



# ENHANCING COMPETITION IN THE SERVICE SECTOR – FINNISH EXPERIENCE

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# CONTENTS OF THE TALK

- The talk is exclusively focused on liberal professions
- 1. **The Finnish post-war economic system: the role of competition policy and price regulation**
  - a corporatist economic model, *de facto*
  - how liberal professions were involved
  - the role of liberal professions in the economic system
- 2. **Reconstruction of the economic system in the late 1980s**
  - eclipse of price regulation
  - deregulation
  - ascendancy of competition policy



# CONTENTS OF THE TALK (Cont.)

3. **Anti-collusion project by the Finnish Competition Authority (FCA)**
  - horizontal price restraints by liberal profession associations (LBAs)  
cancelled by means of FCA action  
(Competition Council action in one case)
4. **Liberal professions and competition policy after the anti-collusion project**
  - the FCA had paid almost exclusive attention to horizontal price restraints by liberal profession associations
  - subsequently, other kind of issues would attract the FCA's attention
5. **Conclusions**



# THE FINNISH POST-WAR ECONOMIC SYSTEM: THE ROLE OF COMPETITION POLICY AND PRICE REGULATION

- As late as in the mid-1980's, the Finnish economic system was heavily and extensively regulated
  - The economic system was markedly corporatist
- The first competition law came into force in 1958
- Amendments in 1962, 1973, 1985, 1988, 1992, 1998, 2004
  - Until 1988, minor impact and weak enforcement institutions
- Extensive price regulation, competition law enforcement placed in an inferior position
  - All industries were, in fact, compelled to establish industry associations to draft price agreements, so as to comply with the enforcement of price regulation



## THE FINNISH POST-WAR ECONOMIC SYSTEM: THE ROLE OF COMPETITION POLICY AND PRICE REGULATION (Cont.)

- Restrictive practices registered by competition authorities, public register
- Liberal professions were not exempted
  - The relevant associations were compelled to draft price agreements of their own and have them endorsed by regulatory authorities
  - Restrictive agreements were registered, too



# RECONSTRUCTION OF THE ECONOMIC SYSTEM IN THE LATE 1980S

- Price regulation was step-wise abolished by 1988
- Overall, substantial deregulation of the economy characterized government policy until the mid-1990s
  - Government paid close attention to possibilities to increase competition in the economy
- Competition law was modernized and enforcement institutions were enhanced in 1988
  - FCA established as the watchdog of competition
  - Prohibition principle was not yet adopted
  - The FCA concluded that active enforcement of competition law was necessary



# ANTI-COLLUSION PROJECT BY THE FCA

- The "textbook" case against naked horizontal restraints on price and market division was adopted by the FCA as the argument against registered horizontal price restraints
- A letter explaining the harmfulness of collusion was sent by the FCA to relevant parties in 110 cases
  - The parties were urged to cancel their agreements or explain why these agreements should continue to be in force
  - Harmfulness established only by theoretical argument



# ANTI-COLLUSION PROJECT BY THE FCA (Cont.)

- By the end of 1989:
  - In 80 cases, the agreement was cancelled by the relevant parties or the agreement had lapsed anyway
  - In 20 cases, the relevant parties were considering their response or negotiations were underway
  - In 10 cases related to health care the FCA was waiting for further information





# ANTI-COLLUSION PROJECT AND THE LIBERAL PROFESSIONS

- Liberal professions involved:

- ☐ Physicians
- ☐ Dentists
- ☐ Architects
- ☐ Engineers
- ☐ Construction planners
- ☐ Consultants
- ☐ Advocates



# ANTI-COLLUSION PROJECT AND THE LIBERAL PROFESSIONS (Cont.)

- LBA's turned out to be utterly reluctant to cancel their restrictive price arrangements
  - The problem of asymmetric information is relieved
  - Threat of a race to inferior quality service is avoided
  - Exploitation of clients is prevented
  - Similar restrictive practices are allowed – in some cases even stipulated by law – in all industrialized nations
- Finally, all restrictions were abolished
- The *Finnish Medical Association* was the most adamant in its refusal to cancel the practice



# ANTI-COLLUSION PROJECT AND THE LIBERAL PROFESSIONS (Cont.)

## ■ *Finnish Medical Association*

- The Association had issued a recommendation for maximum fees charged by general practitioners, specialists, and radiologists
- Advertising restrictions are mentioned but they are not tackled
  - Advertising must not invite unnecessary demand
  - Superior quality impression must not be created
  - Additional benefits to customers must not be offered
  - Advertising must not concern items not related to medical profession



# ANTI-COLLUSION PROJECT AND THE LIBERAL PROFESSIONS (Cont.)

## □ FCA:

- Recommended fees = actually applied fees
- Quality would not suffer
- Threat of exploitation is exaggerated
- In this context, the medical profession is not as distinctive as to be freed from the rigors of competition

## □ FMA

- Clients benefit from the recommendation
- The changes of the fees are based on earlier regulatory principles



# ANTI-COLLUSION PROJECT AND THE LIBERAL PROFESSIONS (Cont.)

## □ CC

- Maximum fees = actually applied fees
- Other institutions to regulate medical professional activity
- Minor impact
- Recommendation is harmful
- The application by the *Finnish Dental Association* for an exemption in a similar case, under the 1992 law, was turned down by the CC in 1993
- Advertising restraints: total prohibition of advertising applied by the Finnish Advocate Association to its members was cancelled in 1992



## **LIBERAL PROFESSIONS AND COMPETITION POLICY AFTER THE ANTI-COLLUSION PROJECT**

- Intervention against liberal professions was coincidental
  - The FCA project was anti-collusion, not "anti-profession"
  - There was no thorough investigation into
    - The practices and by-laws followed by LB's
    - Restrictive special laws governing their activities
- There have been more urgent priorities for FCA action ever since



# NON-PRICE-RELATED ISSUES

## ■ Pharmacies

- On several occasions since the mid-1990's, the FCA has advocated the abolition of needs testing
  - The activity of pharmacies is extremely regulated, and is a part of a delicate balance of interests of various stakeholder groups in a heavily regulated health care system
  - It is difficult to amend the pharmacy system without revamping at least certain other parts of the health care system
  - An over-all reconsideration of the pharmaceutical market seems long overdue in Finland



# NON-PRICE-RELATED ISSUES (Cont.)

## ■ Architects

- In October 2004, the FCA has, on the basis of a complaint, ordered that the *Finnish Association of Architects* terminate conduct whereby members of the Association are prevented from participating in other architectural competitions than those consulted or approved by the Association
- The conduct of the Finnish Association of Architects impedes competition significantly in the planning service market
- Activities by architects entering the market are, in particular, hampered
- The conduct by the Finnish Association of Architects decreases the use and development of different architectural competitions in tendering planning services





## NON-PRICE-RELATED ISSUES (Cont.)

- Members of the Finnish Association of Architects have been left outside some planning projects because of the rules
- The members who have broken the rules have also lost their membership rights for a fixed period
- If the builders are free to execute various competitions, this will probably result in good architecture when the buyer can, through competition, choose the best proposal
- The Finnish Association of Architects has filed an appeal with the Market Court
- The case is currently pending



# CONCLUSIONS

- Currently, the liberal professions are operating under a relatively liberal regime in Finland, as far as competition is concerned
- The current favorable status of competition is, in effect, a byproduct of the development of the economic system, and its regulatory institutions, in particular
- The tension between general competition rules and the particular features of LB's was resolved in favor of general rules, without excluding the possibility of particular revisions - under special circumstances



## CONCLUSIONS (Cont.)

- The Commission Communications have been received by LBA's with little subsequent response