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Domestic Models, International Influences and Outside Pressures - Cartel Legislation in Finland, 1958-1992.

Point of departure

The Finnish model of capitalism has during the 20th century undergone some abrupt and profound changes, often at times of severe crises. At the same time many patterns and institutional settings have been fairly persistent. Finland has been labelled as a highly coordinated economy, due to the extensive cooperation between and within sectors. This collaborative feature has persisted over more liberalistic and more regulative periods. One such tradition has been the high presence of cartels and other types of co-operation between firms in order to restrict or diminish competition. This was the case until the 1990s, when the country became a member in the European Union. However, still today illegal cartels and competition restrictions are revealed from time to time.

The Finnish economy has lately received some attention internationally, not the least due to the Nokia phenomenon, which has encouraged an interest in both Finnish management and institutional solutions. Moreover, the country's long-run economic development has been a success story exceeded by few, although the country has also been susceptible to crises. The economy has been hit severely during the wars, but also the high dependence on international fluctuations has made Finland meet with severe recessions at regular intervals. Finland is a typical small open economy, where the key sector until the 1990s, i.e. the forest industry, has been a volatile one. Furthermore, also the institutional model and the economic policy have contributed to the economic instability and made it somewhat inherent.

Target of the paper

In this paper, the Finnish cartel legislation is the focus of attention. We will study when certain transformation in the legislation took place and discuss the motivation behind these transformations, which groups influenced the process and which were the targets of the reforms. We will also put this legislative development

within a larger institutional and international context. The cartel legislation reflected well transformation in the Finnish model of capitalism, but it is also evident that the legislative reforms were influenced by international trends. Finland has been seen as an efficient copier of foreign models.

The adoption and diffusion of foreign models is a, however, a complex process of adoption, translation and adaptation to local circumstances and the needs of the domestic agents and to the local 'scientific' language, i.e. how the local actors interpret the models. This process is heavily depending on the institutional context in the receiving country, on transfer mechanisms, and on what is transferred. We will see that the competition legislation and competition policies were greatly influenced by the Scandinavian, particularly Swedish legislation. On the other hand, it also appears that the Swedish legislation fitted fairly well for the Finnish institutional and economic model in the post-war period. Interestingly, it appears that the similar legislation had a little other outcomes in Finland than in Sweden. We will return in the end to this discussion.

By studying cartel/competition legislation, we will acquire knowledge about the regulative environment influencing cartelisation on the Finnish market. Therefore, we will also draw some early conclusions on the regulative environments' effects on cartel strategies within branches and among individual firms, although it is obvious that companies' cartel strategies depend on many other factors beside cartel or competition legislation. The legal and institutional environment is only a framework within which the firms are working. Competition/cartel legislation is occasionally ineffective and only by prohibiting cartels, they do not necessarily disappear. In connection to Finnish EU membership (1995), the competition legislation was gradually harmonised with the restrictive EU competition legislation in 1992, but illegal cartels are discovered repeatedly. Old practices and traditions are still prevalent, although taking - out of necessity - other forms. Still, policies supporting or alternatively restricting cartels do also have effects on cartel strategies

Finally, by looking at cartel legislation and the motivation behind the legal reforms, we will acquire information about the general outlook in society on cartels and other forms of voluntary cooperation between firms in order to restrict competition. Legislative reforms are often an answer to a development already well underway. For example, the companies – particularly within big business in the export sector – did not solely adapt and respond to the institutional regime, but, on the

contrary, have been an important driving force behind the economic policy agenda setting in Finland. The competition/cartel legislation appears here to be a very good example.

Furthermore, this paper is part of an on-going research project on cartels and cartel organisation in post-war Finland, where the cartels registered in the cartel register 1958-1988 will be made use of, the legislation concerning the registration of cartels is important in order to get a thorough understanding of the content of the register.¹ Although the register consists of around 1600 competition restrictions or cartel 'cases', it covers only a part of such agreements.

