The new legislative package includes this element that enables the FCA to participate fully in the EC's decentralised enforcement system. Finnish procedures and sanctions can now be used to apply Art. 81 and 82 of the Treaty, that is, to deal with anticompetitive conduct that has a community dimension.

9. Technical changes about merger control will reduce the workload. The substantive merger standard will be about the same as before, and about the same as the EC standard had been before its recent subtle revision. The merger reporting threshold is to be adjusted. The total turnover level is raised slightly, from EUR 336.4 million to EUR 350 million, and the within-Finland turnover threshold (the minimum for each of at least 2 parties) is reduced slightly, from EUR 25.2 million to EUR 20 million. One notification rule is being eliminated, so that previous acquisitions in the same industry are not considered in defining the notification obligation. The changes in notification rules are expected to cut the number of filings in half.

Box 3. Consumer policy

Integrate competition and consumer policy perspectives.

Competition and consumer policies still follow separate paths. The 2003 Report observed that consumer policy in Finland seems distant from competition policy. Consumer policy statements acknowledge the importance of competition, and consumer policies are assigned to the Ministry of Industry, which also oversees competition policy. But in the separate bodies such as Consumer Complaint Board and the National Consumer Agency and Ombudsman, that deal with consumer issues directly, the focus is elsewhere and there seems to be a lingering suspicion about markets. The 2003 Report expressed the hope that combining jurisdictions over these subjects in the new Market Court might help reconnect them.

The new Market Court's practice appears to keep the different aspects of its docket separate, in terms of organisation and assignment as well as doctrine, and hence does not seem to take much advantage of this potential for greater co-ordination yet.

Institutions

10. The FCA is attached to the Ministry of Trade and Industry. Independence from the Ministry about enforcement matters appears not to be a concern despite the absence of formal protections. There are no signs of intervention about particular matters or about priorities and other issues. The Ministry of Trade and Industry has supported efforts to get more resources for the FCA, although the Ministry of Finance did not go along with the latest such effort.

11. Resource levels have been stable and may be somewhat low. The workload is increasing, and decision times have grown. Staff levels grew from about 50 in the mid-1990s to about 60 in 2000, and by another 10% since then to a current level of 67 permanent positions. The total number of person-years actually worked is slightly lower – in 2002, that figure was 63 – because of allocations for leave or part-time situations. The FCA staff was re-organised in 2002 to concentrate resources based on the type of transaction or violation, rather than on industry. This step appears intended to develop capacities to analyse mergers and monopolies and to investigate cartels. Cartel enforcement is now getting more attention. The “cartel” section, which has a staff of 13, handles all restraints cases, both horizontal and vertical. A major case such as the recent asphalt investigation can tie up one or two of these staff for an extended period. Evidently, the FCA can only deal with one major restraints case at a time. With several horizontal investigations now pending, the unit may be overstretched. The average length of time to complete proceedings has gotten longer; between 2000 and 2002, it nearly doubled (for letters, from about 70 days to about 120; for exemptions, from 160 to 320; for decisions, from 390 to 650). In 2003, matters closed by letter were handled much more quickly (at about 50 days on average), but the backlog for decisions grew much longer (to an average time for decision over 800 days). The FCA contends that the increased time is a statistical quirk, which results from a backlog of long-pending applications for exemptions and negative clearances. As the enforcement system changes to eliminate the task of reviewing applications for exemption, some resources will be available to deal with other enforcement problems. The number of cases the FCA has opened about domestic competition restraints has grown substantially, from 318 in 2001 to 425 in 2003; by contrast, the merger workload has been relatively stable, at about 150 filings per year.

12. The FCA has targeted sectors of particular importance to the economy whose characteristics that could lead to competition problems. One that fits both criteria is the forest products industry. The FCA is concerned that its oligopolistic structure both for input procurement and for commodity product output may produce “gatekeeper” market power. Oligopoly and gate-keeper problems are also a concern in wholesale distribution of consumer products, where 2 large groups account for dominant shares of the trade. The FCA is concerned that they might use their power to admit products into the distribution chain in order to influence end-customer competition and pricing. Other areas of particular attention are public services (especially health care because of the entry barriers), financial services (because of entry barriers and oligopoly structure), and network industries (because of oligopoly structure, public regulation, and the importance of these inputs to the economy). About half of the FCA’s cases are about abuse of dominance. Most of those are in effect about the reasonableness of prices in historic monopolies. These matters can be considered FCA contributions to reforms in telecoms and electric power. Many of the abuse of dominance matters are the inevitable result of the FCA’s implicit obligation to respond in some way to each complaint.

