Chapter 5 Finland

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The present chapter follows the outline pattern of the previous sections. The first part (sub A) 5.01 introduces roughly to the legal provisions and the main institutions concerned with the implementation of competition law in Finland. It continues with the general approach to demand and supply side substitutability for defining the relevant product market, and the criteria used to define the geographic market. Afterwards, (sub B) this chapter portrays the main markets delineated in the media sector by the Finnish authorities. The third section (C) provides a comparison between the market definition applied at the EC level and the methodology adopted by the Finnish authorities. The last part (sub D) provides an analysis of the impact of different regulatory frameworks in Finland on market definition.

A Market Definition in Competition and Media Law

Before the criteria of market definition applied in Finnish competition and media laws are examined, a short introduction to the legal framework governing those areas is presented.

I. Introduction to the Legal Framework

This section provides a succinct introduction to the major legal provisions concerning competition and media law. It further gives an overview of the courts and authorities involved in the regulation of the relevant markets. Recent developments of laws are traced as far as they are necessary to prevent confusion.

1. Legal Provisions

The main legislation covering competition law in Finland is the Competition Act¹, which was enacted 1992 and repealing prior competition legislation. The Competition Act comprises provisions dealing with vertical restraints², concerted practices and cartels³, and the abuse of dominant positions⁴. Moreover the control of mergers and acquisitions⁵ was introduced in 1998.⁶ Additionally, several procedural provisions⁷ are included, which are accompanied by the Act on the Competition Authority, the Decree on the Competition Authority, the Market Court Act, and decisions of the Ministry of Trade and Industry.

² §§ 4 Competition Act.
³ § 5 and 6 Competition Act.
⁴ § 7 Competition Act.
⁵ §§ 11 et seq. Competition Act.
⁷ §§ 12 et seq. Competition Act.
As to media sectors, the Communications Market Act\(^8\) and the Act on Television and Radio Operations\(^9\) are of relevance. Broadly speaking, the Communications Market Act deals with the regulation of communication networks and services such as issues of numbering, standardisation, and interconnection. It is complemented by some additional legislation and several decisions of the Ministry of Transport and Communications, which are presented below as far as they are relevant for this study. Due to the implementation of the EC Regulatory Package, the Communications Maket Act has been reviewed and completely altered. The new version entered into force on 25 July 2003. Thus, effects of the new legislation cannot be appraised fully yet. The Act on Television and Radio Operations contains, besides provisions for frequency allocation and licensing, several rules on content regulation concerning matters like advertising, programme supervision, and protection of minors. Regarding print products the Freedom of the Press Act\(^10\) is to be mentioned.

2. **Authorities and Courts**

The Finnish Competition Authority (Kilpailuvirasto) investigates competitive restrictions and initiates proceedings pursuant to the Competition Act\(^11\). On regional level, provincial state authorities, operating under the guidance of the Competition Authority\(^12\), are responsible for investigations of anti-competitive behaviour as well\(^13\). The Competition Authority can grant exemptions for agreements having only a minor effect on competition and negative clearances for those it considers not to be prohibited by the Competition Act\(^14\). It proposes all other decisions to the Market Court (Markkinaoikeus)\(^15\), which deals with first instance decisions in competition cases since 2002\(^16\). Formerly, those matters fell within the competence of the Competition Council (Kilpailuneuvosto). Decisions of the Market Court can be appealed against before the Supreme Administrative Court (Korkein hallinto-oikeus)\(^17\).

Further, the tasks of the Competition Authority include merger control.\(^18\) The authority may grant clearances as well as conditional clearances in merger decisions. The Market Court may prohibit an acquisition upon the proposal of the Competition Authority\(^19\).

Because of the straightforward approach to regulate media sectors in a technologically neutral manner, in Finland only a single authority exists for communications regulation. The Finnish

\(^8\) No. 393/2003 of 23 May 2003, Viestintämarkkinalaki (Communications Market Act) as last amended by No. 628/2003.
\(^11\) § 12 Competition Act.
\(^13\) Cf. § 12 (2) Competition Act.
\(^15\) http://www.oikeus.fi/markkinaoikeus/.
\(^16\) Cf. § 18 (1) Market Court Act.
\(^17\) § 21 (2) Competition Act.
\(^18\) § 11 et seq. Competition Act.
\(^19\) § 11d Competition Act.
Communications Regulatory Authority (FICORA)\(^\text{20}\) is responsible for giving effect to both the Communications Market Act and the Act on Television and Radio Operations. Therefore, it is in charge of the regulation of telecommunication networks and services, broadcasting by radio and television, and the Internet\(^\text{21}\). However, pure competition matters remain in the competence of the Competition Authority\(^\text{22}\). Decisions of FICORA can be appealed to the administrative courts\(^\text{23}\). FICORA will have the responsibility for defining the relevant market concerning communications in the meaning of the Communications Market Act.\(^\text{24}\) In this respect, changes to the current approach of market definitions in the communications sector might be possible.

II. The General Approach to Market Definition in Finnish Competition Law

In order to establish whether an undertaking maintains a dominant position, first of all the relevant market has to be defined. § 3 (2) Competition Act states:

“A dominant position shall be deemed to be held by a business undertaking or an association of business undertakings, which, either within the entire country or within a given region, holds an exclusive right or dominant position in a specified product market […].”\(^\text{25}\)

From this it can be concluded that markets have to be determined in respect to both their geographic dimension and the products and services offered on them. Consequently, Finnish competition law requires the definition of the relevant product market (sub 1) as well as of the geographic market (sub 2)\(^\text{26}\).

1. Definition of the Relevant Product Market

When defining the relevant product market, the main question is whether certain products or services are interchangeable. If products can be substituted by others, they altogether form one market. According to Finnish case law, such substitutability can be inferred from a customer perspective, as well as from the sight of suppliers. In the following, both criteria are presented in turn by referring to distinctive examples. On which particular factor authorities focus in practice depends much on the particular circumstances of the industry sector examined\(^\text{27}\).

\(\text{\textsuperscript{20}}\) Formerly the Telecommunications Administration Centre (Telehallintokeskus).
\(\text{\textsuperscript{21}}\) Additionally, FICORA is responsible for postal services, which however is of no relevance for this study.
\(\text{\textsuperscript{23}}\) § 127 Communications Market Act; § 40 Act on Television and Radio Operations.
\(\text{\textsuperscript{24}}\) § 16 Communications Market Act.
\(\text{\textsuperscript{25}}\) Unofficial translation provided by the Competition Authority at http://www.kilpailuvirasto.fi/cgi-bin/sivu.pl?i=actoncompetitionrestrictions.
a) Demand-Side Substitutability

Primarily, market definition relies on the consideration of demand-side substitutability. It is regarded as essential to examine which products or services are equivalent from a customers’ perspective. Above all, products belong to the same market if customers consider them to be interchangeable. The substitutability of products is mainly assessed by questioning whether they have similar functions or quality levels. Different products may even stem from the same origin and have similar applications. A vivid example is the recent merger case Valio in which the Competition Authority analysed the effects of the concentration in over 20 different markets for milk products, amongst others diverse markets for liquid dairy products, milk powder and raw milk products.

Furthermore, not only the view of direct customers can be relevant. Occasionally, the substitutability of products is assessed from the standpoint of ultimate consumers. In Lakritsipiippu the complainant was a wholesaler who claimed that the only producer of liquorice pipes maintained a dominant position since the production of such sweets in their particular form needed high investments in technology. The Competition Authority however found the market to be broader and considered that from a consumers’ perspective liquorice pipes are interchangeable with other liquorice products as not the form but taste and price are essential for choices of consumers.

