

Réponses au questionnaire sur la régulation économique
Responses to the questionnaire on economic regulation

Finlande

Cour administrative suprême

Finland

Supreme administrative Court

QUESTIONNAIRE ON ECONOMIC SECTORAL REGULATION IN EUROPEAN UNION COUNTRIES

Contribution of the Supreme Administrative Court of Finland

I Scope and purpose of economic sectoral regulation

1. Economic sectoral regulation mainly focuses on sectors submitted to European Union secondary legislation (transport, energy, postal activities, electronic communication, audiovisual media). Are other sectors subject to such regulation in Finland?

- Economic sectoral regulation is an extensive concept that may be perceived in a large or in a more restricted sense. Appreciating the concept in a large sense, it may validly be argued to comprise e.g. licensing of the construction of hypermarkets on the basis of planning and construction legislation, issuing of mining licences on the basis of mining legislation or promoting the use of green energy by heavily taxing carbon based energy production or introducing a feed-in-tariff for hydroelectric or wind power production. Since choosing such an overarching approach of economic sectoral regulation does not seem to be apt for the purpose of the multi-country questionnaire at hand, the concept is examined in a more restricted manner.
- Bearing this in mind, only such economic sectors where the Supreme Administrative Court possesses jurisdiction and of which there exists pertinent jurisprudence of this Court are touched upon. It is common to many of these sectors that a regulatory authority is involved in the licensing and surveillance of the sector. In addition to sectors harmonised (at least partly) by the EU legislation – electricity and natural gas market, telecommunications market (regulation of undertakings with significant market power) and postal delivery licences – the following issues related to granting licence to operate a sectoral economic activity are covered:

- Pharmacy licences (not regulated by EU legislation, may have linkages with EU based right to provide services or right of establishment);

Taxi-driver licences (not regulated by EU legislation);

License to dispense alcohol (not regulated by EU legislation).

2. Is the whole set of European Union secondary legislation for economic sectoral regulation transposed into national law and/or practically implemented.

- As the Supreme Administrative Court does not systematically follow-up the transposition of EU economic sectoral regulation into national legislation, a comprehensive answer cannot be given. Whilst deciding a case where e.g. a provision of a EU Directive is at stake, the Supreme Administrative Court confirms that the pertinent EU Directive is duly transposed into national law. Occasionally delays in the transposition of EU legislation are perceived.
- From the jurisdictional point of view, transposition of EU secondary legislation in a substantially and timely manner into national legislation does not seem to be a major problem.

3. Is economic sectoral regulation only aimed at introducing competition in sectors where there is State monopoly? If not, what are its other purposes (implementing an internal market, defining universal service obligations, consumer protection, etc.)?

• **ELECTRICITY MARKET:**

- DIRECTIVE 2009/72/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 JULY 2009 CONCERNING COMMON RULES FOR THE INTERNAL MARKET IN ELECTRICITY AND REPEALING DIRECTIVE 2003/54/EC THAT FORMS PART OF THE 3RD INTERNAL ENERGY MARKET PACKAGE OF THE EU, IS TRANSPOSED INTO FINNISH LEGISLATION BY ELECTRICITY MARKET ACT (588/2013) AND ACT ON THE SUPERVISION OF ELECTRICITY AND GAS MARKET (590/2013). THE PURPOSE OF THESE ACTS IS TO ENSURE THAT THE PRECONDITIONS FOR ESTABLISHING NATIONAL, REGIONAL AND EU INTERNAL ELECTRICITY MARKET THAT FUNCTION EFFECTIVELY AND IN A SECURE AND ENVIRONMENTALLY SUSTAINABLE WAY ARE SAFEGUARDED IN ORDER TO GUARANTEE SECURITY OF SUPPLY, COMPETITIVE ENERGY PRICING AND REASONABLE SERVICE CONDITIONS FOR END-USERS. THE PRIMARY MEANS TO ACHIEVE THESE OBJECTIVES ARE TO SAFEGUARD HEALTHY AND WELL-FUNCTIONING ECONOMIC COMPETITION IN THE PRODUCTION AND SUPPLY OF ELECTRICITY AND TO SUSTAIN REASONABLE AND EQUAL SERVICE PRINCIPLES IN THE FUNCTIONING OF ELECTRICITY NETWORKS.
- THE FINNISH ELECTRICITY MARKET HAS NEVER BEEN DOMINATED BY A SOLE STATE MONOPOLY COMPANY ALTHOUGH MAINLY STATELY OWNED FORTUM OYJ PLAYS A MAJOR ROLE IN THE MARKET. THE ELECTRIFICATION OF THE COUNTRY AT THE BEGINNING OF THE 20TH CENTURY WAS MAINLY CARRIED OUT BY MUNICIPALLY OWNED, VERTICALLY INTEGRATED (DISTRIBUTION NETWORK OPERATION, SUPPLY) ENTITIES/COMPANIES. IN THE TRANSMISSION NETWORKS SECTOR THERE WERE INITIALLY TWO MAJOR PLAYERS – ONE OWNED BY THE STATE AND ANOTHER CHIEFLY BY THE INDUSTRY – BUT LATE AT THE 1990s' THESE ENTITIES WERE MERGED AND SINCE THEN THERE HAS BEEN ONE SOLE TRANSMISSION SYSTEM OPERATOR (FINGRID OYJ).
- ELECTRICITY SUPPLY WAS OPENED UP TO COMPETITION FOR ALL END-USERS PRIOR TO THE DEADLINE IMPOSED BY THE 1ST INTERNAL ELECTRICITY PACKAGE OF THE EU (96/92/EC) AT LATE 1990s'. ELECTRICITY SUPPLY PRICES HAVE NOT BEEN SUBJECT TO REGULATION SINCE 1980s'. ALONG WITH ENHANCING COMPETITION IN THE ELECTRICITY SUPPLY MARKET THE PURPOSE OF THE LEGISLATION IS E.G. TO ENSURE SUSTAINABLE ENERGY PRODUCTION AND STRENGTHEN THE STATUS OF THE CONSUMERS. ALREADY THE EARLIER ELECTRICITY MARKET ACT (386/1995) CONTAINED A SPECIFIC CHAPTER ON CONSUMERS INCLUDING, AMONG OTHERS, PROVISION ON COMPENSATING CONSUMERS FOR POWER CUTS BY A STANDARDISED FEE.
- ELECTRICITY TRANSMISSION AND DISTRIBUTION NETWORKS (AS WELL AS GAS NETWORKS) ARE DEEMED TO CONSTITUTE NATURAL MONOPOLIES. OPERATING A TRANSMISSION OR DISTRIBUTION NETWORK REQUIRES A LICENCE THAT IS GRANTED BY THE ENERGY AUTHORITY. THE OPERATION OF A NETWORK IS SUBJECT TO REGULATION STIPULATED BY THE ELECTRICITY MARKET ACT TRANSPOSING THE SAID DIRECTIVE 2009/72/EC WHEREAS THE COMPETENCES OF THE ENERGY AUTHORITY ARE INCLUDED INTO ACT ON ON THE SUPERVISION OF ELECTRICITY AND GAS MARKET.
- THE ENERGY AUTHORITY MAY IMPOSE SECURITY OF SUPPLY OBLIGATIONS TO AN ELECTRICITY SUPPLIER OF LAST RESORT BEING THE SOLE SUPPLIER OF A SPECIFIC REGION OF THE COUNTRY.

• **NATURAL GAS MARKET**

- DIRECTIVE 2009/73/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 JULY 2009 CONCERNING COMMON RULES FOR THE INTERNAL MARKET IN NATURAL GAS AND REPEALING DIRECTIVE 2003/55/EC WAS TRANSPOSED IN THE FINNISH LEGISLATION BY AMENDING THE NATURAL GAS MARKET ACT (508/2000) AND BY THE ACT ON THE SUPERVISION OF ELECTRICITY AND GAS MARKET. THE PURPOSE OF THESE ACTS IS TO ENSURE THAT THE PRECONDITIONS FOR EFFECTIVELY FUNCTIONING GAS MARKET ARE AT PLACE IN ORDER TO GUARANTEE THAT THE SUPPLY OF REASONABLY PRICED NATURAL GAS OF A GOOD QUALITY MAY BE SAFEGUARDED. THE PRIMARY MEANS TO ACHIEVE OPERATIONAL NATURAL GAS MARKET ARE TO SECURE HEALTH AND FUNCTIONING ECONOMIC COMPETITION IN THE SUPPLY AND STOCKING OF NATURAL GAS AND TO SUSTAIN REASONABLE AND EQUAL SERVICE PRINCIPLES IN THE OPERATION OF NATURAL GAS NETWORKS. THE ROLE OF THE CONSUMERS IS ALSO NOTED IN THE NATURAL GAS MARKET ACT.
- SINCE THERE THERE IS NO INDIGENOUS NATURAL GAS PRODUCTION NOR AT THIS STAGE ANY LNG (LIQUEFIED NATURAL GAS) TERMINALS IN FINLAND AND AS FINLAND IS CURRENTLY DEPENDENT ON ONE NATURAL GAS SUPPLIER THAT IS ESTABLISHED IN A NON-EU MEMBER STATE (I.E. THE RUSSIAN FEDERATION) AND AS THE FINNISH NATURAL GAS NETWORK IS NOT INTERCONNECTED WITH ANY OF THE EU MEMBER STATES, ONE SINGLE, PARTLY STATE OWNED COMPANY, GASUM OY, IS IN CHARGE OF IMPORTATION, TRANSMISSION AND WHOLESALE OF NATURAL GAS. WHOLESALE OF NATURAL GAS IS NOT OPENED UP TO COMPETITION. FINLAND THUS APPLIES THE EXEMPTION OF ARTICLE 49 OF THE DIRECTIVE 2009/73/EU (AND ITS PREDECESSOR). ON THE BASIS OF THIS EXCEPTION, THE PROVISIONS OF THE DIRECTIVE 2009/73/EU ON LICENSING, UNBUNDLING OF TRANSMISSION NETWORKS AND TRANSMISSION OPERATORS, OPENING UP THE MARKET FOR COMPETITION AND RECIPROCITY AS WELL AS DIRECT LINES ARE NOT APPLIED IN FINLAND. COMPETITION IS INTRODUCED SOLELY TO THE SECONDARY NATURAL GAS MARKET AND EVEN THERE IN A LIMITED WAY (MINIMUM CONSUMPTION OF 5 MILLION CUBIC METERS/YEAR OR SPECIFIC METERING REQUIREMENTS).
- THE ENERGY AUTHORITY IMPOSES SECURITY OF SUPPLY OBLIGATIONS TO GASUM OY WHICH IS THE SUPPLIER OF LAST RESORT IN NATURAL GAS MARKETS.