13. The Market Court, created in its present form in 2002, is still settling into its status. The jurisdiction of the old Market Court had been limited to marketing practices and complaints about unfair competition. It thus dealt with misleading marketing and protection of consumers against unfair marketing practices and unreasonable contract demands. The new Market Court combines those functions with the jurisdiction of the old Competition Council, which had been an “administrative-judicial” body with the

power to impose orders and fines to enforce the Competition Act and to decide appeals from FCA actions, such as granting or denying negative clearances and exemptions and imposing conditions on mergers. Assigning these functions to a judicial body removes a concern about the appearance that “prosecution” and “decision” powers were combined under the influence or authority of the Ministry of Trade and Industry. Appointments to the Market Court are made by the government, but they are generally initiated by the Ministry of Justice, which is responsible for its resources. The Market Court now has 5 permanent, tenured judges, plus 16 part-time non-judicial experts who serve fixed terms. The experts, which include economists, have an equal vote, and there have been some split decisions. Combining the functions of the previous institutions could encourage policy consistency, that is, competition policies that are attentive to consumers’ interests, as well as consumer protection and market practice rules that are attentive to how competitive markets actually work. So far, Finland’s new Market Court has not indicated a policy direction.

14. The Market Court is not actually spending much time on important competition cases, though. In part, this may be because the Market Court is preoccupied by another responsibility, to decide disputes about the procurement process. This function too was inherited from the old Competition Council. The Market Court handles over 200 procurement cases per year, compared to 25 about competition and 25 about unfair competition. The Market Court has not yet applied the available general legal authority in order to dismiss peremptorily cases of minor importance. A clear jurisdictional threshold might help clear its docket for important matters. Most of the competition matters are complaints against the FCA for not taking action. These complaints, which are typically small-scale controversies, have led to some disagreements about which parties have standing to pursue them. The Market Court has distinguished “declaratory” and “constitutive” decisions. In effect, it defers to the FCA findings about such matters as the existence of a dominant position, and it has denied standing to competing parties trying to challenge FCA findings that firms did not have dominant positions. Proposals from FCA for orders or other remedies are generally more important. There are only a few of these every year, though. The Market Court in its present form has not rejected any proposals from the FCA.

Enforcement process

15. The leniency process authorised in the new legislation will follow the EC model. The means for assuring lenient treatment must deal with the fact that the Market Court, not FCA, has sanctioning power. The law assures full immunity from fine to the first party to come in and offer evidence, by providing that the FCA would not have power to refer them to the Market Court. For other participants, the Market Court could apply lower fines in exchange for co-operation. The program will be limited to hard-core cartels, that is, horizontal price agreements and market division. Industry in Finland reportedly opposed the leniency system, on the revealing grounds that by fostering suspicion it “would ruin the business climate” in Finland. Yet the FCA does not expect that there will be many domestic cases. Rather, it believes that the program will be most valuable for co-ordinated action against larger-scale cartels at the European and broader level.

16. Sanctions authority may be stronger. The task of enforcement against clandestine cartels is complicated by the courts’ apparent reluctance to impose significant sanctions against horizontal violations. If sanctions are not significant, then the promise of leniency in exchange for insiders’ direct evidence does not work. Finland is moving toward stronger sanctions targeting horizontal collusion, but it is too early to tell whether those moves are effective. There have been only a few sanctions cases before the new Market Court: 2 cases in 2002, 2 in 2003.

Box 4. Horizontal violations and sanctions

Apply effective sanctions to horizontal issues.

The 2003 Report recommended more attention to horizontal restraints, and stronger sanctions to back it up. The apparent lack of judicial support for enforcement against horizontal restraints had been discouraging. The FCA believed that the wood products collusion was a serious restraint, but the penalty eventually imposed was insignificant, compared to sanctions that have been applied against cartels elsewhere. The statute's apparent limitation on the range of sanctions provided in the Competition Act may have limited the courts' vision. An extraordinary showing was required to impose a fine greater than the cap, of EUR 670 000. But it was never clear what would constitute such a showing.

