

Finland¹ was a province and then a Grand Duchy under Sweden, from the 12th to the 19th centuries, and an autonomous Grand Duchy of Russia after 1809. It won its complete independence in 1917.

During World War II, it was able to successfully defend its freedom and resist invasions by the Soviet Union – albeit with some loss of territory. In the subsequent half century, the Finns made a remarkable transformation from a farm/forest economy to a diversified modern industrial economy; per capita income is now on par with Western Europe.

As a member of the EU, Finland was the only Nordic state to join the euro system at its initiation in January 1999.

Finland was one of the first to liberalise its national infrastructure monopolies at the end of the 20th century. Finland's recent economic success is rooted in its traditions of independence, adaptability, and community. These traits were no doubt fostered and necessitated by the country's geographic isolation and linguistic distinctiveness.

Economy

Finland has a highly industrialised, largely free-market economy, with per capita output roughly that of the UK, France, Germany, and Italy. Its key economic sector is manufacturing – principally wood, metals, engineering, telecommunications, and electronics industries. Trade is important, with exports equalling one-third of GDP. Except for timber and several minerals, Finland depends on imports of raw materials, energy, and some components for manufactured goods.

Because of the climate, agricultural development is limited to maintaining self-sufficiency in basic products. Forestry, an important export earner, provides a secondary occupation for the rural population. Rapidly increasing integration with Western Europe – Finland was one of the first 12 countries joining the European Economic and

PROFILE	
Population:	5.2 million***
GDP (Current US\$):	161.5 billion***
Per Capita Income: (Current US\$)	27020 (Atlas method)*** 26190 (at PPP)**
Surface Area:	338.2 thousand sq. km
Life Expectancy:	77.9 years**
Literacy (%):	100 (of ages 15 and above)
HDI Rank:	13**
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

Monetary Union (EMU) – will dominate the economic picture over the next several years. Growth in 2003 was held back by the global slowdown.

Competition Evolution and Environment

Competition policy has a long history in Finland, as restraints on competition appeared from the outset of its industrial development. The earliest reported Finnish decision about industrial competition dates from 1837, when a court refused to enforce an agreement amongst mill owners, because it put undue limitations on the economic freedom of the parties, to the agreement, and of their input suppliers, who were its victims.

Since the late 1980s, Finland has followed an economics-based competition policy, as part of a general shift from collective corporatism to a more democratic market order. Around the turn of the 20th century, Finnish firms in some export-oriented businesses, especially forest products, combined to achieve economies of scale. In some cases, particularly involving the Russian market, they also

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1 <http://cia.gov/cia/publications/factbook/geos/fi.html>

entered into agreements to maintain prices and limit production.

Some of the combinations and agreements had domestic effects, as Finnish firms discriminated against the home market, selling products more cheaply in St. Petersburg than in Helsinki.

The problem of industrial combinations appeared in the policy debate in 1928, when the Progressive Cooperative platform called for investigations into, and public control of 'rings and trusts'. This call was renewed in 1948, along with a proposal to ban unfair methods of competition. The Government responded by appointing a committee representing industry, agriculture, and trade interests, to study the matter.

The committee's report in 1952 endorsed, in principle, the protection of economic freedom to compete, but it suggested basing a competition law on information and publicity, rather than control or prohibition. Two prohibitions were, nonetheless, included in the Government's proposed bill, which was based on experiences elsewhere in Scandinavia:

- A blanket prohibition against resale price maintenance; and
- The other, against bid rigging, was intended to encourage competition in the construction industry.

Cartels involving imports and exports were exempted, even from registration, in order to maintain the system of licence-based control over international trade. These were the basic provisions of the first, limited Finnish Law on competition, the 'Act on Competition Restrictions within the Economy', which was adopted in 1958.

After the Law was passed, labour and consumer groups shifted their attention and priorities to income policies and price regulation, and away from eliminating restraints on market competition. The business community had been dubious about the need for a law from the outset, arguing that any restraints that they agreed upon, amongst themselves, should not be considered inconsistent with free competition. Hundreds of restraints were registered over the next few years, and there were thousands of requests for notification, but the two prohibitions were never applied.