• **TELECOMMUNICATIONS MARKET**

- THE EU REGULATORY FRAMEWORK ON ELECTRONIC COMMUNICATIONS CONTAINING INTER ALIA THE FRAMEWORK DIRECTIVE 2002/21/EC, THE ACCESS DIRECTIVE 2002/19/EC, THE AUTHORISATION DIRECTIVE 2002/20/EC AND THE UNIVERSAL SERVICE DIRECTIVE 2002/22/EC, IS TRANSPOSED INTO NATIONAL LEGISLATION BY THE TELECOMMUNICATIONS MARKET ACT (393/2003). THE PURPOSE OF THE ACT IS TO PROMOTE SUPPLY AND USE OF TELECOMMUNICATIONS/ELECTRONIC SERVICES IN ORDER TO ENSURE THAT THESE SERVICES ARE AVAILABLE TO ALL TELECOMMUNICATIONS COMPANIES AND END-USERS ON REASONABLE CONDITIONS. THE PURPOSE OF THE ACT IS ALSO TO SECURE THAT TELECOMMUNICATIONS SERVICES ARE BASED ON REASONABLE NEEDS OF THE END-USERS AND THAT THESE SERVICES ARE COMPETITIVE, TECHNICALLY ADVANCED, OF A GOOD QUALITY, SECURE AND SAFE AS WELL AS LOW PRICED.
- Contrary to many European countries, the telecommunications sector was not organised in Finland as a single State monopoly. Instead, in addition to a few major market players (among others the predecessor of the current partly State (Sweden and Finland) owned TeliaSonera Oyj, as well as private Elisa Oyj and DNA) there were several dozens local entrepreneurs.
- The Finnish Communications Regulatory Authority (FICORA) has the

competence to impose universal service obligations to Telecommunications companies.

• **Postal delivery**

• Universal service obligations based on the Directive **97/67/EC of the European Parliament and of the Council on common rules for the development of the internal market of Community postal services and the improvement of quality of service** are transposed into national legislation by the Postal Act (415/2011). The purpose of the Act is to ensure the provision of postal services and in particular of universal service on equal conditions in the whole country.

• STATELY OWNED POSTAL COMPANY ITELLA OYJ HAS BEEN RESPONSIBLE FOR THE PROVISION OF THE UNIVERSAL SERVICE AND IT HAS BEEN UNTIL RECENTLY (30TH JANUARY, 2014) THE SOLE HOLDER OF POSTAL DELIVERY LICENCE. POSTAL DELIVERY LICENCE IS ISSUED BY THE COUNCIL OF STATE FOR A FIXED PERIOD OF MAXIMUM 10 YEARS. POSTAL DELIVERY LICENCE IS GRANTED SHOULD THE APPLICANT HAVE E.G. ECONOMIC RESOURCES AND CAPACITY TO OPERATE THE OBLIGATIONS OF THE LICENCE. THE DELIVERY AREA OF THE LICENCE MUST BE BOTH ADMINISTRATIVELY AND FUNCTIONALLY UNIFORM. ACCORDING TO THE POSTAL ACT THE COUNCIL OF STATE MAY SET CONDITIONS TO THE LICENCE RELATING TO FOR INSTANCE THE QUALITY, AVAILABILITY AND EFFICIENCY OF THE SERVICE.

• **Pharmacies**

• On the basis of Law on medicines, a pharmacy business may be operated with a licence which is issued in respect of a municipality or a part thereof by the Finnish Medicines Agency (FIMEA). The decision to establish a new pharmacy is made where this is required for the availability of medicines, which must be evaluated on the basis of the number of inhabitants in the area, the existing pharmacy services there and the establishment of other healthcare services. The University of Helsinki has the right to a pharmacy in the City of Helsinki and the University of Eastern Finland has the right to a pharmacy in the City of Kuopio. In addition to the sale of medicines, the task of those pharmacies is to carry out practical training for pharmacy students and to carry out research on pharmaceutical services. A pharmacy licence may be granted to a national of EU/EEA State, who is an authorised pharmacist and who has not been declared bankrupt or incompetent and for whom no trustee has been appointed. Where there are a number of applicants, the pharmacy licence is granted to the applicant who has overall the best qualifications for operating a pharmacy.

• A branch of a pharmacy may be opened in an area which, on account of the sparseness of its population, is not regarded as fulfilling the operational prerequisites for an independent pharmacy, but where a pharmacy is required for the availability of medicines. The licence is granted on application to the pharmacist who has the best qualifications for operating such a branch, taking account of the location of the pharmacy and other operating conditions. One pharmacist may operate up to three branches of a pharmacy.

• The University of Helsinki may operate up to 16 branches of pharmacies.

• **Taxi-driver licence**

• Each competent Center for Economic Development, Transport and the Environment confirms annually the maximum amount of municipal taxi-driver licences on the basis of Taxi Traffic Law (217/2007). These licences are allocated in the following priority ranking: (i) those applying licence for a location that is minor than the

whole municipality & the distance from the location to the center of the municipality should be at least 20 km (not applicable for the major towns in Finland); (ii) the length of the competence as a taxi-driver; the applicant having the lowest number of taxi-driver licences; the period of time the applicant has had the licence.

- In order to obtain a taxi-driver licence the applicant - either natural or legal person - must fulfill detailed conditions relating to e.g. driving licence, maximum age (natural persons), health requirements, completed the taxi drivers' training and test to an acceptable standard, local knowledge of the area in which the car is located; the applicant is otherwise fit to be a taxi driver with regard to his/her personal qualities.
- In assessing the taxi driver's personal qualities, his/her prerequisites to operate as a taxi driver shall be taken into account. The applicant shall not be regarded as fit to be a taxi driver if (s)he has committed a traffic offence or some other criminal offence prescribed in law, which indicate that (s)he is clearly unfit to work as a taxi driver.

• **Licence to trade and serving of alcohol**

- On the basis of Alcohol Act (1143/1994), dispensing alcohol requires a licence issued by the Regional State Administrative Agency (AVI-Agency). A licence to dispense alcohol is granted if the applicant does not abuse intoxicants, has not been declared bankrupt or incompetent and for whom no trustee has been appointed, has not been imprisoned (natural person) and his/its previous licence to dispense alcohol has not been cancelled. The applicant should not have neglected his/its obligations to pay taxes or other public payments.

4. Is economic sectoral regulation an *ex ante* control, aimed at defining obligations for companies in the regulated sectors *a priori*, or an *ex post* control, aimed at upholding competition provisions in case of infringement?

• **Electricity market**

- The regulation of electricity transmission and distribution network operation (TSO/DSO) is based on an *ex ante* control by the Energy Authority. The Energy Authority sets methods for defining (reasonable) return on capital of the TSO/DSO and charges for transmission/distribution services to be collected during the regulatory period (4 + 4 years). In addition to setting these methods, the Energy Authority exercises its regulatory competences e.g. by defining conditions for distribution and connection services.
- Regardless of the fact that the Finnish Competition and Consumer Authority possesses competence on classical competition law cases (cartels, abuse of dominant position, mergers), the Energy Authority is competent to enhance competition and to survey the opening up to competition and the functioning of competition in the electricity market.

• **Natural gas market**

- Due to the specificity of the Finnish natural gas market defined earlier, the market is not currently opened up to competition. Notwithstanding this, an entity operating in the natural gas market is obliged to unbundle the supply of natural gas from its other business activities. Such an entity has also a universal service obligation to supply all clients buying natural gas. The universal service obligation applies for as long as the natural gas market is not opened up to competition.
- Regardless of the fact that the Finnish Competition and Consumer Authority

possesses competence on classical competition law cases (cartels, abuse of dominant position, mergers), the Energy Authority is competent to enhance competition and to survey the opening up to competition and the functioning of competition in the natural gas market.