For services demand-side substitutability is a significant element for market definitions as well. In the merger case Finnlines/ Transfennica the Competition Authority rejected as a preliminary conclusion the argument presented by Finnlines according to which the relevant market comprised of sea transports of goods carried in large consignments. Contrarily, the Competition Authority established much narrower markets in finding that container traffic had to be distinguished from so-called roll-on/ roll-off (ro-ro) traffic which is able to ship entire vehicles. From a customer’s perspective both means of transport are not interchangeable because the ability of ro-ro vessels to load moving trailers cannot be utilised in container ships. This also implies that the ways of loading and unloading goods differ fundamentally. In addition, many destination ports did not possess the necessary infrastructure to unload containers.

A prominent example for demand substitutability in antitrust cases is the decision in PHP, which is related to communication markets. A local telephone company had applied so-called ownership discounts which the Competition Authority regarded as tying and discrimination vis-à-vis the company’s customers; further, the non-cost-accountable discount practice was

29 Competition Authority, Case 96/61/95, Optiroc, KT 2/92, at p. 1 (7-10).
31 Competition Authority, Case 1151/81/99, Valio Oy IV.
32 Competition Authority, Case 9/61/95, Lakritsipiippu sopimusvalmistuksen lakkaaminen (liquorice pipe).
33 Competition Authority, Case 607/81/2000, Finnlines Oyj/ Transfennica Oy; the parties cancelled the acquisition before proceedings were completed. See also OECD, Annual Report on Competition Policy – Finland 2000, para. 68 et seq.
35 OECD, Annual Report on Competition Policy – Finland 1999, para. 43 et seq.
seen as an obstacle for competing telecom operators to enter the market\textsuperscript{36}. Concerning market definition, the issue was if the relevant product market comprised fixed-network telephony only or included mobile telephony as well. The Competition Authority appraised that from a customer’s perspective fixed-network telephony is not substitutable by mobile telephony. Since both means of telephony have different functions and purposes, mobile telephony is rather a supplement to fixed telephony. Inter alia conventional telephone networks have higher transmission capacities and thus allow faster data transfer.

Different price levels of similar products can have a decisive impact on the assessment of product substitutability. This is likewise demonstrated by the case Finnlines/ Transfennica mentioned above. The Competition Authority considered road transport not to be a substitute for sea transport to Central Europe. Customers would not equally choose road transports since they are much more expensive than sea transports. Similarly, in PHP another reason to distinguish the market for fixed-network telephony from the market for mobile telephony was that telephone calls via mobile networks were much more expensive than those via conventional lines.

b) Supply-side Substitutability

Although demand-side substitutability is the main criterion for market definitions, Finnish competition law occasionally considers the perspective of suppliers\textsuperscript{37}. The matter in Optiroc\textsuperscript{38} was whether bricks made of clay belong to the same market than those made of limestone. The Competition Authority observed that both production methods require high investments but differ fundamentally. Therefore producers were not able to switch easily between both types of bricks. However, the Competition Authority held that the demand-side substitutability was so strong that both types of bricks fell into the same market. Thus, a decisive factor for identifying supply-side substitutability is the amount of investments needed for switching to the supply of other products or services\textsuperscript{39}.

2. Definition of the Relevant Geographic Market

According to the Competition Authority, the relevant geographic market is defined as an area in which customers are able to find economically realistic alternatives for their business relations\textsuperscript{40}. Similarly, the Competition Council held that the relevant geographic market comprises a region in which the undertakings compete against each other and the conditions for conducting business are for all competitors objectively equal\textsuperscript{41}.

Pursuant to § 3 (2) Competition Act (above para. 5.05) the dominant position can relate to either the entire country or parts thereof. In Finnish case law, geographic markets range from

\textsuperscript{36} Competition Authority, Yearbook 2001, at p. 20 (21); Yearbook 2002, at p. 22.


\textsuperscript{38} Competition Authority, Case 96/61/95, Optiroc, KT 2/92, at p. 1 (7-10).

\textsuperscript{39} Cf. Competition Authority, Case 155/61/91, Turun energialaitos.

\textsuperscript{40} P. Erämetsä, “Finnland”, in: P. Behrens (ed.), EC Competition Rules in National Courts (VI), at p. 161 (194); cf. e.g. Competition Authority, Case 615/61/1998, Päijät-Hämeen Puhelinosuuskunta (PHP) (supra note 34) sub “Kilpailuoikeudellinen arvio/Relevantit markkinat”.

\textsuperscript{41} Cf. e.g. Competition Council, Case 1/359/94, Valio Oy II, KR 8/92-6/96, p. 331; Competition Authority, Case 35/61/2001, Savon Mediat Oy.
the size of a single town to the entire Finnish market. Criteria for the definition of geographic markets are inter alia transport costs and availability of products. Moreover, specific preferences of customers can have an impact as well. In *Valio* it was held that a geographic market can be a region in which consumers have developed a preference for certain milk products. Therefore, various regional parts of Finland formed separate markets. Moreover, special requirements for certain products can determine the regional dimension of a market. Although the markets for milk powder are generally European-wide because of its durability and low transport costs, concerning the brand ‘*Joutsenlippu*’ the Competition Authority established national markets since the milk used for the products of this brand shall entirely be of Finnish origin. The Competition Authority found that four out of five customers want to buy only milk products of Finnish origin.

**B Survey on Relevant Product and Geographic Markets in the Finnish Media Sector**

Generally, the communications sector contributes significantly to the Finnish Competition Authority’s workload. In the following, decisions having major impact on the definition of media markets are presented. We start with the traditional publishing sector, examine music, film and broadcasting in turn, and conclude this section with the most recent mass media, the Internet.

### I. Publishing

As to product markets in the publishing sector, the Competition Authority recently held that a picture agency has had abused its dominant position because of unreasonable and discriminatory pricing. The relevant market was the news picture service market for dailies in Finland. In a resembling decision concerning the news agency *Suomen Tietotoimisto*, the Competition Authority defined product markets for news in Finnish, for those in Swedish, as well as for “daily news on domestic affairs, politics, culture, foreign affairs and sports”. Similarly, the wholesale distribution of newspapers and magazines directed at publishers was seen as being the relevant market for the service of the company *Rautakirja*, which was found to have abused its dominant position.

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43 Competition Authority, Case 1151/81/99, *Valio Oy IV*, with reference to the prior cases *Valio Oy II* (*supra* note 41) and Competition Council, Case 6/359/96, *Valio Oy III*, Supreme Administrative Court, Case 3482/1/1997.
44 Competition Authority, *Yearbook 2001*, at p. 31.
45 In 2000, 41 percent of the authority’s project cases related to the telecommunications sector whereas mass communications accounted for 23 percent, Competition Authority, *Yearbook 2001*, at p. 19 et seq.
47 Competition Authority, Case 129/61/2000, *Oy Suomen Tietotoimisto Ab*.
In *Lapin Kansa*\(^{50}\) the definition of the relevant geographic market was a critical issue. The Competition Authority found that the regional newspaper publisher *Lapin Kansa* had abused its dominant position. It held that the relevant market for newspaper advertising comprised the publication area of the newspaper, since there had been no major alternative media that could provide sufficient substitutes in the capital of Lapland, Rovaniemi, or its neighbouring regions\(^{51}\).