The Inter-War Period: Nation Building, Industrial Breakthrough and Cartelisation

Harm Schröter has classified Finland in the inter-war period as one of the most cartelised European economies.² Although detailed and extensive data is impossible to receive, all existing sources and previous research supports this argument. Mika Kallioinen claims in a new book on the Finnish cotton producer's cartel, that cartels and industrial co-operation was something of a 'national custom' in Finland in the 1920s and 30s.³ On the other hand, it appears that the picture was perhaps a little more varied than this. According to one investigation from the 1950s, cartels were common particularly within the export sector and on the domestic market within the manufacturing sector, while the service sector was less organised due to its structure of many small firms. A large amount of small firms did not make price and other restrictions unnecessary, but made extensive agreements difficult to bring about and enforce.⁴ On the other hand, the importance of the export cartels can not be stressed enough: it has been estimated that some 80% of the Finnish exports during the inter-war period was sold through the sales organisations and cartels.⁵ This number primarily indicates the big role of forest industry products in the export during the

¹ 'Cartel organisation' Project led by Prof. Otto Toivanen, HECER (Helsinki Centre for Economic Research) at the University of Helsinki, and financed by Academy of Finland.

² Schröter, Harm, Cartelization and Decartelization in Europe, 1870-1995: Rise and Decline of an Economic Institution, *The Journal of European Economic History* Vol. 26 No.1 1996

³ Kallioinen, Mika, *Puuviillateollisuuden myyntikartelli 1910-1939*. Turun Yliopisto. 2006.

⁴ Salonen, Ahti M. *Tutkimus taloudellisesta kilpailusta Suomen nykyisessä yhteiskuntaelämässä*. Helsinki 1955, 111.

⁵ Stjernschantz, G. *Finlands industriförbund 1921-1946*. Minnesskrift. Helsingfors 1946. Source: to be checked.

inter-war years: in 1920 forest products stood for 93.7% and in 1938 81.8% of the total exports.⁶

Moreover, the type of cartel agreements concluded varied extensively with respect to scope and content over the period, from loose price agreements ('price rings') to joint sales organisations and syndicates, taking care of sales, dividing orders and making decisions about investments, or even trusts, like the sugar trust *Finska Socker Ab*. The agreements also changed shape. This was typical for instance for the cotton producer's cartel, which started as a price ring, but gradually got a stricter form and became finally a joint sales organisation.⁷ Based on an investigation carried out by Ferdinand Alfthan in the early 1920s such a view also receives support. Syndicates or joint sales organisations formed a minority primarily existing in the export sector, while 'price rings' and other forms of loose agreements were more common between the domestic manufacturers.⁸ The agreements signed did not always cover the whole branch, and although particularly the joint sales associations became persistent, other cooperative forms only lasted for a short period. Import competition was in some branches considerable, providing at least some form of competition on the Finnish market.⁹

The economist at the Bank of Finland, Mikko Tamminen, pointed out in 1958, that competition on the domestic market had been fairly harsh in the inter-war period. The consumption goods and the retail sector was fairly competitive with many small firms, consumer co-operatives had a strong position in Finnish society, import competition was not at all insignificant, although the barriers to trade were raised as a result of increasing protectionism during the interwar period. Finally, the severe crises of the 1930s had as an effect to put pressure on prices downwards.¹⁰

However, a development towards increasing industrial cooperation appears to have occurred during the 1920s and 30s – a fact already observed by Ferdinand Alfthan in 1922. During the inter-war period the number of cartels working primarily on the domestic market, like the cotton producers' cartel, grew rapidly, some of which were fairly effective in fighting import competition and keeping prices and profits high. In the interwar period the wholesale and retail sector also started to cooperate in

⁶ *Suomen Taloushistoria* 3, 306–312; Kuisma 1993.

⁷ Cf. Kallioinen 2006.

⁸ Alfthan 1922, 324.

⁹ *Ibid*, 330.