- **Telecommunications market**

- The Finnish Communications Regulatory Authority (FICORA) functions as the regulator of the Finnish telecommunications market. Based on the EU Telecommunications Directive package, the FICORA uses its *ex ante* regulatory competence in those parts of the telecommunications markets where competition does not function adequately i.e. where on the one hand telecommunications operators cannot set their prices independently of other operators and on the other hand consumers cannot substitute their operator with another. In these cases after having given a separate decision concerning market analysis, FICORA issues decision to impose obligations on Telecommunications companies declared to have significant market power on a specific market (so called SMP-decision). The market definition is based on the European Commission recommendation on relevant product and service markets. In this perspective the pertinent markets where the FICORA has given SMP-decisions are as follows: Market 3 – Call termination on individual fixed telephone networks, Market 4 – Market for wholesale network infrastructure access at a fixed location, Market 5 – Market for wholesale broadband service, Market 6 – Market for wholesale terminating segments of leased lines, Market 7 – Call termination on individual mobile networks. As of Market 2 – Call origination on fixed telephone networks, the FICORA has made a decision based on its market analysis, that *ex ante* regulation is no longer needed from 2014 onwards.

- WHERE *EX ANTE* REGULATION IS NOT DEEMED NECESSARY DUE TO FUNCTIONING OF COMPETITION IN THE RELEVANT MARKET, THE FICORA USES ITS COMPETENCE TO *EX POST* FOLLOW-UP THAT MARKET IS ADEQUATELY OPERATING. THEREFORE ALSO THE FICORA HAS THE POWER TO ENHANCE COMPETITION IN THIS SECTOR.

- **POSTAL DELIVERY**

- THE OBLIGATIONS OF THE HOLDER OF A POSTAL DELIVERY LICENCE ARE IMPOSED IN THE LICENCE OF THE COUNCIL OF STATE. SETTING OF THE CONDITIONS OF THE LICENCE MIGHT BE APPRECIATED AS AN *EX ANTE* MEASURE. SHOULD THE HOLDER OF THE LICENCE CONTINUOUSLY AND SERIOUSLY ACT IN BREACH OF THESE CONDITIONS, THE COUNCIL OF STATE MAY CANCEL IT. THE SAME APPLIES IF THE HOLDER OF THE LICENCE DOES NOT ANY LONGER HAVE SUFFICIENT ECONOMIC RESOURCES TO CARRY OUT ITS OBLIGATIONS OR IF IT HAS NOT COMMENCED ITS REGULAR ACTIVITIES WITHIN A FIXED PERIOD OF TIME. CANCELLING A LICENCE DUE TO SUCH BREACHES IN THE ACTION OF THE LICENCEE MIGHT BE APPRECIATED AS AN *EX POST* MEASURE OF THE COMPETENT AUTHORITY.

- STRENGTHENING OF COMPETITION IS NOT STIPULATED TO BE THE PURPOSE OF THE POSTAL ACT AND THERE ARE NO SPECIFIC PROVISIONS IN THE LAW RELATING TO THE ROLE OF THE COUNCIL OF STATE IN ENHANCING COMPETITION IN THIS SECTOR. NOTWITHSTANDING THIS, THE COUNCIL OF STATE HAS RECENTLY ISSUED TWO POSTAL DELIVERY LICENCES TO PRIVATE POSTAL COMPANIES. DUE TO THE CONDITIONS INCLUDED IN THESE LICENCES, THESE DECISIONS WERE APPEALED AGAINST TO THE SUPREME ADMINISTRATIVE COURT.

- **PHARMACIES**

- AN *EX ANTE* EVALUATION BASED ON THE ABOVE MENTIONED CRITERIA OF THE MEDICINES ACT ON THE NEED TO ESTABLISH A PHARMACY OR A BRANCH OF A PHARMACY

IN A MUNICIPALITY OR PART OF IT IS MADE BY THE FIMEA PRIOR TO ISSUING A LICENCE TO A PHARMACIST. THE ACTIVITIES OF A PHARMACIST ARE SUPERVISED AND IF HE/SHE FAILS TO FOLLOW THE OBLIGATIONS STIPULATED BY THE LAW ON MEDICINES OR BASED ON THE LICENCE, THE LICENCE MAY BE CANCELLED. THERE HAS BEEN VERY FEW CASES WHERE THE LICENCE HAS BEEN CANCELLED DUE TO ECONOMIC DIFFICULTIES OR DRUG ABUSE OF THE PHARMACIST.

- SINCE THE AIM OF THE LAW ON MEDICINES IS NOT TO PROMOTE COMPETITION IN THE SECTOR, THERE ARE NO PROVISIONS IN THE LAW NOR ARE SUCH CONDITIONS INCLUDED IN THE LICENCE THAT SEEK TO STRENGTHEN COMPETITION IN THE SECTOR.

• **TAXI-DRIVER LICENCE**

- THE COMPETENT CENTER FOR ECONOMIC DEVELOPMENT, TRANSPORT AND THE ENVIRONMENT HAS A TASK TO FOLLOW-UP CHANGES IN SUPPLY AND DEMAND OF TAXI-SERVICES AS WELL AS THE DEVELOPMENT OF THE PROFITABILITY OF THIS SECTOR. THE CENTER FOR ECONOMIC DEVELOPMENT, TRANSPORT AND THE ENVIRONMENT HAS ALSO THE DUTY TO FOLLOW THE FEED-BACK OF THE CONSUMERS ON THE AVAILABILITY AND QUALITY OF TAXIS AND THE SUFFICIENCY OF TAXIS RELATING TO THE TRANSPORTATION NEEDS OF THE BUSINESS LIFE AND MUNICIPALITIES. PERTINENT INFORMATION THAT THE CENTER IS OBLIGED TO COLLECT ON THE SUPPLY AND DEMAND OF OF TAXI-SERVICES CONTAIN E.G.: THE NUMBER OF AND NET REVENUE OF TAXI-DRIVER LICENCES, THE NUMBER OF RIDES ORDERED BY TAXI CENTER, THE DENSITY OF THE POPULATION AND ITS INCOME LEVEL, THE LENGTH OF THE STREET AND ROAD NETWORK, THE NUMBER OF HOTELS AND LICENCES TO DISPENSE ALCOHOL IN THE AREA IN QUESTION.

- THE COMPETENT CENTER FOR ECONOMIC DEVELOPMENT, TRANSPORT AND THE ENVIRONMENT SHALL CANCEL TAXI-DRIVER LICENCE SHOULD THE LICENCEE NOT FULFILL THE CONDITIONS FOR THE LICENCE ANY LONGER. THE CENTER MAY ALSO CANCEL TAXI-DRIVER LICENCE DUE TO BREACHES OF THE CONDITIONS OF THE LICENCE BY THE HOLDER OF THE LICENCE. IF THE BREACHES ARE NOT SO SEVERE THAT THE LICENCE SHALL NEED TO BE CANCELLED, THE CENTER MAY ISSUE A WARNING FOR THE HOLDER OF THE TAXI-DRIVER LICENCE.

- SIMILARLY TO POSTAL DELIVERY SECTOR, REGULATION OF THE TAXI-DRIVER LICENCES MIGHT BE DEFINED TO CONTAIN ELEMENTS OF BOTH *EX ANTE* AND *EX POST* REGULATION.

• **LICENCE TO TRADE AND SERVING OF ALCOHOL**

- IF THE HOLDER OF THE LICENSE TO TRADE AND SERVING OF ALCOHOL (LICENSE TO DISPENSE ALCOHOL) BREACHES THE OBLIGATIONS DERIVING FROM ALCOHOL LAW OR THE FROM CONDITIONS OF THE LICENSE THE COMPETENT REGIONAL STATE ADMINISTRATIVE AGENCY (AVI-AGENCY) MAY ISSUE HIM A COMPLAINT, A WRITTEN WARNING, SET CONDITIONS NECESSARY FOR THE SUPERVISION OF THE ACTIVITY TO DISPENSE ALCOHOL OR LIMIT THE DISPENSING TIME, AREA OR TYPES OF ALCOHOL DRINKS TO BE DISPENSED. THE COMPETENT AUTHORITY MAY ALSO CANCEL THE LICENSE FOR A FIXED PERIOD OF TIME OR PERMANENTLY.

- IN THE SURVEILLANCE OF THE SECTOR A NATIONAL BIENNIAL PROGRAM ON THE ADMINISTRATION OF ALCOHOL DRAFTED BY THE AVI & VALVIRA IS FOLLOWED. THE PURPOSE OF THE PROGRAM IS TO ENSURE THAT E.G. ADMINISTRATION OF THE SECTOR OF LICENSES TO DISPENSE ALCOHOL IS CARRIED OUT IN A COHERENT WAY.

5. HAS THE IMPLEMENTATION OF AN ECONOMIC SECTORAL REGULATION PROMPTED THE EMERGENCE OF COMPETITION IN THE RELEVANT SECTORS? DID

THE ENTRANTS MANAGE TO FIT IN REGULATED MARKETS? IF NOT, WHY?