To support the possibility of higher fines, the 2004 amendments to the law have removed the fixed threshold. The only limit now is that the fine cannot be more than 10% of annual group worldwide turnover. This rule is generally consistent with the approach that the EC and other European jurisdictions are now applying to determine fines against competition violations.

The 2003 Report also suggested that Finland consider imposing some liability or sanction on the individuals who are responsible for the violations by corporate entities. The risk of personal liability can discourage an executive from authorising or engaging in illegal conduct, and the prospect of avoiding that liability can lead to confessions that strengthen enforcement against corporate misconduct. An individual sanction was considered, but rejected, while preparing the revisions to the law. Perhaps a case that links price fixing to public corruption could persuade lawmakers that individuals as well as organisations should be held accountable.

17. The FCA now has the power to issue orders. Previously, the FCA could approve applications for exemption from the law's prohibitions, but it had to obtain an order from the Market Court either to impose a financial sanction or to prevent future violations. With the FCA no longer deciding about individual applications for exemption in order to permit conduct, the amended law gives it an analogous power, to issue orders prohibiting future conduct. These orders, like the FCA's decisions about exemptions under the previous system, can be appealed to the Market Court. The FCA contends that because the prohibition system will now lack a purpose-based general provision like Art. 9, it is all the more important for the FCA to be clearly the first-instance decision-maker.

Box 5. Private litigation

Channel competitor complaints into private lawsuits

The 2003 Report examined and suggested some ways to shift some kinds of cases, particularly less important competitor complaints, into private litigation. Finland's law permits an aggrieved party to bring suit without waiting for the FCA to act, at least with respect to clear violations. Third parties already can file suits seeking orders against prohibited conduct. For conduct that might have been covered by an order under Art. 9 of the previous law, a party would have to go first to the FCA and seek an order.

These are often essentially private disputes among customers and suppliers, and often they have little effect on competition at a larger scale. The 2003 Report suggested that Finland consider procedures that would permit the FCA to send complaints directly to the Market Court for litigation and decision there, where it appears that they are essentially private disputes that should not occupy public resources for investigation and resolution. Indeed, there does not appear to be a fundamental jurisdictional impediment to direct access to this presumably expert tribunal. The difference in treatment between complaints against anti-competitive restraints (handled first by the FCA) and complaints about unfair competition (taken directly to the Market Court) is historical. There may be substantive synergies in treating them similarly, because many competitor complaints are likely to be analogous to unfair competition claims.

As a practical matter, the FCA's expanded power to issue orders under the amended law may preserve its role as a gate-keeper. After the elimination of Article 9, all anti-competitive conduct covered by the law is subject to the prohibitions. In principle, therefore, any allegedly anti-competitive conduct could be the object of an independent private suit. But a civil suit against conduct prohibited by the Competition Act would go to the normal civil court, not to the Market Court. So far, the suggestion to provide a means for competitors (or others) to bring complaints directly to the Market Court has not been considered.

Coverage of competition law and policy

18. Sectoral regulation shows little sign of conflict with competition law and policy, and competition principles are well established as the basis for conventional economic regulation. But in some areas there is work to be done. Competition for taxis and trains remains limited. Pharmacies are even more controlled than before, but large-scale competitive entry in other areas of retailing is picking up pace. Some enterprises that are connected to the state could present problems. These range from idiosyncrasies, such as the retail alcoholic beverage monopoly, to some major corporations where the state's large ownership interests challenge the goal of maintaining efficiency-based policy, in the face of implicit pressure to protect the value of the state's holdings.

Box 6. Retail and services restraints

Re-examine remaining constraints on competitive operation and entry in retail and services.

The 2003 Report described familiar regulation-based constraints on competition in retailing and services, whose legitimate goals might be met by less anti-competitive means.

In wholesale and retail trade, local competitors are likely to have used the land use control process to delay or prevent competitive entry, while regulation of opening hours channels competition and dilutes the effect of alternative retailing strategies. Controls on operating hours still tend to protect some local retailers, but resistance to new entry appears to be fading. Denial of necessary local government permissions is reportedly not a problem any more. Instead, localities are competing to attract hypermarkets near new roads. This significant shift of opinion followed some prodding and the application of competition policy oversight. The principal large-scale new entrant in grocery and household products, Lidl, has relied on support from the FCA about issues such as access to dairy and other agricultural products, breweries, and recycling systems.