¹⁰ Tamminen, Mikko, Kartellilain voimaan astuessa! *Kansantaloudellinen Aikakauskirja* 1958 no. X.

various ways, primarily by organising into chains. Vertical price fixing agreements became more common as a result of this, i.e. the producers demanded the wholesalers and/or the retailers to sell at a certain minimum price, and also the wholesalers requiring retail sector to sell certain goods at certain prices.¹¹

Although the intensified cartelisation of the inter-war period had some clear ‘domestic’ explanations, the overall picture in Finland fits well international trends. The inter-war period was, as Harm Schröter has shown, a period of intensified cartelisation internationally. Finnish business leaders followed closely what went on abroad and took models home with them. Moreover, in the same way as the customs war broke out in various branches as a result of increasing protectionism, the cartelisation of the Finnish export industry was often an answer to cartelisation and other protective actions taken abroad.

The Forest Industry Set the Model

The reason for this tight cartelisation of the Finnish export industry, particularly within the so important forest industry sector, has been put down to incidences connected to the WWI and the Civil War in Finland 1918. Finland gained its independence in 1917. The Russian revolution and the independence declaration meant a full stop of the export to Russia – the main export market hitherto – while substituting markets, due to the ongoing war in Europe, were not to be found. At the same time domestic discontent had increased in 1917 and in January 1918, civil war broke out, which although short was violent and had devastating economic effects due to extensive standstills and unrest in industrial areas. The war ended in April, when the ‘white’ (i.e. bourgeoisie) side defeated the ‘red’ side (i.e. the socialists). The victory of the whites as received with some military assistance from Germany. This made Finland turn towards Germany politically and economically. As war was still going on in Europe, Germany was the only export market open to Finland and a trade agreement, which opened export opportunities, between the countries was rapidly signed.¹² However, it became soon evident for the Finnish industrial managers that the situation for the Finnish paper exporters was awkward at the least, as the paper producers met with a strong German national purchasing cartel. The answer to this

¹¹ Salonen 1955, 112.

¹² Ahvenainen, J. & Vartiainen, H., Itsenäisen Suomen talouspolitiikka, *Suomen Taloushistoria* 2. Helsinki. 1982; Kuisma, Markku, *Metsäteollisuuden maa*. SKS: Helsinki. 1992.

was joint sales and in 1918 the extensive common sales organisation of the paper producers, the *Finnish Paper Mills' Association* (FPMA), through which the majority of the Finnish paper was exported abroad, was established. The Finnish Paper Mills' Association was soon followed by similar export cartels for cardboard and for pulp.¹³

This 'German interlude' in the Finnish economy turned out to be short. When WWI came to an end, the strong political and economic ties to Germany were cut, and Finland opened up to the west. FPMA and the export cartels in the form of joint sales associations became, however, efficient instruments for the Finnish export industry also when seeking new markets in Europe and these association remained a persistent and prominent phenomenon in the Finnish economy up until the 1990s, when the competition legislation and the EU membership forced them to be dissolved.

Although the situation in 1918 induced the establishing of these strong export cartels, there had been strong cartels and/or sales organisations already earlier. For example the Finnish paper producers had already in the late 19th century cooperated when selling on the Russian markets. Also other cartels existed much earlier.¹⁴ Thus, the German interlude was not the roots to the Finnish tradition with cartels, but speeded up the development.

During the inter-war period the Finnish paper produces also cooperated actively with competitors in other countries and participated in international cartel agreements, particularly with Swedish competitors through the so called Scan-cartels or 'Scan-family' (e.g. *Scancraft*, *Scannews*, *Scangrease*), which made Finnish and Swedish paper exporters besides agree on prices and division of markets in western Europe, also agreed not to compete in the other country. Such agreements, although not as extensive, were also formed within other branches, for example in cement and in household ceramics etc.¹⁵ Export and transnational cartels were fairly efficient in influencing customs policies.

From above we can see that the Finnish development occurred within and as a response to the changing international environment. But how did this increasing cartelisation relate to the general picture of the Finnish economy? At the end of the WWI the Finnish economy had been in all but good shape, but the inter-war period

¹³ Heikkinen, Sakari, *Paper to the World. The History of Finnish Paper Mills' Association*. Helsinki 2001.