- **ELECTRICITY MARKET**

- MEASURED FROM DROP IN PRICES OF SUPPLY OF ELECTRICITY AND THE NUMBER OF NEW MARKET ENTRANTS (E.G. VATTEFALL OWNED BY THE SWEDISH STATE) IN PARTICULAR AT THE BEGINNING OF OPENING THE ELECTRICITY SUPPLY MARKET INTO COMPETITION AT THE END OF 1990'S, INTRODUCING ECONOMIC SECTORAL REGULATION IN THE SECTOR HAS ENHANCED COMPETITION. IT IS NOTEWORTHY THAT WHILST SOME OF THESE INITIAL ENTRANTS HAVE LEFT THE MARKET, NEW ENTRANTS (INVOLVED IN THE CONSTRUCTION OF ELECTRICITY PRODUCTION PLANTS) HAVE EMERGED SINCE.

- **NATURAL GAS MARKET**

- DUE TO THE SPECIFICITY OF THE FINNISH NATURAL GAS MARKET, COMPETITION HAS NOT THUS FAR EMERGED IN THE SECTOR NOR HAS THE NUMBER OF MARKET PLAYERS INCREASED. AT THE TIME OF DRAFTING THIS PAPER, PLANS TO CONSTRUCT A 30,000 CUBIC METER LNG IMPORT TERMINAL TO THE CITY OF PORI LOCATED AT THE SOUTH-WESTERN PART OF FINLAND ARE PROGRESSING. THE CONSTRUCTION OF THE LNG IMPORT TERMINAL SHALL IN THE FUTURE PUT TO AN END THE CURRENT, CLOSED STATUS OF THE FINNISH NATURAL GAS MARKET.

- **TELECOMMUNICATIONS MARKET**

- AS NOTED EARLIER EVEN BEFORE OPENING UP THE TELECOMMUNICATIONS MARKET TO COMPETITION THERE HAS BEEN NUMEROUS COMPANIES OPERATING IN THE FINNISH TELECOMMUNICATIONS SECTOR (FIXED TELECOMMUNICATIONS NETWORK, MOBILE NETWORK). CALCULATED BY THEIR TURNOVER, THREE BIGGEST TELECOMMUNICATION COMPANIES OPERATING IN FINLAND (TELIA SONERA, ELISA, DNA) CONSTITUTE TOGETHER A SUBSTANTIAL PART OF THE TURNOVER OF MOBILE NETWORK BUSINESS AND APPROXIMATELY 2/3 OF THE TURNOVER OF THE FIXED NETWORK BUSINESS. IN ADDITION TO THESE COMPANIES THERE ARE 24 INDEPENDENT REGIONAL TELECOMMUNICATION COMPANIES CONSTITUTING TOGETHER FINNET-GROUP AND A NUMBER OF OTHER, MINOR INDEPENDENT TELECOMMUNICATIONS COMPANIES. ECONOMIC REGULATION TOGETHER WITH TECHNOLOGICAL INNOVATIONS HAS HAD A REMARKABLE INFLUENCE ON COMPETITION OF THE SECTOR.

- **POSTAL DELIVERY**

- ITELLA OYJ HOLDS THE STATUS OF THE UNIVERSAL SERVICE PROVIDER IN THE POSTAL DELIVERY SECTOR. THUS FAR THERE HAS NOT BEEN RELEVANT COMPETITION NEITHER IN ADDRESSED DELIVERIES, WHERE SOME LICENSES HAVE BEEN ISSUED TO OTHER ENTITIES IN ORDER TO ENHANCE COMPETITION IN THE MARKET, NOR IN POSTAL DELIVERIES WHERE ITELLA OYJ HAS BEEN THE SOLE MARKET PLAYER. AS NOTED EARLIER THE COUNCIL OF STATE ISSUED TWO POSTAL DELIVERY LICENSES TO NEW ENTRANTS RECENTLY. DUE TO THE CONDITIONS IMPOSED IN THESE LICENCES, THESE DECISIONS OF THE COUNCIL OF STATE WERE APPEALED AGAINST TO THE SUPREME ADMINISTRATIVE COURT. THE SUPREME ADMINISTRATIVE COURT QUASHED ONE OF THESE DECISIONS DUE TO PROCEDURAL REASONS. THE COUNCIL OF STATE ISSUED A NEW DELIVERY LICENCE TO THE APPLICANT AT THE BEGINNING OF 2014. THE OTHER CASE CONCERNING POSTAL DELIVERY LICENCE IS STILL PENDING BEFORE THE SUPREME ADMINISTRATIVE COURT. IN THIS CASE THE APPLICANT CLAIMS THAT SOME OF THE CONDITIONS INCLUDED IN ITS POSTAL DELIVERY LICENSE BY THE COUNCIL OF STATE ARE CONTRARY TO THE POSTAL ACT.

- **PHARMACIES**

- LICENSES TO PHARMACIES SITUATED AT THE BEST MARKET PLACES OF THE BIGGEST CITIES OF FINLAND ARE SOUGHT AFTER AND THERE MAY BE SEVERAL CANDIDATES FOR A SINGLE LICENSE. THE SAME MAY NOT APPLY REGARDING LICENSES TO A PHARMACY SITUATED IN A LESSER DENSELY POPULATED MUNICIPALITY OR PART OF IT. THE PHARMACY OF THE UNIVERSITY OF HELSINKI POSSESSES ALTOGETHER 16 LICENSES OF A BRANCH OF A PHARMACY IN THE BIGGEST CITIES OF FINLAND IN MARKET PLACES THAT ARE OF INTEREST TO PRIVATE PHARMACISTS AS WELL.

- **License to trade and serving of alcohol**

- The purpose of regulation in this sector is rather to prevent the societal, social and health-related negative impact caused by alcohol by influencing alcohol consumption than to promote competition in this sector. Due to objective conditions for issuing a license there should not be blockages for the entry into market.

6. Has the implementation of an economic sectoral regulation directly or indirectly lead to the total or partial privatisation of publicly owned companies?

- Implementation of the Transmission System Operation (TSO) ownership unbundling requirements of the 3rd energy market package has directly led to multiplication of institutional owners (e.g. insurance companies) and additional, partial privatisation of the Finnish TSO (Fingrid Oyj).
- SINCE OPENING THE ELECTRICITY SUPPLY MARKET INTO COMPETITION AND DUE TO UNBUNDLING REQUIREMENTS OF THE EARLIER EU DIRECTIVES, A NUMBER OF MUNICIPAL VERTICALLY INTEGRATED ELECTRICITY ENTITIES HAS CHANGED THEIR LEGAL STATUS INTO A LIMITED COMPANY (LTD). ECONOMIC REGULATION MAY DEEMED TO HAVE INDIRECTLY LED TO MERGERS AND ACQUISITIONS IN THE SECTOR BY NATIONAL AND FOREIGN COMPANIES.
- In the natural gas sector no such privatisation has yet taken place.
- Except for the Pharmacy of the University of Helsinki and University of the Eastern Finland, all pharmacists holding a Pharmacy license are natural persons. Legal persons are not allowed to hold a pharmacy license.
- In the postal sector the predecessor of Itella Oyj was a State entity. Itella Oyj is a state owned limited company (Ltd). In the addressed delivery sector there are currently a few companies and in the delivery sector there is at the time of writing this paper only one, privately owned company competing with Itella Oyj.
- In other economic sectors appreciated in this paper – taxi-driver license and license to trade and serving of alcohol – the companies operating in the sector are mainly privately owned.

7. Which economic sectors would you like to address more specifically in terms of regulation?

- From the point of view of the jurisdiction of the Supreme Administrative Court, no such sectors may be identified.

II Organisation of economic sectoral regulation

8. Is economic sectoral regulation implemented by one or several independent authorities? If so, on what grounds was this choice made and how is this independence guaranteed?