A very narrow market definition was applied in a case concerning the publishing House *Otava*\(^{52}\). The Competition Authority limited the relevant market to those upper-secondary school books which were published by *Otava*. School books of other publishers have not been included and consequently *Otava* was regarded as having a dominant position\(^{53}\). This market definition was derived from the fact that bookstores had to obtain exactly those books which have been chosen by teachers for the respective curriculum. Thus, those school books could not be replaced by books of other publishing houses.\(^{54}\) This view was occasionally criticised for applying a too narrow market\(^{55}\). Correspondingly, the Competition Council rejected the Competition Authority’s proposal and found that publishing of other school books used in Finland has to be part of the relevant market as well.\(^{56}\) However, the Supreme Administrative Court reversed the decision of the Council, upheld the market definition of the Competition Authority and returned the case back to the Council for judging whether the conduct of *Otava* constituted an abuse of the dominant position.\(^{57}\)

Recently, the Supreme Administrative Court upheld a decision in which the Competition Council found that the relevant market for the activities of the calendar publisher *Ajasto* was the market of calendars and almanacs published in Finland\(^{58}\). Until 1995, *Ajasto* had an exclusive right to manufacture, distribute and import Finnish and Swedish calendars so that it still retained a dominant position in the calendar market\(^{59}\).

Additionally, there appears to be a separate market for pocket books, which has to be distinguished from markets for other books and magazines. The Competition Authority granted a conditional exemption for a joint venture of four printing houses.\(^{60}\) The cooperation *Loisto* deals with the marketing of pocket books. The applicants pointed out that Finland does not yet have a functioning pocket book market and the cooperation was aimed at creating such a market. The Competition Authority granted a temporary exemption under several

\(^{50}\) Competition Authority, Case 287/61/1996, *Lapin Kansa Oy*; the market definition was confirmed by the Competition Council, see Finnish Competition Authority, *Yearbook 2001*, at p. 22.


\(^{52}\) Competition Authority, Case 246/61/94, *Otava*.


\(^{55}\) P. Schulze Steinen, *Kauppakumppanin mahti ja määrrävä markkina-asema*, at pp. 235 et seq.


\(^{57}\) Supreme Administrative Court, Decision 19.10.2001/2540; the Market Court finally decided on 24.3.2003, Case 7/359/1997.


\(^{60}\) Competition Authority, Case 1119/67/2001, *Taskukirja Loisto Oy*.
conditions, thereby expecting possible efficiency benefits for consumers from competition in the pocket book market.\footnote{See OECD, \textit{Annual Report on Competition Policy – Finland 2002-2003}, para. 25 et seq.}

II. Music and Copyright

Concerning music and copyright, pertinent case law regarding market definition does not exist in Finnish competition law. Cases broadly dealing with those areas concern copyright associations which hold real monopolies in their respective realms\footnote{Cf. Competition Authority, Case 142/61/2000, Teosto ry; the Competition Council’s decision is reported in OECD, \textit{Annual Report on Competition Policy – Finland 2001-2002}, at para. 44 et seq.; it repeated the finding that the Finnish Composers’ Copyright Society Teosto holds a real monopoly in the collective administration of musical copyrights in Finland, cf. Competition Council, Cases 5/359/95 and 22/359/96.}. As far as market definition is relevant in those cases, it rather affects markets in the broadcasting sector (see \textit{Gramex} infra 5.13).

III. Film

The only cases dealing with film in a broad sense are those concerning home video distribution. In \textit{Finnkino}\footnote{Competition Authority, Case 131/61/1999 \textit{Finnkino Oy, Oy Egmont Entertainment Ab, Warner Home Video}.} 23 video retailers complained about the distribution policy of a company having a dominant position in the wholesale-market for rental videos\footnote{This was confirmed by the similar Case 117/61/1996, \textit{Sandrew Metronome Distribution Finland Oy (ent. Warner Home Video Oy)}.}. The Competition Authority distinguished markets for the wholesale and the retail level due to the different clientele. Wholesale distributors would not sell or rent video tapes to private consumers. The wholesale market was further differentiated into markets for selling and renting. The relevant geographic market comprised entire Finland. The Competition Authority acknowledged that in future the Scandinavian market could become relevant since large international companies are trying to organise their distribution networks in such a way that they can operate on the entire Scandinavian market.

IV. Broadcasting (Radio and TV)

Contrarily to the decisions regarding newspaper advertisements, the Competition Authority held in \textit{Gramex}\footnote{Competition Authority, Cases 1018 and 1061/61/2000, \textit{Gramex Oy}; cf. \textit{Yearbook 2002}, at p. 22; OECD, \textit{Annual Report on Competition Policy – Finland 2001/2002}, para. 43.} that there is one national market for selling advertising time of radio broadcasts, on which both nationwide and local radio stations operate. Additionally, local radio stations operate on local markets as well. The case however focused on the analysis of competition problems on nationwide markets. Thus, the organisation for copyrights of performing artists and record producers, \textit{Gramex}, had infringed competition law when applying different pricing schemes to local radio stations than to the nationwide broadcaster \textit{Nova}. The Market Court upheld the decision.\footnote{Market Court, Case 211/690/2001.}
The effect of new technology on market definition is demonstrated by Sonera/ Digita. This is one in a series of cases in which the leading telecommunications company in Finland is involved. Sonera intended to acquire Digita, a subsidiary of the Finnish Broadcasting Company Yleisradio. Digita offered inter alia transmission services of television and radio programmes and owned the radio towers and infrastructure needed for national broadcasting. The Competition Authority investigated the effect of the concentration in several markets, whereby it considered the impact of new technological opportunities on issues like convergence, network effects, access to essential facilities, and dynamic efficiency. Amongst others, markets of the digitalised public broadcasting network’s technical services, public broadcasting network’s transmission services, digital network service systems, Internet connection services, and cable networks were distinguished.

In particular, the Competition Authority had reservations about the strengthening of Sonera’s position in the market of public broadcasting networks. Those networks were estimated to have an important function for the distribution of new Internet type content services, in addition to the basic transmission of television and radio programmes. The planned acquisition would have affected the possibilities of other competitors in the field of digital television and radio. Thus, the Competition Council imposed the condition that Sonera refrains from seeking a licence for digital television broadcasting. As a result Sonera did not proceed with the acquisition.

V. Internet

Regarding the supply of content services, the Competition Authority established for example in Sonera/ Talentum amongst others markets for web content, mobile content, and Internet advertising.

A very important merger case was Sonera/ LSP/ TP. In its decision the Competition Authority elaborated on market definitions in the communications sector. It firstly made use of the definitions found in the Communications Market Act and concluded that it is to distinguish between networks and the services provided by using those networks. The

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67 Competition Authority, Case 1010/81/1999, Sonera Oyj/ Yleisradio Oy/ Digita Oy.
68 Regarding market shares in the telecommunications sector see Ministry of Transport and Communications, Finnish Telecom Policy, at p. 9.
71 Competition Authority, Yearbook 2001, at p. 32 (33).
72 Competition Council, Case 53/690/2000; this was the first decision of the Competition Council in a merger case, OECD, Annual Report on Competition Policy – Finland 2000, at note 1.
74 Competition Authority, Case 582/81/1999, Sonera-yhtymä Oyj/ Talentum Oyj.
75 OECD, Annual Report on Competition Policy – Finland 1999, at para. 74 et seq.
76 Competition Authority, Case 1202/81/2000, Sonera Oyj/ Loimaan Seudun Puhelin Oy/ Turun Puhelimen. This concentration was banned by the Competition Council, Cases 167 and 168/690/2001; the appeal to the Supreme Administrative Court, Case KHO:2002:50, concerned procedural issues.
77 § 4 Communications Market Act, former version.
authority also referred to the distinction of service markets from markets for access to facilities in the Notice of the European Commission on the application of the competition rules to access agreements in the telecommunications sector. This distinction was refined by the Competition Authority, which established 16 different network and service markets. Regarding the media sector, markets for Internet services, the retail of Internet services, data transmission services, the renting of cable TV networks and SMS- and WAP-gateway products are particularly relevant.