A more comprehensive competition law, the 'Act on the Promotion of Economic Competition, 1964' based on notification and control of abuse, was adopted in 1964. Finland's 1961 association agreement with the EFTA² required Finland to prevent practices that would nullify the pro-competitive effect of tariff reductions. The 1958 law was inadequate for this purpose; moreover, the 1958

law had failed its intended purposes of gathering information and shaming cartels through publicity.

The new law provided for controlling cartels and dominant firms, if they were abusive. The law created a new competition authority, the Council of Freedom of Trade, to negotiate resolutions and grant exemptions. This was not an enforcement body, though; enforcing legal obligations would be the duty of the Government. The law required associations to notify agreements, and more than 80 price agreements had been registered by 1967.

Box 72.1: Refusal to Grant an Exemption to a Cartel of Bus Companies

By its decision of March 30, 1998, the Competition Council dismissed the exemption application of the local bus company, *Turun Linja-autoilijain Osakeyhtiö* (TLO). The Competition Council agreed with the Finnish Competition Authority and found that the cooperation agreement among the bus companies, on pricing and market sharing within the framework of the so-called general tariff agreement, violated the Competition Act, and an exemption according to Article 19 of the Act could not be granted.

Based on the general tariff agreement, the city of Turku committed to buying transport services directly from the 22 member associations of the TLO, without the tendering required in the public procurement legislation. Due to the city abandoning tendering, the TLO granted a 3.5 percent additional discount for its services.

In its decision, the Competition Council looked at the increased competition from other EU countries in the Finnish bus traffic market. The maintenance of a cartel, between the bus companies, and the neglect of tendering by the bus companies also violated the aims and effects of Articles 85 and 59 of the EC Treaty, and the Directives on Public Procurements. Hence, granting permission to an arrangement impeding competition coming from other Member States, and foreclosing the market was not possible in view of Article 5 of the Treaty.

Source: OECD paper on Finland, 1998

Dominant positions (defined as a market share over 50 percent) were also to be notified, but there were only 10 notifications over a period of 10 years. The light controls that were actually applied, tended to support a pattern of loose horizontal and vertical combinations. Nonetheless,

2 European Free Trade Association

the 1964 Law did mark the introduction of the principle of national competition policy.

The next major reform of the competition statute, in 1973, introduced an executive official, the Competition Ombudsman, who was empowered to represent public interest in negotiations involving the (renamed) Competition Council. The Ombudsman could refer matters to the Competition Council for action, as could consumer associations or trade unions. By 1982, the Ombudsman had handled 183 cases, of which only nine were referred to the Council.

But in the 1970s, the principal policy concern was inflation, and the main objective of the institutional changes was to control price increases. A Board of Trade and Consumer Interests was to administer both price regulation and competition policy. Price control however proved unworkable.

In 1985, the Council was given greater powers, although the Government was already moving toward more radical change. A committee reviewing the failures of price regulation called attention to the deregulatory function of competition policy. It proposed that horizontal cartels should be treated as void *ab initio*. When a new Law was adopted in 1988, it did not take that step towards prohibition. Rather, the most visible change was institutional. The Board of Trade and Consumer Interests was closed down, and a new administrative agency was established.

This new institution aggressively attacked the system of cartels. The powers of what was then called the Office of Free Competition (OFC) were broadly similar to those of the Competition Ombudsman. The OFC – which is now called the Finnish Competition Authority (FCA) – was authorised to:

- register and investigate restraints;
- negotiate about removing them; and
- refer matters that could not be resolved, to the Competition Council.

Further amendments in the 1990s, adopted the EU ‘toolkit’ and merger control. Finland was enduring a severe recession, which was magnified by the disruption of its traditional markets in what had been the USSR. The Government proposed to prohibit restrictive agreements, and to reform the Competition Council by ending the practice of interest group representation in its membership.

The Parliament appeared to generally agree that restraints on competition were an important reason for the country’s poor economic performance. Indeed, the lawmakers wanted an even tougher competition law than the Government proposed. Heeding the concerns of small businesses, which feared that the prohibition against

agreements would hurt them if they banded together and, which thus demanded that large firms share the effects, the legislature added a prohibition against abuse of dominance.