The 2003 Report also called for reconsidering needs-based controls on pharmacies. But not only is entry still limited, in addition there is no longer competition in retail prices. As of 2003, the government sets the retail prices (not just the ceilings, below which firms could compete), which are uniform nationwide. Steps toward competition take the form of a campaign to promote use of generic drugs. The pharmacist has to explain the generic option, and the customer then can decide whether to choose it. The unexpected popularity of this campaign, whose impact was 3 times greater than had been planned, demonstrates how much the consuming public is interested in greater competition for these products. It is even having an effect on Finnish manufacturing, forcing branded drug producers to cut some jobs.

The 2003 Report called for reconsidering needs-based entry requirements in transport, particularly taxi services. Entry into taxi and bus service is still based on a determination of need, and thus implicitly on a concern to protect the conditions of existing providers. Taxi licensing decisions at the provincial level can consider total demand, needs of customer groups, the "appropriateness" of the business, and financial requirements. There are no fixed quotas, though. A working group has been examining whether such a system is consistent with constitutional guarantees of freedom of trade. Rates are subject to a regulated cap, which has become a focal point for uniform pricing. Dispatching tends to be a local common service, to which access is mandatory. The Ministry of Transport is considering how to facilitate offering different price levels through a single dispatcher.

19. Competition law and agency jurisdiction apply broadly, including to government entities, but aspects of public holdings could be improved. How direct or indirect government participation in a markets might affect competition continues to be an important topic.

Box 7. Subsidies and preferences

Discourage subsidies and preferences that distort competition.

The FCA's now-concluded "government and markets" project, which the 2003 Report encouraged, demonstrated how subsidies could distort competition. That project sensitised decision-makers to the problems, although it did not produce a general formula for analysing the balance-sheet foundations of such subsidy distortions. The FCA's direct role about subsidies and similar distortions is limited. Now that Article 9 is no longer available, the legal basis for competition policy intervention against such distortions appears weaker. The abuse would have to be violation of a specific prohibition. Even where an "abuse" approach to enforcement is available, these problems are probably better handled through program design at a different level, and except in clear and egregious cases, the role of competition policy bodies is likely to be analysis and advocacy, more than enforcement.

20. Although government ownership has no effect on the coverage of the competition law itself, apparent conflicts between ownership interests and other regulatory responsibilities remain a concern.

Box 8. State holdings

Remove state holdings from positions that raise apparent conflicts of interest.

State holdings continue to present the appearance of conflicting interests. MTI's dual position as a major shareholder in large industrial enterprises and as the overseer of agencies such as the FCA that enforce the laws against these enterprises is unsatisfactory. The fact that the state has a direct ownership interest in the financial health of these enterprises by itself raises some concern about the even-handedness of regulation. There has been no implication of actual impropriety in any particular case. It is a matter of appearances. But appearances do matter. The 2003 Report concluded that it would be better to eliminate the appearance of conflict, and the temptation to intervene, by moving the shareholder responsibility to another body, if not by eliminating state shareholding entirely.

These matters remain essentially unchanged. The ownership responsibility for industrial firms in which the state holds an interest remains with the MTI. That fact does not prevent the application of the competition law; indeed, all of these firms have been targets of enforcement. Legislation has been proposed to transfer the ownership function to the Prime Minister's office. Perhaps because no situation has arisen presenting an actual conflict, "correcting" the FCA-MTI link has not been the focus of interest. The same issue, of combining ownership and regulatory functions, arises in some sectors. For example, the Ministry of Transport both owns Finnair and regulates the airline industry (although those functions are not performed by the same branch of the Ministry). Faith in the probity of the Finnish public service leads to a reluctance to admit that these situations present potential problems that are worth forestalling.

21. Energy network access and pricing are increasingly the responsibilities of regulators. Wholesale and retail energy markets and prices are not regulated. They are, of course, subject to the Competition Act's generally applicable prohibitions, which could be applied to cases of exploitation, predation, discrimination, or other abuse. The Energy Markets Authority (EMA), a unit within MTI, regulates grid access, including pricing for that function. Litigation about rates for transmission and distribution has made it clear that these matters are subject principally to the standards of the sectoral regulatory legislation, which are different from those of the competition law. There is an unofficial working party among FCA, EMA, MTI's Energy Department, and the National Consumer Authority that, among other tasks, seeks to improve customer awareness. It does not appear to be involved in co-ordinating case matters.