¹⁴ Cf. Alfthan 1922.

¹⁵ Cf. Fellman, Susanna, *Samarbete och konkurrens – Arabia och Rörstrand under ett sekel. Historisk Tidskrift* no 2, 2007.

turned out fairly favourable from a macroeconomic growth perspective. While this period for many countries was one of slow growth, due to severe crises, economic and political instability, increasing protectionism and nationalism, Finland experienced an average growth of 4.6 per cent during the period 1920-1938. The country did not experience an economic crisis in the early 1920s, while the Great Depression, although harsh within certain sectors, was shorter than and not as deep as in many other industrialised countries if measured in GDP figures.¹⁶ During this period, Finnish industrialisation experienced its industrial breakthrough, with rapid expansion and increasing productivity.¹⁷ The Finnish catching up-process with the leading economies in Europe began. New export markets opened up, exports shifted towards more refined products, and gradually diversified. Finland became, however, at the same time increasingly integrated in the international economy, and thus, also sensitive to the international economy and its fluctuations.

The inter-war era was in Finland liberalistic from the perspective of regulation or direct intervention in the economic activity, although it was also an era of a more active State, for instance marked by the establishment of the first state companies. Moreover, protectionism flourished. The cartels and their activity were, however, not restricted in any way and a favourable attitude particularly towards export cartels, which were seen as working in the national interest, is evident. The war years had tightened the close relations between the political and the business elite, which made big business have extensive influence in the economic-political agenda setting later. This was the case particularly when it came to economic legislation, but also the favourable attitudes towards cartelisation and the introduction of trade policies promoting the interest of big business, i.e. the forest industry can be attributed to this influence.¹⁸ Still, in spite of close relations between the state and business, the Government did not actively intervene to force cartelisation, as it did in for example Norway and France.¹⁹ Finland after the independence declaration can be seen as a typical example of a young nation, on the verge of industrialisation, resorting to a

¹⁶ Hjerpe, R., *Finnish Economy 1860-1985. Growth and Structural Change*. Studies on Economic Growth 13. Suomen Pankki, Helsinki 1989.

¹⁷ Krantz, O., *Industrialisation in Denmark, Finland, and Sweden. A Comparative View*. I Kryger Larsen, H. (ed.), *Economic Convergence? Industrialisation in Denmark, Finland and Sweden*. Finska Vetenskapssocieteten, Helsingfors. 2001.

¹⁸ Hjerpe, Riitta & Lamberg, Juha-Antti (2001). The Change of the Structure and Organization of Foreign Trade in Finland after the Russian Rule. I Teichova, A. et al. (eds.). *Economic Development and the National Question*. Cambridge University Press, Cambridge . Ojala & Karonen 2006

¹⁹ Cf. Schröter 1996.

strong economic nationalism. Cartels, particularly export cartels, fitted this situation well.

According to one of the leading historians in Finland, Markku Kuisma, an important factor contributing to the rapid economic growth - particularly the forest-based industrial progress - in the inter-war period was a result of “a successful set of means consisting of government actions coloured by agrarian interests, the establishment of state-owned industrial corporations inspired by economic nationalism and entrepreneurial enthusiasm, and intensive cartellization, led by the family-firms of the export sector.”²⁰

Harm Schröter has stressed that the interwar period was some sort of zenith of cartelisation, while the decades after WWII led to gradual decartelisation. This was, however, as we shall see below, not the case in Finland. Although Finland received its first cartel law in 1958, which can be seen as anti-abusive and which was gradually made stricter in the 1960s and 70s, the development went towards increasing cartelisation up until the 1980s.