Competition Law

The new Act on competition restrictions, the ‘Competition Act’, became effective in 1992. The final pieces were added to the Competition Act in 1998. The principal addition was merger control. Experience with the 1992 law showed that mergers were circumventing the ban against horizontal agreements. A notorious example was the merger of Finland’s major dairies, after the OFC rejected a proposed agreement amongst them. Additionally, the 1998

Box 72.2: Action on Bauhaus for Claiming Lower Prices

Bauhaus, a famous superstore, commenced its operations with advertising on price guarantees. The price guarantee, in itself, already contained the message that the advertiser was so sure of its prices being lower, that it could take a financial risk by promising to pay the price difference, stated the Market Court.

If a company claims that its prices are lower, it must demonstrate this claim to be true. According to the Market Court, conclusions cannot be drawn regarding competitors’ prices on the basis of such products that the competitors do not even sell.

According to Bauhaus, it constantly compared its prices with those of its competitors, and if it noticed that a competitor has a lower price, it would lower its own price. As the company could not demonstrate evidence of having lower prices, the Consumer Ombudsman imposed a temporary ban on the aforementioned stratagem of price guarantee advertising.

In actual fact, the company itself admitted that, in practice, it is not possible to ensure that all its prices are always lower than those of its competitors. According to the Market Court, by reducing its prices only when lower prices have been found from a competitor, Bauhaus has actually left the task of price comparison to the consumer.

The Market Court imposed a ban on Bauhaus in regard to this matter, and backed up the ban with a conditional fine of EUR 100,000. The rulings of the Market Court were unanimous and they came into immediate force. The temporary ban imposed by the Consumer Ombudsman on Bauhaus has been in force since the beginning of October 2001.

Source: Consumer Protection, 1/2002

3 The “bagatelle” exemption covers agreements among small groups of limited economic importance.

amendments provided further reassurance to small businesses by making the *bagatelle* exemption³ somewhat more explicit. The most recent changes, in early 2002, have been institutional. The Competition Council was replaced by a judicial body, the newly reconstituted Market Court.

The policy focus in Finland's competition law is on efficient markets and consumer interest. A comprehensive conception of competition policy, based on efficiency, supported the stronger enforcement in the 1990s. Economic competition is to be 'sound' in order to ensure dynamic and static efficiency in the economy.

Sectoral Regulation

Finland moved early to introduce competition in most infrastructure sectors, such as telecom, energy, and transport (except for rail). There are a few anomalies, such as the vestigial national monopoly for alcoholic beverage retailing, and there are sectoral regulations, which may impair competition more than necessary. Here is a brief description of some of the sectoral regulations:

- **Telecommunications:** The telecom regulator, the Finnish Communications Regulatory Authority (FICORA), may refer problems to the FCA if the conduct at hand in the sector might violate the Competition Act. There is no formal process governing this relationship, though.
- **Electricity:** The Energy Market Authority's (EMA) principal responsibility is to regulate transmission rates, on the theory that this function is a natural monopoly. Transmission service is not excluded from the Competition Act, and the FCA has also been concerned about grid access and pricing.
- **Natural Gas:** Natural gas is a regulated national monopoly. Finland receives all of its natural gas by pipeline from Russia, and the gas grid covers only the Southeastern part of the country. Finland has an exemption from the EU's Natural Gas Directive, postponing open competition until the grid has been connected to the European network and Finland has more than one source of supply. Meanwhile, the monopoly importer and grid operator is regulated by the EMA.
- **Water and Sewer Services:** Water and sewer services are local monopolies. National legislation sets basic standards for regulation by local health care authorities, environmental protection authorities and regional environmental centres. The Consumer Ombudsman has a role in ensuring compliance with consumer protection rules. The FCA can apply the Competition Act to prevent abuse of dominance, including excessive prices.
- **Banking and Insurance:** Financial services are fully subject to the Competition Act and FCA jurisdiction, including notification for bank mergers. In insurance, the sectoral regulator, the Insurance Supervision Authority (ISA) has some enforcement authority. The ISA has the power to propose that a restriction chiefly affecting the insurance industry be brought to the Market Court for an order or sanctions.