- There are several national regulatory authorities operating in different sectors.
 - **The Energy Authority**, the successor of the Energy Market Authority that was on its part preceded by Electricity Market Center established in mid-1990s', possesses regulatory competence in the electricity and natural gas market (as well as emission trading and feed-in tariffs for green energy that are not dealt with in this paper). The competence of the Authority has grown substantially since its establishment mainly due to the requirements deriving from EU Directives aimed at establishing internal energy market, emission trading and feed-in tariffs for green energy. The independence of the Authority functioning under the Ministry of Employment and the Economy is guaranteed by the fact that the competences and functions of the Authority are stipulated by law and are separate from those of the Ministry. The Ministry is not competent to participate in drafting of the Decisions of the Authority and cannot influence the regulatory activities of the Authority.
 - **THE FINNISH COMMUNICATIONS REGULATORY AUTHORITY (FICORA)** IS RESPONSIBLE FOR E.G. MARKET ANALYSIS AND REGULATION OF TELECOMMUNICATIONS MARKETS. THE FICORA IS A STATE AUTHORITY ORGANISED UNDER THE MINISTRY OF TRANSPORT AND COMMUNICATIONS. THE FICORA WAS PRECEDED BY THE TELECOMMUNICATIONS ADMINISTRATION CENTRE ESTABLISHED IN 1988. THE INDEPENDENCE OF THE AUTHORITY IS GUARANTEED BY THE FACT THAT THE COMPETENCES AND FUNCTIONS OF THE AUTHORITY ARE STIPULATED BY LAW AND ARE SEPARATE FROM THOSE OF THE MINISTRY. THE MINISTRY IS NOT COMPETENT TO PARTICIPATE IN DRAFTING OF THE DECISIONS OF THE AUTHORITY AND CANNOT INFLUENCE THE REGULATORY ACTIVITIES OF THE AUTHORITY.
 - **Finnish Medicines Agency (FIMEA)** is responsible for licensing of pharmacies and acts as the national competent authority for regulating pharmaceuticals. The independence of the Agency functioning under the Ministry of Social Affairs and Health is guaranteed by the fact that the competences and functions of the Agency are stipulated by the law and are separate from those of the Ministry. The Ministry is not competent to participate in drafting of the Decisions of the Agency and cannot influence the regulatory activities of the Agency.
 - **THE COUNCIL OF STATE** THAT ISSUES LICENSES TO POSTAL DELIVERY AND MAKES DECISIONS ON THE ENTITY THAT FUNCTIONS AS THE UNIVERSAL SERVICE PROVIDER IN THE POSTAL BRANCH, POSSESSES THE GOVERNMENTAL POWER OF FINLAND. THE DECISION TO ALLOCATE THESE FUNCTIONS TO THE COUNCIL OF STATE IS POSSIBLY DUE TO THE NEED TO MAINTAIN THE POLITICAL DISCRETION LINKED TO THESE DECISIONS
 - **Centers for Economic Development, Transport and the Environment (ELY-Center)** that issue among others taxi-driver licenses possess on a regional level State regulatory competence and functions under the administrative branch of the Ministry of Employment and the Economy. The competences and functions of the Center are stipulated by law and are separate from those of the Ministry. The Ministry is not competent to participate in drafting of the Decisions of the Center and cannot influence the regulatory activities of the Authority
 - **REGIONAL STATE ADMINISTRATIVE AGENCIES (AVI-AGENCY)** THAT ISSUE AMONG OTHER LICENSES TO SERVE AND RETAIL ALCOHOL IN THEIR AREA AND THAT SUPERVISE THAT WHEN THESE ACTIVITIES ARE CARRIED OUT THE PERTINENT LEGISLATION IS DULY FOLLOWED, ARE ORGANISED UNDER EIGHT MINISTRIES OF WHICH THE MINISTRY OF FINANCES HAS THE GENERAL ADMINISTRATIVE RESPONSIBILITY OF THE AGENCIES. THE COMPETENCES AND FUNCTIONS OF THE AGENCIES ARE STIPULATED BY THE LAW AND ARE SEPARATE FROM THOSE OF THE RELEVANT MINISTRIES. MINISTRIES ARE NOT COMPETENT

9. Are these authorities independent of the regulated economic sectors? If so, how is this independence guaranteed?

- Representatives of the regulated economic sectors do not constitute part of the above mentioned Authorities. A representative of the regulated economic sector being party to the regulatory administrative procedure enjoys the administrative procedural guarantees stipulated by the Administrative Act and has thus, for instance, the right to be heard during the procedure to issue a licence. Decision making in these Authorities is normally based on presentation by a civil servant who carries the responsibility for the legality of the decision (e.g. the license to be issued) and impartiality of the preceding administrative procedure.

10. Do these Authorities have regulatory power? If so, is it a general regulatory power for the sectors concerned or a narrower regulatory power limited to certain specific aspects of regulation?

- Apart from the Council of State, all of the above mentioned Authorities enjoy rather extensive economic regulatory powers that are, however, specifically stipulated by the pertinent legislation. Each single regulatory activity shall thus need to be based on law and the Authority cannot have a general regulatory power surpassing specific provisions of the law.

11. Do these Authorities take part in drafting the relevant legislation for regulated sectors, through notice procedures for instance?

- Typically, a representative of the Authority takes part in the preparations of the relevant legislation for a regulated sector. Participation may consist of nominating a representative to a national ministerial working group preparing draft law and giving a statement on behalf of the Authority of a draft law to the Ministry responsible for preparing the government bill to the Finnish Parliament. In matters falling exclusively or partly to the competence of the EU, representatives of Agencies may participate in the preparatory work of subordinate sector-specific preparation sections of the governmental Committee for EU Affairs. Representatives of these Authorities are often heard at the Parliamentary Committees when a government bill concerning the regulatory competences of these Authorities are at stake. Indirectly the Authorities may on their own motion put forward initiatives to amend legislation. Such initiatives may derive from preparations of the European bodies, such as the Council of European Energy Regulators (CEER) or Body of European Regulators for Electronic Communication (BEREC).

12. Do these authorities have a sanctioning power toward companies of the regulated sectors? If so, what kind of sanctions can they adopt and under which procedure? Do these procedures guarantee compliance with provisions of Article 6.1 of the CPHRFF?

- **Electricity Market:** On the basis of Act on the supervision of electricity and gas market (590/2013), the Market Court has the power to order an administrative sanction (payment) on a written proposal of the Energy Authority for e.g. a distribution system operator that collects on purpose or by negligence unreasonably high distribution network payments from its clientele. The administrative sanction shall be paid to the state. Adjusting the level of the payment is based on an overall deliberation in which the quality and scale, rate and duration of the offence are taken into consideration. The maximum amount of the payment is 10 per

cent of the operator's annual net revenue. Normal procedural guarantees – among others right to be heard, right to have an oral hearing, right to appeal to the Supreme Administrative Court – based on Administrative Procedural Law apply. The procedure as stipulated by law seems to guarantee compliance with Article 6.1 of the European Convention on Human Rights.

- Obligations relating to the right not to be tried or punished twice, *ne bis in idem* principle, deriving from Article 4.1 of Protocol No. 7 to the European Convention on Human Rights seem to have been taken into account as well. According to the Act on the supervision of electricity and gas market, an administrative sanction shall not be ordered for an entrepreneur that is suspected in criminal proceedings of the same offence being preliminarily investigated, considered of charges or that is pending before a Court of law. Nor shall an administrative sanction be ordered for an entrepreneur that has been already convicted of the same offence in accordance with penal procedure or has been ordered to pay an administrative sanction on the basis of competition law.
- **Natural Gas Market:** Similar sanctioning powers and procedural guarantees apply in the natural gas market as described above in the context of the electricity market.
- **TELECOMMUNICATION MARKET:** ACCORDING TO THE COMMUNICATIONS MARKET ACT, A TELECOMMUNICATIONS COMPANY THAT BREACHES E.G. ITS OBLIGATIONS BASED ON A SMP-DECISION OF THE FINNISH COMMUNICATIONS REGULATORY AUTHORITY AND DOES NOT CORRECT ITS OFFENCE MAY BE ORDERED TO PAY AN ADMINISTRATIVE SANCTION. MARKET COURT HAS THE POWER TO ORDER THE ADMINISTRATIVE SANCTION ON A WRITTEN PROPOSAL OF THE FINNISH COMMUNICATION REGULATORY AUTHORITY. THE PAYMENT SHALL BE PAID TO THE STATE. ADJUSTING THE LEVEL OF THE PAYMENT IS BASED ON AN OVERALL DELIBERATION IN WHICH THE QUALITY, SCALE AND DURATION OF THE OFFENCE ARE TAKEN INTO CONSIDERATION AS WELL AS AN ADMINISTRATIVE SANCTION BASED ON COMPETITION LAW SHOULD THE ENTREPRENEUR HAVE BEEN ORDERED TO PAY SUCH A PAYMENT. THE MINIMUM AMOUNT OF PAYMENT IS 1 000 € AND MAXIMUM IS 1 MILLION €. NORMAL PROCEDURAL GUARANTEES – AMONG OTHERS RIGHT TO BE HEARD, RIGHT TO HAVE AN ORAL HEARING, RIGHT TO APPEAL TO THE SUPREME ADMINISTRATIVE COURT – BASED ON ADMINISTRATIVE PROCEDURAL LAW APPLY. THE PROCEDURE AS STIPULATED BY LAW SEEM TO GUARANTEE COMPLIANCE WITH ARTICLE 6.1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS.
- The provisions of the Communications Market Act relating to administrative sanctions seem to be more lenient regarding the requirements deriving from Article 4.1 of Protocol No. 7 to the European Convention on Human Rights than those of the law on the supervision of electricity and gas market. Notably, although the Market Court may omit to order an administrative sanction based on the Communications Market Act if the entrepreneur has been ordered to pay an administrative sanction based on competition law, this is not altogether prohibited as is the case in the electricity and natural gas sectors.
- **Pharmacies:** As noted earlier, the Finnish Medicines Agency (FIMEA) supervises the activities of a pharmacist operating a pharmacy or a branch of a pharmacy. If a pharmacist fails to fulfil the obligations stipulated by the Medicines Act or conditions based on the license, the license may be cancelled. The decision to cancel a license to operate a pharmacy may be appealed against to a regional Administrative Court. Normal procedural guarantees – among others right to be heard, right to have an oral hearing, right to appeal to the Supreme Administrative Court – based on Administrative Procedural Law apply. The procedure as stipulated by the law seem to guarantee compliance with Article 6.1 of the European Convention on Human Rights.
- **Taxi-driver license:** As noted above the competent Center for Economic Development, Transport and the Environment shall cancel taxi-driver license should the licensee not fulfill

the conditions for the license any longer. The Center may also cancel taxi-driver license due to breaches of the conditions of the license by the holder of the license. If the breaches are not so severe that the license shall need to be cancelled, the Center may issue a warning for the holder of the taxi-driver license. The Decision of the Center to cancel a taxi-driver license may be appealed to a regional Administrative Court. Normal procedural guarantees – among others right to be heard, right to have an oral hearing, right to appeal against to the Supreme Administrative Court – based on Administrative Procedural Law apply. The procedure as stipulated by the seem to guarantee compliance with Article 6.1 of the European Convention on Human Rights.