However, the Competition Authority does not provide very certain definitions of geographic markets. Like the classical and mobile telecommunications networks, the markets for the retail of Internet services and the renting of cable TV networks are estimated to comprise the operating area of the respective company. The other markets are likely to be national and the market of SMS- and WAP-gateway products is “presumably” international. The Competition Authority argues that Internet services can be seen as national, but sometimes they have regional aspects as well. A further clarification of the geographic dimensions of the markets was not regarded as necessary.

Moreover, the Competition Authority distinguished in a report wholesale and retail markets for broadband Internet services such as ADSL connections. Regarding the retail market, consumers and private firms purchase Internet access from a service operator. In order to access the Internet, the service operator itself obtains network capacity from network operators, which forms the wholesale market of broadband services.

As to electronic commerce, the recent merger case concerning Oikotie (“Shortcut”) is of interest. Four publishing houses applied for an exemption regarding a cooperation dealing with electronic web services for advertisements. The Oikotie service is the sole provider of electronic advertisements in Finland which offers job, housing and car advertisements under the same brand. The Competition Authority accepted the applicants’ view that the electronic advertising market and the traditional newspaper advertising market were two distinct markets. In also finding that there is a close link between the two markets, the Competition Authority denied to grant the exemption. The decision was appealed to the Market Court.

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79 See also Competition Authority, Case 720/81/2002, Sonera Oyj, Hämeen Puhelin Oy/ Telekolmio Oy.


81 Competition Authority, Case 940/67/2001, Oikotie.

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C Comparative Analysis of Market Definitions Adopted by the European Commission and those Adopted by Competition Authorities in Finland

I. General Remarks

Finnish competition law appears to conform closely to EC competition rules. The Government Bill on the 1992 review of the Competition Act states that EC competition law shall serve as a basis for the interpretation of Finnish competition rules. Thus, the direct application of EC rules is not regarded as necessary in relation to purely national cases. Art. 81 and 82 EC may be applied in parallel to the national rules when there is an impact on the trade between Member States. Both authorities and courts comply with the approach of EC competition law to market definition, though concerns are expressed about the geographic dimension of markets defined on EC level. Occasionally, it is felt that the reference to national markets could be insufficient and would place companies of small countries in a disadvantageous position especially regarding concentration cases.

II. Comparative analysis

From the case law presented above, it can be assumed that the Finnish competition law is applied to the media sector in a manner which is principally in coherence with EC law. However, this does not prevent that occasionally the markets established by the national authorities might differ from results of the Commission in similar cases. This is demonstrated in the following by comparing the results of exemplary Finnish case law in the media sector with corresponding findings on EC level.

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In the abovementioned case relating to school books (see para 5.10), the relevant market was initially regarded as comprising only those school books published by the company Otava. This narrow market definition was then corrected by the Competition Council. The resulting broader market definition is comparable to that established by later case law on EC level\(^8\). The Commission found demand-side substitution to be inappropriate for the definition of markets in the sector for professional books because this would lead to too narrow markets as publications could rarely be regarded as substitutable from a customer’s perspective\(^9\). However, the Supreme Administrative Court rejected the findings of the Competition Council and re-established the initial market definition. Thus, in Finland there is a market for school books provided by a particular publisher. This result seems not to be supported by the Commission’s approach of market definitions in the publishing sector.

Contrarily, Finnish and EC competition law come to similar conclusions concerning the broadcasting market. In Sonera/ Digita the Competition Authority paid particular attention to the function of digital networks, which soon could become essential distribution channels for new Internet type content services. The emergence of markets for digital networks also appears to become relevant for decisions on EC level as indicated by the Commission in Microsoft/Liberty Media/Telewest\(^9\). Thus, it can be concluded that the distinction of analogue and digital broadcasting is going to be significant in future appraisals of media markets on both national and European level.

Likewise, in the Internet sector the Competition Authority in Sonera/ Talentum (supra para. 5.14) as well as the Commission\(^9\) have accepted a separate market for advertising services on the Internet.

In conclusion, it can be said as an overall assessment that the market definitions established by the Finnish authorities and courts do not contradict EC law. However, it can be noted as a general observation that there seems to be a tendency in Finland to very detailed definitions of markets whereas the practice on EC level generally prefers broader markets. At large, Finnish authorities attach much importance to market definitions. The Competition Authority devotes a substantial part to this issue in nearly all its decisions. Unfortunately, references to the methods of investigations and theoretical tests applied, such as the SSNIP test, are communicated rather scarcely.

\(^{9}\) Ibid. at para 10.
\(^{9}\) Press Releases IP/00/287 and IP/00/733; cf. Bird & Bird para. 228 and 229.
D       Impact of different regulatory frameworks on market definitions

I.       The Regulatory Framework for the Media Sector in Finland

1.       General Statistics with relevance for the Finnish media landscape

Finland is a small European and officially bilingual country with a population of 5.2 million inhabitants of which a minority of nearly 5.5% speaks the Swedish language. Despite of this fact the Finnish media landscape is very large and diversified.

a)       Print media

The Finnish press market in particular is considered being one of the most important press markets in the world with for example a total of 208 different newspaper titles published in 2002. Their circulation reached a number of 3.25 million copies. In addition to this newspaper circulation there was also a circulation of 5.16 million copies of periodicals (reparted on 190 different titles, published in 2002) which have to be taken into account.

Regarding the printed media it also has to be mentioned that 12,090 different book titles were published last year.92

b)       Broadcasting

aa.       Television

However, other media markets are also very lively. The Finnish TV-landscape consists of 81 channels, but only four of them are nationwide channels with analogue terrestrial licence (two are public and two are run by private broadcasting companies). In addition, the coverage of Swedish-language channel SVT Europa with programmes from the Swedish channels 1 and 2 includes southern Finland.

Regional television indeed is not a major issue in Finland. There are only two private regional channels but several local TV-stations and open channels are operated. Apart from the mentioned nationwide channels there are also ten foreign channels targeting the Finnish TV-market.93

bb.       Radio

Concerning radio in Finland the public broadcasting company (Finnish Broadcasting Company (YLE)) operates three analogue radio channels in Finnish language. In addition, YLE has three digital radio channels.