Box 72.3: Abuse of Dominance by Valio, Dairy Products Company

The Competition Council imposed a fine of FIM 5 million on October 24, 1997, on the Finnish dairy products company *Valio Oy* for an abuse of dominant position in the Finnish liquid dairy product markets. According to the rebate table applied by Valio, the retailers were granted discounts on the prices of liquid dairy products, on the basis of the average value of all the products (liquid dairy products, cheese, fats, ice-cream, snacks and juice) obtained from Valio.

In order to obtain a full discount, retailers had to make all their purchases of liquid dairy products from Valio, which had the effect of tying customers and excluding competitors from the markets. Additionally, the marketing funds employed by Valio, and granted on the basis of total purchases, had the same effect. The amount of marketing funding varied according to the level of competition in different regions of the country, and customers on level par, measured by their total purchases, could receive different amounts of funding. The Competition Council dismissed Valio's claim that it was a question of lawfully meeting competition. The Council found that Valio also sought to capture the markets and strengthen its market dominance.

The Supreme Administrative Court came to the same conclusion as the Competition Council and dismissed the appeal lodged by Valio on the Council's decision. In its decision, the Court expressly stated that Valio has been found guilty of an abuse of dominant position under Article 86 of the EC Treaty, in addition to the national Competition Law.

Source: OECD paper on Finland, 1998

Consumer Protection

The Consumer Protection Act deals with marketing abuses. The legislation is applied by the courts, although consumer disputes with businesses are often settled through the Consumer Complaints Board. Consumer interests are also looked after by the Finnish Consumer Agency, and the Consumer Ombudsman.

As in other Scandinavian countries, Finnish consumer protection has traditionally been strong, indeed, stronger than the EU's. Consumer groups, and the Government's general consumer policy, recognise the important role of competition in protecting consumer interests. Nevertheless, consumer policy has been more concerned with issues of equity and distribution.

The Consumer Ombudsman usually keeps the FCA informed about its actions. The two agencies, however, have different views about matters such as the risk of setting

Box 72.4: No to an Exemption to Horizontal Cooperation in the Daily Consumer Goods Market

By its decision, on December 04, 1998, the FCA did not grant an exemption to the chain-specific horizontal retail price cooperation, for the basic products, of the K-Group's daily consumer goods trade. Nor was an exemption granted to the harmonisation of other sales and delivery terms, purchasing prices or other purchase terms, because the applicants had not presented sufficient grounds to support their application.

The K-Group is the biggest daily consumer goods group in Finland, with a market share of 40 percent in the retail sales of these goods. The group consists of seven chains, conducting daily consumer goods trade. Its operations are co-ordinated by Kesko Oyj, the holding company of the chains.

In its deliberations, the FCA considered the sparseness of the national daily consumer good

distribution channels in Finland, and the considerable market share of the applicants.

The FCA held that the cost-savings obtained, through the new forms of co-operation, would not accrue to the retail prices to a sufficient extent. Because, in spite of the great purchasing power and other cooperation forms of the group, the K-Group's daily consumer goods stores, of all formats, have been found the most expensive of all the trade groups.

The negative decision was also affected by the previously granted exemptions to the chains of the K-Group, allowing the stores, of the chains, to conduct purchasing and sales cooperation, in the context of sales campaigns, and to agree on the maximum prices of the K-Group's own brands.

Source: OECD paper on Finland, 1998

product and performance standards too high, which would harm consumer interests by limiting competition. Both bodies are now discussing a project about promoting transparency in consumer markets. A recent action suggests both the degree of vigilance over consumer issues and the economic sophistication underlying it: the Market Court rejected an advertisement that promised to match or beat competitors' prices, in part because such commitments can support an agreement not to cut prices.

Concluding Observations and Future Scenario

The FCA's strategy, in the coming years, is to gradually shift emphasis from reactive competition control to proactive activities and influence. The FCA's expertise will

be put to full use by 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 October 01, 2002. The organisation reform brought with it three new units:

- *The Monopolies Unit* deals with abuses of dominant position and merger control;
- *The Cartels Unit* investigates cartels and other concerted activities between competitors, distribution channels restraints and governmental competition restraints; and
- *The Advocacy Unit* seeks to affect, proactively, the harmful market conduct of the business community and the Government.

Suggested Readings

1. Regulatory Reform in Finland, OCED 2003
2. OECD paper on Finland, 1998