- **LICENCE TO SERVE AND RETAIL ALCOHOL:** AS NOTED ABOVE IF THE HOLDER OF THE LICENCE TO SERVE AND RETAIL ALCOHOL BREACHES THE OBLIGATIONS DERIVING FROM ALCOHOL ACT OR THE CONDITIONS OF THE LICENCE, THE COMPETENT REGIONAL STATE ADMINISTRATIVE AGENCY (AVI-AGENCY) MAY CANCEL THE LICENCE FOR A FIXED PERIOD OF TIME OR PERMANENTLY. THE DECISION OF THE AGENCY TO CANCEL A THE LICENCE MAY BE APPEALED AGAINST TO A REGIONAL ADMINISTRATIVE COURT. NORMAL PROCEDURAL GUARANTEES – AMONG OTHERS RIGHT TO BE HEARD, RIGHT TO HAVE AN ORAL HEARING, RIGHT TO APPEAL TO THE SUPREME ADMINISTRATIVE COURT – BASED ON ADMINISTRATIVE PROCEDURAL LAW APPLY. THE PROCEDURE AS STIPULATED BY LAW SEEM TO GUARANTEE COMPLIANCE WITH ARTICLE 6.1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS.

13. IS EVERY ECONOMIC SECTOR REGULATED BY A SPECIFIC AUTHORITY, OR ARE THERE SOME AUTHORITIES EXERCISING THEIR POWERS IN SEVERAL SECTORS?

- ALL OF THE AUTHORITIES, AGENCIES AND CENTRES DEALT WITH IN THIS PAPER POSSESS COMPETENCE IN SEVERAL SECTORS. ENERGY AUTHORITY IS RESPONSIBLE FOR ELECTRICITY AND GAS MARKET AS WELL AS EMISSION TRADING AND FEED-IN-TARIFFS FOR GREEN ENERGY. THE FINNISH COMMUNICATIONS REGULATORY AUTHORITY HAS IN ADDITION TO ITS REGULATORY COMPETENCES IN THE TELECOMMUNICATIONS MARKET, *INTER ALIA* POWER TO GUIDE RADIO AND TELEVISION BROADCASTERS AND NETWORK OPERATORS AND TO GRANT SHORT-TERM LICENCES AND RADIO LICENCES AS WELL AS TO MONITOR POSTAL SERVICE. THE FINNISH MEDICINES AGENCY (FIMEA) IS IN ADDITION TO BE COMPETENT TO GRANT A LICENCE TO A PHARMACY TO GIVE LICENCES TO NEW MEDICINES AND TO DEFINE WHICH SUBSTANCES ARE DEEMED TO BE HUMAN MEDICINES IN THE FINNISH MARKET. CENTERS FOR ECONOMIC DEVELOPMENT, TRANSPORT AND THE ENVIRONMENT ALONG WITH THEIR REGULATORY FUNCTIONS PROMOTE REGIONAL BUSINESS POLICY. REGIONAL STATE ADMINISTRATIVE AGENCIES HAVE A VARIETY OF COMPETENCES AMONG WHICH IS THE POWER TO MAKE DECISIONS ON LICENCES AND PERMITS PURSUANT TO THE ENVIRONMENTAL PROTECTION ACT AND THE WATER ACT.

14. HOW ARE ECONOMIC SECTORAL REGULATORY AUTHORITIES' COMPETENCES ARTICULATED WITH THOSE, WHEN APPROPRIATE, OF A TRANSVERSE AUTHORITY IN CHARGE OF ASSESSING COMPLIANCE TO COMPETITION LAW?

- THE SPHERES OF COMPETENCE BETWEEN THE FINNISH COMPETITION AND CONSUMER AUTHORITY AND THE REGULATORY AUTHORITIES, AGENCIES AND CENTERS DEALT WITH IN THIS PAPER ARE SEPARATE FROM ONE ANOTHER. THE FINNISH COMPETITION AND CONSUMER AUTHORITY IS RESPONSIBLE FOR THE CLASSICAL COMPETITION LAW CASES SUCH AS CARTELS, ABUSE OF DOMINANT POSITION AND MERGERS, AND MAY MAKE A PROPOSAL FOR THE MARKET COURT TO ORDER ADMINISTRATIVE SANCTION FOR A MARKET PLAYER IN THIS PERSPECTIVE. SINCE COMPETENCES OF THE REGULATORY AUTHORITIES, AGENCIES AND CENTERS ARE SEPARATE FROM THOSE OF THE AUTHORITY RESPONSIBLE FOR COMPETITION, NO

OVERLAPPINGS OF COMPETENCE SHOULD OCCUR. AS EXPLAINED ABOVE *NE BIS IN IDEM* PRINCIPLE IS TAKEN INTO ACCOUNT IN ADMINISTRATIVE SANCTIONS PROPOSED BY THESE AUTHORITIES – ALBEIT WITH VARYING INTENSITY – IN ELECTRICITY, GAS AND TELECOMMUNICATIONS LEGISLATION.

III. JUDICIAL REVIEW OF ECONOMIC SECTORAL REGULATORY AUTHORITIES' DECISIONS

15. ARE ALL ECONOMIC SECTORAL AUTHORITIES' DECISIONS SUBJECT TO JUDICIAL REVIEW? IF NOT, WHICH DECISIONS ARE NOT SUBJECT TO SUCH CHECKS AND WHY?

- DECISIONS DESCRIBED ABOVE CONCERNING ADMINISTRATIVE SANCTIONS IMPOSED ON ELECTRICITY (AND GAS) DISTRIBUTION SYSTEM OPERATORS OR TO TELECOMMUNICATIONS COMPANIES ARE SUBJECT TO JUDICIAL REVIEW. INITIAL DECISION ON ADMINISTRATIVE SANCTION IS MADE BY THE MARKET COURT ON PROPOSAL OF THE ENERGY AUTHORITY OR FINNISH COMMUNICATIONS REGULATORY AUTHORITY RESPECTIVELY. THE DECISION OF THE MARKET COURT MAY BE APPEALED AGAINST TO THE SUPREME ADMINISTRATIVE COURT.
- *EX ANTE* REGULATORY DECISIONS (SO CALLED CONFIRMATORY DECISION) OF THE ENERGY AUTHORITY ON REASONABLE PROFIT ON CAPITAL OF A TSO/DSO FOR A SURVEILLANCE PERIOD OF FOUR YEARS MAY BE APPEALED AGAINST TO THE MARKET COURT AND FURTHER TO THE SUPREME ADMINISTRATIVE COURT. DURING THE SURVEILLANCE PERIOD A TSO/DSO MAY REQUEST THE ENERGY AUTHORITY TO MODIFY THE CONFIRMATORY DECISION DUE TO E.G. CHANGES ON THE PARAMETERS TO WHICH THE DECISION IS FOUNDED ON. THE ENERGY AUTHORITY MAKES AFTER THE SURVEILLANCE PERIOD A SO CALLED SURVEILLANCE DECISION UPON WHICH THE NEXT CONFIRMATORY DECISION ON REASONABLE PROFIT ON CAPITAL OF THE TSO/DSO FOR THE FOUR-YEAR SURVEILLANCE PERIOD IS BASED ON. THE TSO/DSO MAY APPEAL AGAINST THE SURVEILLANCE DECISION TO THE MARKET COURT AND FURTHER TO THE SUPREME ADMINISTRATIVE COURT.
- *EX ANTE* REGULATORY DECISIONS OF THE FINNISH COMMUNICATIONS REGULATORY AUTHORITY ON [MARKET ANALYSIS AND] SIGNIFICANT MARKET POWER (SMP) OF A TELECOMMUNICATIONS COMPANY MAY BE APPEALED AGAINST DIRECTLY TO THE SUPREME ADMINISTRATIVE COURT.
- The Council of States refusal to grant or withdrawal of a postal delivery licence as well as decision to set conditions/obligations in a postal delivery licence may be appealed against to the Supreme Administrative Court. The appeal may only be grounded on illegality of the decision of the Council of State and not on the political appropriateness of the decision.
- Refusal to grant and withdrawal of a pharmacy licence, taxi-driver licence and licence to serve and retail alcohol may be appealed against to the competent regional Administrative Court and further to the Supreme Administrative Court.
- Otherwise the right to appeal is not limited in matters described in this paper.

16. Which system of jurisdiction is competent to verify these decisions? What are the relevant legal proceedings in this matter? When relevant, is the same system of jurisdiction competent to control the decisions of the authority in charge of assessing compliance to competition law?

- Administrative jurisdiction is competent to verify all of the regulatory

decisions described above. All administrative courts apply in their proceedings the Administrative Judicial Procedure Act obliging these courts to ensure proper examination of the case including among others the duty to hear parties and to organise an oral hearing if conditions for this are fulfilled.

