



FINNISH COMPETITION
AUTHORITY

Comment on Professor Lyons' presentation

**Exploitative abuses
-Finnish experiences**

**Pros and Cons of High Prices
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Case examples: Energy pricing

- After a rapid decline in tax revenues, municipalities faced severe financial difficulties in the 1990's
- Public utilities were used to increase the level of revenues in municipalities without having to raise the municipal income tax rate
- Substantial price increases by public utilities (electricity, district heating, water and sewage, ports etc.)

Energy pricing (2)

- In September 1996, the consumer associations representing the one-family house owners in the Helsinki area had filed a complaint against Helsinki Energy (HE)
- HE was accused of unreasonable pricing in sales and distribution of electricity and district heating, thus violating the prohibition on abuse of market dominance
- As price comparisons to competitive markets were impossible, the FCA focused mainly on assessing the profitability of HE
- Profitability was assessed using Weighted Average Cost of Capital (WACC) / Capital Asset Pricing Model (CAPM)

Energy pricing (3)

- HE was deemed dominant in markets for sales and distribution of electricity and district heating
- Pricing of electricity and district heating was on or above the national average between 1992-1998, although the operation area of HE was very profitable compared to other utilities (population density etc.)
- Profitability of HE activities in 1995-1998
 - Distribution of electricity: ROIC several percentage units above WACC
 - District heating: ROIC 5-10 percentage units above WACC
- FCA considered HE's pricing of electricity and district heating to be excessive

Energy pricing: Competition Council's ruling (2001)

- Competition Authority should only intervene directly in the price level of an undertaking if other indirect means of influencing the price level (removing competition restraints and merger control) do not suffice or when the price level is markedly excessive
- Competition Authority's threshold for intervention in excessive pricing should be well above that of sector regulators; conduct is not abusive every time profitability exceeds WACC
- To achieve the right end result, all the evidence should point to the same conclusion

Energy pricing: Competition Council's ruling (2)

- Price of electricity seemed to be high but pricing of electricity distribution and district heating did not differ significantly from other utilities in Finland
- ROIC in electricity distribution activities was not significantly higher than WACC
- ROIC in district heating activities was high compared to WACC but the assessment period was relatively short (1995-1998) and, in general, the WACC/CAP assessment involves uncertainties that have to be considered

Energy pricing: Competition Council's ruling (3)

- As all the components of the assessment (pricing and profitability in different product markets) did not indicate to excessive pricing...
- ...Competition Council stated that there was not sufficient evidence that HE's pricing behaviour should be considered abusive

FCA and excessive pricing after energy case

- Competition Council in its HE decision raised the evidentiary burden faced by the competition authority to prove abuse in excessive pricing cases very high
- Considering the amount of work that was required from FCA to bring the HE case before the Competition Council, it became evident that the FCA will investigate excessive pricing cases only in very exceptional circumstances

Port of Helsinki case

- In 1992 shipping companies lodged a complaint with the FCA, accusing Port of Helsinki of abusing its dominant position when it proposed to raise the passenger fee from 5 FIM to 20 FIM as of 1 January 1993
- The complainants considered the raise to be excessive and significantly threatening to their ability to conduct business activities
- The Port of Helsinki introduced passenger fees in 1975 / the fee amounted to 2 FIM
- Fee raised in 1979 to 3 FIM; in 1985 to 4 FIM; in 1991 to 5 FIM
- Comparison to other Finnish harbours: Turku – 4 FIM; Vaasa – 3.40 FIM

Port of Helsinki - FCA's findings

- Port of Helsinki is in a dominant position (natural monopoly) in the regional market for the supply of port services
- Raise not economically justifiable in increased costs (comparison with other harbours)
- Investment costs and operating costs of Port of Helsinki are not significantly higher than those of other harbours
- Profitability of Port of Helsinki not below that of other harbours
- The City of Helsinki has not produced economic evidence showing that the services it offers to passengers, when compared to services offered in other domestic and international harbours, incur higher costs which would in turn justify increasing passenger fees



Port of Helsinki - FCA's findings (2)

- No cost-based grounds for the raise
- Reason behind the raise was the City of Helsinki's difficult financial situation and the need to compensate for lost revenues due to reduction in tax revenue
- Raise exceptionally high and unexpected
- Due to intense competition, it was not possible to pass the raise on to individual passengers, therefore the raise (annually 75 million FIM) was left to be paid by the shipping companies
- FCA considered that since the fee was proposed to be fourfold, the pricing was excessive and the practice abusive

Port of Helsinki - Competition Council & Supreme Administrative Court

- Competition Council rejected the FCA's proposal:
 - According to established case-law, fees under public law need not be cost-based
 - High investment costs for a new harbour project
 - Indirect costs associated with the Port of Helsinki
 - Therefore: price increase not considered excessive
- Supreme Administrative Court agreed with the FCA's findings and considered that the City of Helsinki had abused its dominant position
 - main arguments: suddenness and radicality of the raise

Port of Helsinki II

- Port of Helsinki decided to raise the fee from 5 FIM to 10 FIM as of 1 October 1993, instead of 20 FIM
- FCA found pricing of Port of Helsinki to be excessive in general
- Market Court (former CC) ruled that according to price comparisons or cost evaluations, the price increase was not excessive (1997-1999)
- Passenger fee constant since 1993 – profitability calculations did not support excessiveness
- Complainant appealed, FCA did not
- Supreme Administrative Court rejected the appeal – lack of sufficient grounds to prove breach of the Act

A successful case: excessive copyright fee (commercial radio stations)

- A fixed fee was added by collecting society on traditional turnover based percentual tariff
- Fixed fee ignored size of radio stations
- For a minor station, fee accounted for 20% of turnover
- Competition Council 27.2.2002 -> abuse of market dominance

Concluding remarks

- Consumers expect the Competition Authority to intervene in high prices (if any)
- For Competition Authority intervention due to excessive pricing is a distasteful task and exceptional sphere of operation
- Main target of the FCA on abuse surveillance: exclusionary practices, entry barriers, advocacy
- However, the Authority signals its readiness to intervene in excessive prices if they go totally over the top