As Swedish is the second official language in Finland, YLE also provides programmes in Swedish on two channels. There is also one commercial radio station (Sámi Radio) which broadcasts in Lapland in three Sámi languages. Approximately 70 local commercial radio

92 All information available at http://www.stat.fi/tk/tp/taskue_kultuuri.html?tulosta
93 For more detailed information see the Statistical Yearbook 2003, published by the European Audiovisual Observatory in Strasbourg, Volume 5, and also a list of television channels equally provided by the EAO, available under http://www.obs.coe.int/db/persky/fi.html?print
stations broadcast their programmes in different parts of the country. Furthermore there are some "special broadcasting services", most of which extend over wider areas than the local radio stations. These include stations broadcasting music for young people, a classical music station, a station broadcasting in Russian, stations specialising in jazz and Finnish popular music, and a tourist radio station in Lapland.  

c) Telecommunications

As regards telecommunications there are actually 185 telecommunications operators in Finland which operate, partly similarly, in different networks: There are 106 operators which operate in local networks, 65 in long-distance networks, 62 in international networks and 45 in mobile networks. Several (102) telecommunication operators also operate in other fields of telecommunications, e.g. the provision of Internet-connections or cable-TV-services.

d) New media / Internet

According to an annual survey which analyses the access to information technology, 56 % of the Finns had access to computers, 34 % to a CD-ROM-reader, 28 % to a modem, and 47 % had access to the Internet in the beginning of 2001. In 2002 "Statistic Finland" already stated a percentage of 62 of the Finnish population having access to Internet. The Ministry of Transport and Communications comments the development of the internet market as follows:

"Like the other telecommunications markets, the Internet has grown more rapidly in Finland than in many other countries. Free market competition shows a large number of Internet service suppliers and low prices. There are dozens of Internet service providers (ISP) in Finland, although during the last few years Internet services have also been concentrated. The combined market share of the three biggest service providers (Sonera/Inet, HTC/Finnet/Kolumbus and Saunalahden Serveri) to private customers was more than 80% at the beginning of 1999. Several Internet service providers operate only regionally, for example within one numbering area. Prices for Internet services in Finland are the lowest in the OECD countries. Nowadays the prevailing practice is the so-called 'flat rate' pricing, which means that the customer is charged a fixed monthly fee regardless of the connection time used. The only part that is based on time charge is the local call charge for the time that the customer is connected to the network."  

Also the press uses increasingly the Internet to distribute editorial material. 100 online newspapers (out of which 51 dailies) and a total of 209 online-magazines have been counted in Finland in 2002.
e) Cinemas/Films

From 165 film premieres shown on a number of 339 screens in Finland only 12 films were Finnish productions in 2001. 6,5 million admissions to film theatres were counted in the same year. For the statistics of the video industry, the Finnish Film Distributor's Association reported that there have been 9 million rental transactions with regard to video-cassettes and 1 million of DVD rentals in 2001. The number of recording sold amounted to 3,3 million video cassettes and 1,2 million DVDs.

f) Phonograms

At the retail level sales of a total of 11,7 million copies (of which 0,1 on MCs and 11,6 on CDs) with a value of 128 million Euros were estimated for 2001 by the Finnish Group of the IFPI. 2.088 phonogram titles (on different types of phonograms like CDs, MCs or minidisc recordings) were produced in Finland.

2. Legal Framework

Currently Finnish media legislation undergoes many important changes. The revisions are related to almost all media sectors and are on the one hand based on the requirements of the new directives (e.g. on electronic communications) at EC-level and on the other on the need of adaptation to new technologies.

At the moment, the following main Acts building the framework of Finnish media legislation (not including general competition regulations) are in force:

a) The Freedom of the Press Act of 1919

Soon, this Act will be replaced by legislation dealing with the liabilities and responsibilities relating to the use of freedom of expression. The act will be neutral as regards technology as it will apply to both print and electronic media. The most significant changes relate to the legal status of the editor-in-chief, the obligation to store a copy of all publications and programmes for a period of three weeks and protection of the editorial source.

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102 See the correspondent table to Phonogram Sales in the period 1992-2001 at http://www.stat.fi/tk/el/uaaan1001.xls
104 On 11 February 2003 the Constitutional Committee of the Finnish parliament suggested the original government's law proposal to be changed (Document No. PeVM 14/2002 vp, available only in Finnish language at http://www.eduskunta.fi/triphone/bin/utahref.scr?%7BKEY%7D=PeVM+14%2F2002+vp). The parliament passed the law on 17 February 2003 and accepted the modifications by the Constitutional Committee.
b) The Communications Market Act\textsuperscript{105}

Again, replacement of the legislation is expected to be made soon. A comprehensive reform of communications legislation has already been started in 2000, with the purpose to create a legislative environment for communication activities that takes the technological development in the market into account. The legislative reform has taken place in two stages, and the first amendments entered into force already on 1 July 2002. The bill\textsuperscript{106} which, at the second stage, builds a completely new legislative framework and which implements the EC-Communications directives, has most recently been approved and will enter into force at the end of July 2003\textsuperscript{107}. It will be applicable to all types of communication activities as network business, television and radio operations, and the provision of Internet services but not to the content of messages transmitted in a communications network. It will concentrate on all relevant matters as there are the legislation and its scope, authorities and their powers, licences, universal service obligations, accounting and other separation obligations, number portability, interconnection obligations, the access to services and networks, must-carry obligations, new media services, and it covers the significant market power doctrine.

c) The Act on Television and Radio Operations

It forms the legal basis for all broadcasting activities and has last been amended in 2002\textsuperscript{108}. The provisions of the TVwF-directive were implemented by this Act. The Act lays down the terms for the establishment of broadcasting companies, the licensing conditions for such broadcasters and obligations concerning their program (as required by the TVwF-directive).

d) The Act on the provision of information society services\textsuperscript{109}

On July 1, 2002, this Act implementing the Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (E-Commerce Directive), entered into force. The Act deals with certain matters concerning electronic commerce, such as the freedom to provide services, the information obligation of service providers, formal requirements of agreements that can be concluded by electronic means and the exemption of liability of intermediary service providers. The Act aims to promote the electronic commerce in the European economic area by ensuring free provision of information society services.


\textsuperscript{106} The governmental proposal (hereafter always cited as "the proposal") is available at http://www.mintc.fi/www.sivut/dokumentit/viestinta/tavoite/VLM_englanniksi.pdf

\textsuperscript{107} See the "Topical issue" of 23 May 2003 on the Ministry's of Transport and Communications website, at http://www.mintc.fi


\textsuperscript{109} Act No. 458/2002 on the provision of information society services of 5 June 2002.
e) **Promotion of Film Art Act** \(^{110}\)

According to this Act, funds from the State Budget can be allocated to the Finnish Film Foundation for the production and distribution of films and other audiovisual programmes, and for the promotion of film culture. The resources come from pools and lottery funds.

f) **The Copyright Act of 1961** \(^{111}\)

The Finnish Copyright Act came into force in 1961 and has been updated with 20 subsequent amendments since. There is also a Decree on the application of the Copyright Act (574/1995) and on the application of the Copyright Act to certain cases relating to the EEA countries (575/1995). The Finnish Copyright legislation is actually under revision. A government law proposal on copyright law reform was forwarded to the Constitutional Law Committee, but has not been reviewed before the elections in March 2003. As a consequence the proposal has been returned to the Ministry of Education for further drafting. A new proposal is expected later this year.

g) Besides there are several other Finnish acts in the field of media legislation, \(^{5.37}\) like for example:

- the Radio Act\(^{112}\), which deals with the administration of radio frequencies;
- the Act on Communications Administration\(^{113}\), laying down the duties of the Finnish Communications Regulatory Authority (see below);
- the Act on the Finnish Broadcasting Company Ltd of 1993\(^{114}\) which determines the legal status, the ownership, the organisation and the duties of the public television and radio broadcaster "Yleisradio Oy", which is hold to at least 70% by the state;
- the Act on the State Television and Radio Fund of 1998\(^{115}\) which lays down the principles for the funding of the activities of the Finnish Broadcasting Company Ltd and the management of the State Television and Radio Fund;
- the Act on the provision of electronic service by authorities\(^{116}\);
- the Act on Electronic Signatures\(^{117}\).

These acts are naturally also a part of the Finnish regulatory framework regarding the media but can be considered as more complementary rules to the above-mentioned basic acts.

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\(^{110}\) Act No. 28/2000 on the promotion of film art.


\(^{116}\) Act No. 13/2003.