- The system of jurisdiction in cases discussed in this paper functions as follows:
- **Electricity and natural gas market:**
 - Decision of the Energy Authority →
 - The Market Court →
 - the Supreme Administrative Court
- **Telecommunications market:**
 - Decision of the Finnish Communications Regulatory Authority →
 - the Supreme Administrative Court
- **Postal delivery licence**
 - Decision of the Council of State →
 - the Supreme Administrative Court
- **Pharmacy licence, taxi-driver licence, licence to serve and retail alcohol**
 - Decision of the Finnish Medicines Agency (FIMEA)/Center for Economic Development, Transport and the Environment (ELY-Center)/Regional State Administrative Agency (AVI-Agency) →
 - Regional Administrative Courts →
 - The Supreme Administrative Court
- In **competition cases** (cartels, abuse of dominant position and mergers) the Market Court functions as the first instance court. The decisions of the Market Court may be appealed against to the Supreme Administrative Court. The Administrative Judicial Procedure Act is followed i.e. the same system is applicable in judicial review of regulatory decisions as in competition cases.

17. Which kind of legal recourse is open against these decisions? What are the relevant legal proceedings in this matter?

- ABOVE DESCRIBED DECISIONS OF THE AUTHORITY, AGENCY OR CENTER – THE CONTENTS OF THE DECISION AS WELL AS ADMINISTRATIVE PROCEDURE FOLLOWED WHEN MAKING THE DECISION – MAY BE APPEALED AGAINST BY ISSUING AN ADMINISTRATIVE COMPLAINT TO THE COMPETENT REGIONAL ADMINISTRATIVE COURT/MARKET COURT. THE DECISION OF THE REGIONAL ADMINISTRATIVE COURT/THE MARKET COURT MAY BE APPEALED AGAINST TO THE SUPREME ADMINISTRATIVE COURT. REGARDING DECISIONS OF THE COUNCIL OF STATE AND THOSE OF THE FINNISH COMMUNICATIONS AUTHORITY, THE SUPREME ADMINISTRATIVE COURT IS THE FIRST INSTANCE APPELLATE COURT. AS OF THE PROCEEDINGS FOLLOWED, SEE ANSWER TO QUESTION N:O 16 ABOVE.

18. Which control does the judge exercise on these decisions? Does he monitor the formal requirements, legal proceedings and/or reasons for these decisions? For which kind of decision does he have limited control? In contrast, for which kind of decisions does he exercise through control?

- THE JUDICIAL REVIEW BY THE COURT ON THE REGULATORY DECISIONS DESCRIBED ABOVE COMPRISES:

- THE FORMAL REQUIREMENTS – SUCH AS PROCEDURAL DEADLINES, THE COMPETENCE OF THE AUTHORITY, AGENCY, CENTER TO MAKE THE DECISION THAT IS BEING APPEALED AGAINST, THE TIME SPAN OF THE DECISION (FOR INSTANCE DOES THE CONFIRMATORY DECISION OF THE ENERGY AUTHORITY EXCEED THE FOUR-YEAR PERIOD STIPULATED BY LAW);

THE PROCEDURE FOLLOWED DURING THE ADMINISTRATIVE PHASE INCLUDING CLARIFYING THE PERTINENT FACTS OF THE CASE AND HEARING OF THE PARTIES BY THE AUTHORITY, AGENCY, CENTER; AND

- SCRUTINIZING THE LEGALITY OF REASONING OF THE DECISIONS VIS-À-VIS THE PERTINENT LEGAL NORMS. IT IS TO BE NOTED THAT THE JUDICIAL REVIEW BY THE JUDGE MAY BE FACTUALLY SOMEWHAT RESTRICTED DUE TO THE LARGE MARGIN OF APPRECIATION ALLOCATED TO THE REGULATORY AUTHORITY EXERCISING ITS REGULATORY FUNCTIONS (IN PARTICULAR ENERGY AUTHORITY AND FINNISH COMMUNICATIONS REGULATORY AUTHORITY).
- AS NOTED ABOVE THE DECISION OF COUNCIL OF STATES TO REFUSE TO GRANT OR TO WITHDRAW A POSTAL DELIVERY LICENCE AS WELL AS ITS DECISION TO SET CONDITIONS/OBLIGATIONS IN SUCH A LICENCE MAY BE APPEALED AGAINST ONLY ON GROUNDS OF ILLEGALITY OF THE DECISION AND NOT ON THE POLITICAL APPROPRIATENESS OF IT.

19. While exercising his power of judicial review, how does the judge keep himself informed (appointment of experts, specialised and contradictory investigation, resort to universities, international sources of consultation, etc.)?

- ALL COURTS APPRECIATING A SPECIFIC CASE ARE OBLIGED *EX OFFICIO* TO CLARIFY THE MATERIAL FACTS OF THE CASE AND TO SCRUTINISE APPLICABLE LEGAL RULES (NATIONAL, EUROPEAN, INTERNATIONAL). THE COURT MAY ALSO USE ITS INVESTIGATORY POWERS BY EXPRESSLY REQUESTING CLARIFICATION FROM THE PARTIES OR FROM THE REGULATORY AUTHORITY ON A SPECIFIC MATTER.

RÉFÉRENDAIRES PREPARING THE CASES FOR DECISION ARE HIGHLY QUALIFIED AND SPECIALISED IN ECONOMIC SECTORAL REGULATION MATTERS. RÉFÉRENDAIRES ARE ENCOURAGED TO PARTICIPATE IN TRAINING COURSES, ALSO ABROAD, IN ORDER TO REFRESH AND UPDATE THEIR KNOWLEDGE OF NEW DEVELOPMENT OF THE ISSUES

THE MARKET COURT HAS EXPERT MEMBERS THAT PARTICIPATE IN THE JUDICIAL REVIEW OF DECISIONS OF THE ENERGY AUTHORITY CONCERNING ELECTRICITY AND GAS MARKET.

PARTICULARLY IN CASES CONCERNING ELECTRICITY AND GAS MARKETS AS WELL AS TELECOMMUNICATIONS MARKET, PARTIES TO THE PROCEEDINGS NOT SO RARELY SUBMIT TO THE COURT EXPERT OPINIONS THAT MAY BE CONTRADICTORY WITH ONE ANOTHER. THESE OPINIONS MAY CONCERN, FOR INSTANCE, THE LEGAL INTERPRETATION OF A CERTAIN JUDICIAL ISSUE PERTINENT TO SOLVING THE CASE OR ECONOMICAL APPRECIATION OF THE MATTER. DUE TO RELATIVELY LARGE MARGIN OF APPRECIATION OF THE REGULATORY AUTHORITY, THE STATUS OF SUCH OPINIONS IS RARELY DECISIVE ON THE APPRECIATION OF THE COURT.

THE MARKET COURT/REGIONAL ADMINISTRATIVE COURT/THE SUPREME ADMINISTRATIVE COURT MAY ORGANISE AN ORAL HEARING IN WHICH ALONG WITH THE PARTIES THEMSELVES, EXPERTS MAY BE HEARD AS WITNESSES. EXPERTS ARE NORMALLY NOMINATED BY THE PARTIES.

20. Which role does the Supreme Administrative Court take towards these decisions? What are the major decisions of supreme administrative justice in economic sectoral regulation matters?

- THE SUPREME ADMINISTRATIVE COURT IS THE COURT OF LAST RESORT IN SECTORAL ECONOMIC REGULATORY DECISIONS DEALT WITH IN THIS PAPER. APPEAL AGAINST ANY OF THESE DECISIONS IS NOT SUBJECT TO THE REQUIREMENT OF LEAVE TO APPEAL AND THE SUPREME ADMINISTRATIVE COURT THUS ISSUES ITS DECISION IN THESE MATTERS ON MERITS.

A SUMMARY OF SOME RECENT DECISIONS OF THIS COURT IS BRIEFLY PRESENTED IN THE FOLLOWING:

- **ELECTRICITY MARKET**
 - ***YEARBOOK DECISION OF THE SUPREME ADMINISTRATIVE COURT KHO:2010:86:***
 - THE MARKET COURT HAD MODIFIED IN ITS DECISION THAT WAS SUBJECT TO APPEAL THE ACCOUNTING METHODOLOGY FOR CALCULATING COSTS OF LIQUID ASSETS NEEDED FOR OPERATING DISTRIBUTION NETWORK CONFIRMED BY THE ENERGY MARKET AGENCY IN ITS REGULATORY DECISION. THE ESSENTIAL QUESTION WAS WHETHER MODIFICATION OF THE ACCOUNTING METHODOLOGY WAS NECESSARY IN ORDER TO SECURE REASONABLENESS OF ELECTRICITY NETWORK PRICING.

THE SUPREME ADMINISTRATIVE COURT CONCLUDED THAT THE ELECTRICITY MARKET ACT LEFT A LARGE MARGIN OF DISCRETION FOR THE ENERGY MARKET AUTHORITY TO DEVELOP ACCOUNTING METHODOLOGIES NEEDED FOR ESTIMATING REASONABLENESS OF PRICING. ACCORDING TO THE FACTS OF THE CASE, IT WAS NOT POSSIBLE TO ESTIMATE WHICH OF THE ACCOUNTING METHODOLOGIES LED TO THE OPTIMUM END-RESULT REGARDING THE CALCULATION OF COSTS OF LIQUID ASSETS OR REASONABLENESS OF PRICING. THE SUPREME ADMINISTRATIVE COURT THEREFORE QUASHED THE DECISION OF THE MARKET COURT.