22. EU directives required establishing a telecoms regulator, which is co-ordinating with FCA. The regulatory scheme in the telecoms sector has been light, in part because Finland had applied its competition law to abuses there. When the EU regime required changes, Finland promptly conformed its institutions to the prescribed setup. The Communications Market Act does not displace the Competition Act, and both

might apply to the same situation. The FCA may be a better venue where the issue is discrimination, a fine is appropriate, or an injured party is seeking compensation. The sectoral regulation, applied by FICORA, may be better where the issue is reasonableness of a rate level or infringement of a particular obligation that was imposed because of a finding of significant market power under the sectoral scheme. The 2 bodies have agreed to consult each other before issuing a decision, where each is looking at the same matter, and they are prepared to arrange simultaneous negotiations with parties. In its application of the Communications Market Act, FICORA defines markets and assesses significant market power using conventional Competition Act principles. The FCA offers its views on FICORA's determinations and draft decisions. They have set up a working group of experts to co-ordinate market definitions and analyses, and they have reached an understanding about allocation of responsibilities for particular cases. FICORA's powers under the Communications Market Act are limited. Because it cannot set prices, but only determine whether they are unreasonable, it cannot apply price cap regulation.

23. Commonly-encountered special provisions, for labour, agriculture, and, finance, remain in place. There have been no changes since the 2003 Report in the exemptions for agricultural production and labour. In finance, the Insurance Supervision Authority has the power to propose matters to the Market Court, which it still has not used, and to review mergers, although that does not displace the FCA's principal role.

24. Finland's idiosyncrasies are also largely unchanged. The most obvious peculiarity is the lingering monopoly over retail sales of alcoholic beverages. Alko is evidently improving its marketing, and although it is supposed to set prices to discourage excessive consumption, it seems to be setting prices in anticipation of market opening and competition. Finland also maintains a protected monopoly for its national lottery and closes its pension insurance system to competition.

Advocacy and policy studies

25. FCA advocacy is still wide-ranging. Key targets recently have been areas of pervasive regulatory oversight, such as transport (particularly aviation, railways, and taxis), telecoms, and media. Another important area is promotion of environmental goals, where the FCA is concerned to eliminate obstacles that hinder how firms can achieve those goals, to call attention to considerations of competition in environmental regulation, and to ensure that co-operation to achieve the goals conforms to the competition law. Elimination of Article 9 makes advocacy even more important. It also removes an implicit threat that made advocacy more credible, though.

26. Continued FCA participation in working parties is an important advocacy outlet. This participation is not "behind the scenes," though; in the pervasive transparency of the Finnish government culture, FCA views are hardly secrets. The FCA serves on an Environment Ministry working group about municipal waste management, MTI working groups on procurement reform and allocation of discharge rights, and Transport and Communications Ministry working groups on broadband strategy and taxi regulation. One of these commitments appears to overlap, oddly, an enforcement topic. The Ministry of Trade and Industry set up a group to follow the "national construction political programme" in 2003, which is also to "promote the development of the building and construction sector." This sector is a likely object of enforcement attention; perhaps the FCA is included on this group to ensure that the industry representatives understand how the competition law applies to them.

27. The role of competition policy in the reform process has become less clear. The FCA continues its advocacy efforts unabated, while the formal process for consultation with FCA about how regulatory proposals affect competition has evidently lapsed and has not been replaced.

Box 9. Regulatory impact analysis**Incorporate consideration of competition impacts in the regulatory quality process.**

The 2003 Report described the 1989 directive requiring prior consultation with the FCA about proposals that could impair competition, but observed that it had fallen into disuse. If it had technically lapsed, then the Report recommended that a similar instruction should be reissued, and that a review of potential impacts on market competition should be an element of the general program for ensuring regulatory quality, applied both to new proposals and to matters that are already on the books.

Nothing has been done to reaffirm the 1989 recommendation about consultation. The issue was excluded from the 2004 revision of the law. The statutory authorisation for FCA advocacy remains in place, and the FCA remains active. But competition policy has not been formally incorporated into the regulatory quality process.