\(^{117}\) Act No. 14/2003.
Administrative rules in force with regard to the media are mostly concerning telecommunications and are enacted by the Ministry of Transport and Communications and by the Finnish Communications Authority (FICORA). Although there is a large number of decisions and regulations which partly contain specific definitions relating to communications, these are mainly dealing with technical requirements and provide for more detailed implementation of the provisions laid down in the Communications Market Act, as entered into force. Administrative regulations with special focus on different media (communications) markets do not exist yet.

II. Media Regulators

1. Council of State (Government)

a) Functions / Competencies

aa. Press subsidy

Since 1951 there has been a public subsidy system for the printed press. The first state subsidies to the press have been provided by transportation support through the postal system. They ended in 1994 by partial privatisation of the postal system. Today, Government subsidies consist of selective general press subsidy for reducing transportation, distribution and other costs of newspapers and for development projects relating to newspapers, which are granted by the Council of State, and of subsidy to the political parties to be used for promoting their press and communication activities. On the one hand the general press subsidy is provided on application to those newspapers suffering from economical difficulties according to their estimated need, whereas the so-called "parliamentary" subsidy is provided to political parties (according to the number of members) to be further granted to political newspapers on the other.

Press subsidies are based on the annual State budget and the need for these subsidies in the State budget is annually reviewed.

In this context it can also be mentioned that no Value Added Tax is payable on the sale of newspapers and periodicals in the form of a subscription for at least one month, nor is tax payable on at least one month's supply free of charge in respect of copies of newspapers and periodicals which are generally sold by subscription.

bb. Granting of licences

According to the provisions in the Act on Television and Radio Operations, the Council of State has already in the past been responsible for the granting of programme licences for radio and television operations. With the new Communications Market Act coming into force, the competence to grant all licences relating to the provision and distribution of communication

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118 The decisions in force issued by the Ministry of Transport and Communications are available at http://www.mintc.fi/www/sivut/english/tele/telecommunications/index.html; the regulations in force issued by the FICORA are available at http://www.ficora.fi/englanti/esittely/n2563.htm


services has also been transferred from the Ministry of Transport and Communications to the Government\textsuperscript{121}.

As to the provisions of the Television and Radio Operations Act, programme licences shall be granted taking into consideration the television and radio broadcasting in the licensing area in question as a whole and aim at promoting freedom of speech as well as safeguarding the diversity of the provision of programmes as well as the needs of special groups of the society. The government has also the possibility to attach regulations to the licences relating to the regional service area of broadcasts, the broadcast time of the day and to the transmission technology and transfer capacity.

Licences granted under the terms\textsuperscript{122} of the new Communications Market Act shall contain the geographical operating area of the operator and can include provisions relating to the general aim of the act and to special technical quality requirements. For network services provided in terrestrial mass communications networks a licence can only be granted if the provider ensures that the Finnish public broadcaster and private broadcasters to which licences under the provisions of the Television and Radio Operations Act have been assigned, obtain the necessary capacity at a cost-oriented price for pursuing their activities.

A licence can also contain provisions that concern the amount of capacity reserved for the programme licence-holder or the co-operation between programming licence-holders in matters concerning capacity distribution or electronic programme guides. Conditions concerning broadcasting technology may also be incorporated into a licence.

c) Television and Radio fee

Furthermore the Government determines the amount of the television fee payable for the use of television sets\textsuperscript{123}. When determining this fee the government is obliged to take into account not only the possibility of the public broadcaster (Finnish Broadcasting Company Ltd) to fulfil its statutory functions relating to public service but also the competition situation in the field as well as the general financial development.

2. Ministry of Transport and Communications

a) Legal Basis

In 1970, the Ministry of Transport and Public Works was divided into the Ministry of Transport and Communications and the Ministry of Labour.

With the liberalisation of the Finnish telecommunications sector in 1987 the competencies of the Ministry increased significantly, due to the fact that it became the main regulator in the field of telecommunications. Before, the state-owned telecommunications operator "Sonera" had acted both as a market player and as regulator which was found prejudicial for the development of competition in the telecommunications. The conflict of interest became

\textsuperscript{121} Compare section 7, paragraph 1 of No. 396/1997, as last amended by Act 489/2002 to section 7, paragraph 1 of the proposal for the new Communications Market Act.

\textsuperscript{122} See section 10 of the proposal.

evident when Sonera refused to grant frequencies for some services competing with its own services.

Already one year after the transfer in competence to the Ministry of Transport and Communications had been effected, the predecessor of the present Finnish Communications Regulatory Authority (FICORA), the Telecommunications Administration Centre (TAC), was created.

The relevant competencies have then been divided between the Ministry and FICORA. At the beginning, the former TAC acted as regulator purely in technical matters, being responsible for technical inspection, enforcement of technical regulations and spectrum management. The Ministry indeed remained the competent authority for licensing, approval of technical standards, financial regulation, and overall monitoring of operators.

b) Functions / Competencies

Besides policy making, the Ministry prepares the acts, decrees and decisions made in Parliament, at Presidential sessions of the Council of State (Government) and in the Council of State itself. Furthermore, the Ministry takes decisions in order to concretise legal requirements and issues guidelines and orders on the implementation of the acts. The Ministry may also delegate powers to FICORA, it has transferred most of its regulatory activities. Despite this delegation, the Ministry retains the right to decide on individual regulatory issues even if the decision making power lies with FICORA.

The new Communications Market Act which enters into force in July 2003 will reallocate competencies between the Finnish communications regulators.

Section 119 of the proposal, which is the fundamental provision of the new act with regard to the competencies of the regulatory authorities in the communications' sector, states as follows:

“Section 119 — General guidance, development and supervision

(1) General telecommunications guidance and development are the responsibility of the Ministry of Transport and Communications.

(2) The Finnish Communications Regulatory Authority supervises compliance with this Act and provisions issued under it.

(3) The Government shall ensure that activities concerned with regulation of telecommunications operators and with Government ownership or power of decision are separated from each other in a structurally efficient manner.

(4) The Ministry of Transport and Communications is assisted by the communications administration advisory board. The advisory board follows the activities of the communications administration, prepares initiatives for developing the communications administration and issues opinions. The communications administration advisory board has a chairperson, deputy chairperson and no more than 16 members, who are appointed by the Ministry of Transport and Communications for three years at a time. Each member is also appointed a personal deputy. The advisory board shall include representatives of the Ministry of Transport and Communications, operators in the sector and the main user groups. The advisory board convenes at the invitation of the chairperson or deputy chairperson. The advisory board is in other respects governed by the provisions on committees.”

The concrete functions and duties of the Ministry can be found in several other provisions of the act. An important change concerning its regulatory tasks is that the Ministry is no longer
the licensing authority in fields of communication. As mentioned above the right to grant licences has been transferred to the Government. Among the regulatory duties of the Ministry, the most important provision with regard to the definition of communication markets is section 16 of the new Communications Act. It states that there has to be a cooperation in defining the relevant communications markets, which is generally vested with the FICORA, between the Finnish Communications Regulatory Authority and the Ministry of Transport and Communications. It is also foreseen that any market definition that deviates from the market definition recommendation of the Commission of the European Communities (the Commission) shall be made on the decision of the Ministry of Transport and Communications.

c) Linkage with General Competition Authorities

Already in the past, the duty of the Ministry in competition relevant matters has been to determine the telecommunications operators which should be deemed to have significant market power, so there also had to be criteria existing by which market delineation was effected. These criteria emanated probably from general competition law primarily, to which section 36, paragraph 3 of the former Communications Act also referred.

Despite this there was no legal obligation for the communications' regulators of defining communication markets and also no provision of cooperation with general competition authorities.