- **NATURAL GAS MARKET**
 - ***YEARBOOK DECISION OF THE SUPREME ADMINISTRATIVE COURT KHO:2011:109:***
 - GASUM OY WAS UNDER AN OBLIGATION TO SUPPLY NATURAL GAS TO ITS CLIENTELE AT PUBLISHED, REASONABLE PRICES AND ON CONTRACTUAL TERMS. THE ENERGY MARKET AUTHORITY CONSIDERED THAT THE PRICING APPLIED BY GASUM OY WAS NOT REASONABLE DURING 2006 AND 2007 AND DECIDED THAT THE COMPANY WAS OBLIGED TO CHANGE ITS PRICING RELATING TO OBLIGATION TO SUPPLY NATURAL GAS 1.1.2008 ONWARDS. THE AUTHORITY DEEMED THAT THE COMPANY COULD PRICE ITS DIFFERENT NATURAL GAS PRODUCTS FREELY FOR AS LONG AS THE OVERALL PRICING OF NATURAL GAS WAS IN THIS PERSPECTIVE REASONABLE.
 - THE SUPREME ADMINISTRATIVE COURT CONSIDERED THAT THE ENERGY MARKET AUTHORITY COULD HAVE ESTIMATED THE REASONABLENESS OF PRICING APPLIED BY GASUM OY BY TAKING INTO ACCOUNT THE PRICING OF NATURAL GAS AS A WHOLE AND BY BASING ITS ESTIMATION TO THE PROFIT GAINED BY THE COMPANY. THE SUPREME ADMINISTRATIVE COURT CONSIDERED THAT IN ITS APPRECIATION THE AUTHORITY NEEDED TO TAKE INTO ACCOUNT ALSO THE GROUNDS FOR ESTIMATING THE REASONABLENESS OF PRICING ARISING FROM THE GOVERNMENT BILL ON NATURAL GAS MARKET ACT. THE SUPREME ADMINISTRATIVE COURT CONSIDERED *INTER ALIA* THAT THE LEVEL OF PROFIT BASED ON THE DECISION OF THE AUTHORITY IS ACCEPTABLE AND EQUIVALENT TO AN EXPERT OPINION SUBMITTED BY THE COMPANY. ALTHOUGH THE REASONING OF THE DECISION OF THE AUTHORITY WAS PARTLY INSUFFICIENT, ITS END-RESULT WAS STILL CORRECT.

- **TELECOMMUNICATIONS MARKET**

- ***YEARBOOK DECISION OF THE SUPREME ADMINISTRATIVE COURT KHO:2010:55:***

- A Telecommunications company, iMEZ, had requested the Finnish national regulatory authority, to take the measures necessary in order to secure the conclusion of an interconnection agreement with TeliaSonera concerning the transmission of text messages (SMS messages) and multimedia messages (MMS messages). After arbitration negotiations had failed, iMEZ asked the Authority to compel TeliaSonera to negotiate the interconnection in good faith. In the alternative, iMEZ asked the Authority to impose an interconnection obligation on TeliaSonera with respect to SMS and MMS messages and to require it to price the forwarding of such messages on reasonable prices. In the further alternative, iMEZ asked the Authority to declare that the forwarding these messages to the specific mobile network was the relevant communications market, and that TeliaSonera was an undertaking having significant market power (SMP), thus enabling iMEZ to obtain the interconnection.

- Before deciding the case the Supreme Administrative Court made a request for preliminary ruling to the Court of Justice. The Court of Justice in its judgment in case C-192/08, *TeliaSonera*, replied to the request in so far as is relevant here as follows:

- Article 4(1) of Directive 2002/19/EC of the Access Directive read in conjunction with recitals 5, 6, 8 and 19 in its preamble and with Articles 5 and 8 thereof, precludes national legislation such as the Communications Market Law in so far as it does not restrict the possibility of relying on the obligation to negotiate on the interconnection of networks solely to operators of public communications networks. It is for the national court to determine whether, having regard to the status and the nature of the operators concerned in the main proceedings, they may be classified as operators of public communications networks.

- The Supreme Administrative Court found in its yearbook decision that only operators of public communications network had the right to negotiate on the interconnection of networks and corresponding requirement to negotiate only applied to operators of public communications network. The Supreme Administrative Court concluded that the company that had requested to be connected was not an operator of public communications network.

- **Postal Delivery Licence**

- The Supreme Administrative Court quashed in 2013 a Decision of the Council of State issuing a postal delivery licence including several strict obligations to a private postal company. The decision of the Council of State was quashed due to defects in the administrative procedure whilst issuing the licence.

- **Pharmacy Licence**

- ***Yearbook Decision of the Supreme Administrative Court***

- Since the Pharmacy of the University of Helsinki possesses 16 licences of a branch of a pharmacy in the biggest cities of Finland, there is sometimes competition between private pharmacists and the Pharmacy of the University of Helsinki (and the Pharmacy of the Eastern Finland University) on a single licence. Such a situation initiated the Supreme Administrative Court to request for a preliminary ruling of the Court of Justice of the European Union on the coherence of the Finnish pharmacy licencing system with the freedom of establishment provision of the TFEU (case C-84/11, *Susisalo*). The Court of Justice found that the Finnish system was not directly discriminatory as in issuing a pharmacy branch licence no distinction was made between Finnish and other EU-/EEA-pharmacists. Due to the differences in issuing a licence to establish a branch of a pharmacy to the Pharmacy of the University of Helsinki that may have 16 branches and other, private pharmacists that may have three such branches at the maximum, the Court of Justice found the system to be indirectly discriminatory. The Court of Justice considered that indirect discrimination may be justified due to the fact that the Pharmacy of the University of Helsinki has specific obligations – e.g. to educate pharmacy students and to produce rare medicines – that the private pharmacists are not subject to.
- The Court of Justice replied to the Supreme Administrative Court as follows:
 - Article 49 TFEU must be interpreted as meaning that it does not preclude a national law, such as that at issue in the main proceedings, which provides for a licensing scheme for the operation of branch pharmacies specific to the Helsingin yliopiston apteekki which is more favourable than that applicable to private pharmacies, provided that – which is for the referring court to verify – the branches of the Helsingin yliopiston apteekki actually participate in the accomplishment of the specific tasks relating to the teaching of pharmacy students, research on pharmaceutical services and the manufacture of rare pharmaceutical preparations conferred on the latter by national law.
- The Supreme Administrative Court concluded in its yearbook decision *inter alia* that the competent Authority was in its consideration to issue a licence to establish a branch of a pharmacy under an obligation to take into account the specific tasks of the Pharmacy of the University of Helsinki stipulated by the relevant legislation. It could not be deduced from the reasoning of the appealed decision of the competent Authority on which grounds the Authority had made its decision to issue the licence to the Pharmacy of the University of Helsinki. Nor could it be deduced from the reasoning of the decision whether the Pharmacy of the University of Helsinki was required to carry out the specific tasks according to the judgment of the Court of Justice i.e. teaching of pharmacy students, research on pharmaceutical services and the manufacture of rare pharmaceutical preparations. The decision of the competent Authority was therefore quashed.

• **Taxi-driver Licence**

- ***Yearbook Decision of the Supreme Administrative Court
KHO:2014:18***

- In a centralised application round for taxi-driver licence quotas organised in 2008, the company had been the sole applicant for a taxi-driver licence for a handicap vehicle. Only after these quota decisions had become final *in toto* could the competent Center for Economic Development, Transport and the Environment (ELY-Center) decide at the end of 2010 finally upon applications for taxi-driver licences concerning years 2008–2010. Since in 2008 the applicant had been the sole applicant for a taxi-driver licence for a handicap vehicle, its legal position could not be worsened by the fact that the taxi-driver quota decisions had been appealed against. The company had the right to get the taxi-driver licence it had applied in 2008 on the basis of the legislation in force at that time.

- **LICENCE TO SERVE AND RETAIL ALCOHOL**

- ***YEARBOOK DECISION OF THE SUPREME ADMINISTRATIVE COURT
KHO:2013:41***

- THE COMPETENT AUTHORITY HAD CANCELLED PERMANENTLY THE LICENCE OF THE COMPANY TO SERVE AND RETAIL ALCOHOL DUE TO SERIOUS NEGLIGENCE OF THE HOLDER OF THE LICENCE TO PAY TAXES AND OTHER PUBLIC PAYMENTS. THE REGIONAL ADMINISTRATIVE COURT MAINTAINED THE DECISION OF THE COMPETENT AUTHORITY. AFTER THE DECISION OF THE COMPETENT AUTHORITY, THE COMPANY WAS ACCEPTED TO REORGANISATION OF DEBTS PROCEEDINGS AND IT PAYED BACK ITS PENDING TAX DEBTS ON THE BASIS OF A CONFIRMED PAYMENT PROGRAM. THE SUPREME ADMINISTRATIVE COURT TOOK THESE CHANGED CIRCUMSTANCES AS WELL AS THE PURPOSE OF THE LEGISLATION ON REORGANISATION OF DEBTS PROCEEDINGS INTO ACCOUNT AND QUASHED THE DECISION OF THE COMPETENT AUTHORITY.