Now, with the legal stipulating of an obligation to define communications' markets, the communications regulatory authorities will get much more active in competition relevant matters than before, which can lead to overlapping decisions with general competition authorities. Exactly concerning this problem the Finnish Competition Authority gave a critical statement on the reform of the legal communications' framework. The FCA was concerned about the fact that the new Communications Market Act would provide the FCA and the Finnish Communications Regulatory Authority (FICORA) with parallel powers in competition control. The authority expressed the opinion, that in general sector-specific competition control should be kept to a minimum and be used only in situations where the general competition rules cannot be efficiently applied, and that competition control should remain solely with the FCA in telecommunications too, whereas FICORA should monitor the activities of the telecom companies in other respects.

The Finnish legislator did not share the FCA's view. Only the FCA's stipulation with regard to a regular cooperation between competition and communications regulatory authorities in order to secure a uniform competition law interpretation has been followed. According to section 120 of the upcoming Communications Market Act there shall be a cooperation between the Ministry of Transport and Communications the competition authorities. The exact wording of the provision is:

124 See section 8, paragraph 1 of the proposal.
125 See section 16, paragraph 2 of the proposal.
126 According to section 16, paragraph 1 of the proposal.
127 See section 16, paragraph 2 of the proposal.
“In discharging the duties under this Act, the Ministry of Transport and Communications and the Finnish Communications Regulatory Authority shall work in cooperation with the competition authorities and the consumer authorities wherever necessary.”

In addition to this provision it is also stated in the new Act\(^{129}\) that the Ministry and the FICORA have the right to supply the Finnish Competition Authority with confidential documents that they have received or drawn up in the course of discharging the duties prescribed in this Act if this is necessary for the fulfilment of the tasks distributed to the Finnish Competition Authority.

3. **Finnish Communications Regulatory Authority**

a) **Legal Basis**

The Former Telecommunications Administration Centre (TAC) as established by Act No. 518/1988 on Telecommunications Administration, which has been repealed by Act No. 625/2001 on Communications Administration changed its name into Finnish Communications Regulatory Authority (FICORA) in September 2001. The rights and obligations previously accumulated to the TAC were transferred to FICORA (section 5 of Act No. 625/2001). Additional duties of the FICORA are laid down in section 2 of Act No. 625/2001 and in the legal Acts referred to as well as other acts like for example the Act on the provision of information society services\(^{130}\).

b) **Functions / Competencies**

FICORA has developed into a multisector regulator. Its regulatory tasks not only relate to telecommunications, but also radio and television operations, postal services, and e-commerce issues.

aa. **Communications**

Due to the new Communications Market Act the competencies of FICORA will increase, especially with regard to the definition of single communication markets.

As already mentioned in part 2.2.2 FICORA is not only vested with the power of defining relevant communications' markets but also obliged to issue corresponding decisions at regular intervals.\(^{131}\) According to section 17, paragraph 1 of the new Communications Market Act FICORA shall “perform at regular intervals a market analysis of relevant wholesale and retail markets, in order to establish the competitive situation.” FICORA shall also, by decision, “declare a telecommunications operator to be an operator with significant market power if, on the basis of market analysis, it is seen in a particular market to exert an economic influence alone or with others that allows it to operate to a considerable extent independently of competitors, consumers or other users.”

According to paragraph 2 of the same section Telecommunications operators which are deemed to have significant market power in a particular market, shall also be considered to

\(^{129}\) See section 113 of the proposal.

\(^{130}\) Act No. 458/2002 on the provision of information society services of 5 June 2002.

\(^{131}\) See section 16, paragraph 1 of the proposal.
have the same position in nearby markets if they are also able to strengthen their market power in those markets.

Furthermore, FICORA shall amend a decision on significant market power if market analysis shows that significant changes have occurred in the competitive situation in the market. Amended decisions can include changes to the obligations imposed on the operator with significant market power or a decision can be taken that the telecommunications operator is no longer considered to be an operator with significant market power.

If FICORA states that there is not enough competition within a particular market, it will impose special obligations on the respective individual operators with significant market power. Terms and conditions of these obligations are concretised in other provisions of the new Communications Market Act. Pursuant to section 127, paragraph 3 Decisions of FICORA taken in this context can be appealed against to the Supreme Administrative Court.

By this new regulatory measures the Finnish legislator wanted to approach telecom operators more on a case-by-case basis, in order to impose only those obligations that are absolutely necessary for ensuring competition.

5.56

bb. TV and Radio Operations

With regard to TV and Radio Operations FICORA supervises the compliance with most of the specific provisions on programmes, laid down in the Act on Television and Radio Operations, as for example the requirements on European works or the general requirements with regard to advertising and sponsorship. Only in matters of ethical principles of advertising and teleshopping spots and for advertising issues in the context of the protection of minors the responsibility for programme supervision lays solely with the Consumer Ombudsman.

In addition to the monitoring of programmes FICORA is also responsible for the administration of licence fees that the television or radio broadcasters pay to the Television and Radio Fund as well as for the collection of television and radio fees that have to be paid for the use of television and radio sets.

5.57

cc) Information Society Services

According to section 26 of the Information society services Act, FICORA’s duty is to supervise that the information society service providers fulfil the obligations imposed on them. FICORA has to monitor that the information society service providers, established in Finland, comply with the Finnish laws in matters of the coordinated field. Requirements restricting service provision in Finland may not be placed on a service provider established in

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132 See section 1, paragraph 3 of the proposal.
137 Act No. 458/2002 on the provision of information society services of 5 June 2002.
another country within the European Economic Area, unless the restriction is necessary in order to maintain public order, safety or national health, or to protect consumers.

c) Linkage with General Competition Authorities?

The cooperation foreseen for FICORA and the FCA has already been described above (Part 2.2.3.). Another authority which can be regarded as a competition authority in its capacity to regulate fair competition and with which FICORA has to cooperate by law is the Consumer Ombudsman. Beside the duty of the Consumer Ombudsman relating to the ethical principles of advertising and teleshopping spots and of the protection of minors as previously set out, the Ombudsman can also give attention to broadcasts violating other program requirements if the relevant content constitutes unsuitable or misleading marketing from the point of view of consumers. In these cases the Consumer Ombudsman can bring the matter to the Market Court as it is also provided in the Act on Dealing with certain matters of marketing law.

Not only in these broadcasting matters the provisions of the Consumer Protection Act and of the Market Court Act must be followed, but also in terms of electronic commerce when services are directed to consumers. Therefor the Consumer Ombudsman has to supervise the compliance of the provisions of the Information society services Act. Correspondent guidelines for e-commerce providers has been issued. Section 26 of the information society services Act provides, that FICORA and the Consumer Ombudsman have to cooperate in an appropriate way when fulfilling the duty of supervising the service providers.

4. Ministry of Education

a) Subsidies

In Finland nearly the entire cultural sector, including audiovisual and literary works, is subsidised with public funds. State subsidies for cultural matters as national cultural institutions, cultural events and different kinds of promotion of art and culture are decided and administered by the Ministry of Education.

For example the Finnish film is subsidised with public funds. The promotion of domestic film production and its distribution has been delegated to the Finnish Film Foundation, which receives an annual appropriation for financing film, television and video production and distribution. The Film Foundation promotes film culture and the export of Finnish films. Also the book trade is occasionally supported by the Ministry of Education. Subsidies for book trade, which come from national lottery funds, and which are distributed by the Ministry, go to a range of organizations and societies for use in book projects.

140 Act No. 1528/2001 on Dealing with Certain Matters of Marketing Law.
141 Act No. 38/1978.
142 Act No. 41/1978.
143 A detailed table of state funds to arts and culture attributed by the Ministry of Education is available at http://statfin.stat.fi/statweb/start.asp?LA=en&DM=SLEN&lp=catalog&clg=culture_and_mass_media
b) Films

Institutions subordinated to the Ministry of Education are the Finnish Film Archive and the Board of Film Classification.

The Finnish Film Archive is responsible for compiling and storing films and videos, carrying out film research and promoting awareness of cinema as art. The Film Archive disposes of an annual budget of nearly EUR 3 million\(^\text{144}\). The Finnish Board of Film Classification examines and classifies films and video and other visual products. Its annual budget is around EUR 0.5 million.

c) Copyright

In matters of copyright the Ministry of Education develops national copyright legislation and conducts the negotiations for Finland concerning international treaties. The Ministry also deals with international copyright issues (as Finland being a member of international (copyright) organisations such as WIPO, WTO, OECD, Unesco, Council of Europe) and participates in the Nordic Cooperation relating to copyright. In addition it is responsible for the approval of collecting societies.

Another institution attached to the Ministry is the Copyright Council, which is appointed every three years by the Finnish Government in order to assist the Ministry of Education in copyright matters and to issue statements on the application of the Copyright Act. Its members are representatives of the major right holders, users of protected works and other interested parties. Anyone (e.g. private persons, business enterprises, organisations, the police, administrators and courts of law, whether or not they have personal interests involved) can appeal to the Copyright Council with questions of copyright.

III. Market Definitions and/or criteria upheld for market perception in the relevant sector focused legislation

First it has to be noticed that there has not been any anti-trust legislation on media concentration in Finland to date.\(^\text{145}\) Due to this, media market definitions are not a major issue in the Finnish media legislation, which is reflected by the fact, that most of the Acts do not contain legal definitions concerning specific media products or services.

1. Printed media

In Finland newspapers are not categorised by law. There is also no general legal definition of what is a book. Only the \textit{Act on Value Added Tax}\(^\text{146}\) determines what has not to be classified as book. According to its provision books do not include "publications manufactured in some other way than printing or a comparable process", "periodical publications", or "publications containing mostly advertising"\(^\text{147}\). The contents of a book must be "legible or observable without technical equipment".

\(^{144}\) See the table referred to in the preceding footnote.

\(^{145}\) See Jyrki Jyrkiäinen, "The Finnish Media Landscape" provided by the European Journalism Centre at http://www.ejc.nl/jr/emland/finland.html

\(^{146}\) Act No. 1501/1993 as amended until February 2003.

\(^{147}\) See section 85a of the VAT-Act.
2. Communications (including Internet) / Broadcasting

With the new legal framework for communications (including the legislation regarding TV and radio operations), the scope of provisions that regulate the granting of licences (as relating to transport/distribution services or content services) have a technology-neutral and therefore more general scope of application than before. In line with European practice, Finnish legislation nevertheless recognises separate markets for provision of communications infrastructure services (including the Internet) and provision of content and value added services based on the infrastructure.

According to the new Communications Market Act (which regulates the transport/distribution of content in communications networks) a communications network is defined as a system of transmitting or distributing messages by wire, radio wave, optical or other electromagnetic means. It further differentiates between (mobile or fixed) "telephone networks" and mass communications networks (communications networks used principally for broadcasting or providing television and radio programmes or other content transmitted in identical form to all recipients). Mass communications networks are again subdivided into terrestrial and cable television networks. The scope of application of the Act entails all communications markets dealing with the relevant network services, communications services and related services but does not comprise the content of messages transmitted in a communications network.

As an other example for the technology-neutral approach the Act on Television and Radio Operations states that its regulations are applicable to all kind of television and radio broadcasting carried out by a broadcaster established in Finland. Television and radio broadcasting is defined as "initial transmission or provision by wire or over the air, including that by satellite, in un-encoded and encoded form of television and radio programmes".

One distinction, this act nevertheless makes, with regard to different kinds of broadcasting services, is that the regulations referring to European works shall not apply to "local" broadcasting (broadcasting in local television networks). By imposing must-carry obligations to telecommunication network providers the Act also differentiates between "terrestrial" and "other" networks and broadcasting through satellite. This provision determines that a telecommunication operator "that provides [a] telecommunication network service in other than terrestrial television and radio network[s] shall be under an obligation to distribute in this network without compensation:

1) broadcasts to be received via ordinary receiver equipment in the municipality where the network is situated, meant to be received in the whole country by television and radio broadcasters operating under a licence granted by the Government; as well as
2) the broadcasts of the Finnish Broadcasting Company Ltd".

This obligation is not applicable to broadcasting through satellite.

The Decree on Television and Radio Operations that implements some aspects of EC television internal market policies, establishes a de facto national market definition of television broadcasting. It states that a television broadcasting of an event of major importance for society shall be deemed to be broadcast to a "substantial proportion of the

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public”, if 90 per cent of the public have access to the broadcasting free of charge through usual receiving apparatuses. Because of officially recognised languages in the country, Finnish, Swedish, and Sámi broadcasts are recognised as targeting different populations, i.e., market groups, and specific provisions are made for them.

With regard to the provisions related to new media services as E-commerce services (these are laid down in the Information society services Act), Information society services are defined as electronic distance services, which are delivered on request of the recipient, usually for payment.

3. Films

Though there is also a Finnish Film subsidy system there are no legal criteria in place for demarcating different Finnish film markets. For subsidy purposes, Film is seen as having mainly a national market.

IV Market Definitions in the Media Sector as upheld in sector specific practice of Authorities and/or Courts

As previously mentioned there has not been any anti-trust legislation on media concentration and therefore no specific restriction on media ownership in Finland. Up to now media market definition has solely been effected by the Finnish Competition Authority and the Competition Council. This situation could change after the entry into force of the new Communication Market Act, as far as it concerns communications networks and service providers, due to the obligation of FICORA to define communications’ markets. But for the moment market definitions of the Finnish Communications Regulatory Authority and the Ministry of Transport and Communications are only based on functional definitions of media and have not resulted in significant debate or challenges until now.

V Common Factors and Differences between the Media (Sector) specific Market Definitions used in application of the Competition Rules

Due to the lack of relevant decisional practice in which the non-competition authorities would have the opportunity to define media "markets", this question can not be answered for Finland.

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151 The policy relates to the definition of “a substantial portion of the public” for which transmission of “events of importance to society” can be protected. See section 4 of Decree No. 14/1999 of 15 January on Television and Radio Operations.

152 See, for example, Act on Yleisradio Oy (Finnish Broadcasting Company), available at www.mintc.fi/www/sivut/english/tele/massmedia/yle_legisl.html.

153 For more details see the OECD-Reports on Finland, as far as they concern telecommunications and mass communications available at http://www.oecd.org.
VI The Possible Impact of this Non-Competition Framework and Practice on the Work of the Competition Regulator, in particular when Defining the Relevant Markets

At this stage it is very difficult to predict to which extent the new communications legislation and future practice of FICORA in defining media markets will influence the work of the Finnish Competition authorities.

The FCA already stated its concern about the future legal certainty and claimed that at least it should be important to safeguard the uniform application of competition rules to Finnish market players, irrespective of the sector they can be attributed to. In the FCA's opinion the future decisions of FICORA on market definition and the competitive position of communications companies should correspond with the general rules of application of the Competition Act.154 As a general cooperation of both regulators is foreseen by the upcoming legislation, such stipulations of the FCA are more probably ensured.