The 1958-1988: Stricter Legislation – Increasing Cartelisation

WWII meant a sharp and abrupt change in the Finnish model of capitalism. From having been a fairly liberal market economy with little direct intervention, although with collaborative features, it became a strictly regulated economy. Obviously, regulation is typical during wars, but in Finland the very strict war regulation remained in force until the late 1950s, mainly due to the heavy war indemnities to the Soviet Union. Moreover, some sectors of the economy, primarily the financial markets and international capital flows, remained strictly regulated until the 1980s. The overall goal behind the regulation and coordination was to promote industrialisation, based on policies promoting a high investment rate by keeping interest rates low and favouring the export sector by resorting to devaluations at regular intervals. An elaborate ‘growth model’, based on coordination, strong elements of corporatism and strive for political consensus evolved, where all segments of the economy had their role to play. The favouring of the export sector made big business getting an even more pronounced role in the agenda setting.

²⁰ Kuisma Markku, Government Actions, Cartels and National Corporations. The Development Strategy of a Small Peripheral Nation during the Period of Crisis and Economic Disintegration in Euroepa. *Scandinavian Economic History Review* vol XLI, no 3 1993.

Moreover, the trade with Soviet Union became an important factor after the war indemnities had been paid in 1952. This trade was of big political significance in the era of the Cold War and, thus, giving big business', particularly some state companies, an even stronger position and making the relationship between the business and the political elite even more intimate.²¹

The law of 1958

Within this regulative and coordinated environment the first cartel law – or actually the ‘law concerning the surveillance of competition restrictions’ (fi: *laki talouselämässä esiintyvien kilpailurajoitusten valvonnasta*) – was passed in 1958. Already in the 1930s a law to regulate the activities of cartels had been on the agenda in the Parliament, mainly as a result of such legislative reforms could be observed in many other countries. In 1927 a consumer organisation (Kulutusosuuskuntien Keskusliitto) had raised the issue of legal restrictions on “rings and trusts”. However, such initiatives and discussions died out, perhaps in the era of non-interventionist policies.

The law of 1958 was a result of a work starting already in 1946, when a committee was formed to draw up the framework for a new law to improve the control of companies’ and business groups’ ‘activity to restrict competition’ (fi: *yrittöryhmien kilpailua rajoittava toiminta*), and also to prevent ‘improper and reprehensible restrictions of competition’. The memorandum of this committee was submitted in 1952, while the actual law was finally passed in 1957, coming into force from the beginning of 1958. The process seems to have been fairly slow. One reason for the delays was that it aroused extensive debate and strong objections. Big business and their interest organisation had significant influence in economic legislation, and the interest of these influential circles in restricting their own activities was meagre. The final law was also (see below) watered down from the version drawn up by the committee in its report 1952 and the Government proposal submitted to the Parliament in 1953.

Moreover, as all segments of the economy were under strict war regulation until 1956, such a law was actually not needed. The war regulation with its strict price

²¹ On the Finnish post-war economic model until 1980 in English, see e.g., Pekkarinen, Jukka, *Scandinavian Models*. In P. Hall (ed.) *The Political Power of Economic Ideas*. Princeton University Press, 1988.

and wage regulation meant that economy was tightly controlled anyway. The abolishment of the war regulation in 1956 did not, however, as mentioned mean a turn back to economic liberalism. Instead, many regulative elements persisted and cooperation in and between branches reached a new level. Some of the regulative elements which continued to exist were actually also transferred to branch associations and new organisations and associations were formed. According to Salonen, the benefits from 'cooperation and collaboration' became at the same time evident, which further promoted collaboration and the emergence of new associations.²²

Tamminen concluded that a cartel law became a logical consequence of the increasing formalisation of co-operation and collaboration in the economy.²³ According to another contemporary analyst, the motivations behind the legal framework affecting economic activities were that it was to be part of and support the general economic environment.²⁴

The origins to this first law were also to be found in the international development. Many European countries had received a cartel or competition legislation already in the inter-war period. The authorities and politicians could observe what was going on in other countries. Particularly Sweden's cartel law from 1946²⁵ influenced Finnish authorities to see a need for something similar. In the report of the Finnish cartel committee, the legal situation in other countries was described and their possible implications for Finland evaluated. Perhaps not surprisingly, Swedish law of 1946 also stood as model for the first Finnish law. Finland has often followed Swedish institutional models closely.²⁶ As one contemporary legal expert concluded, both the birth of the law and the content of it was more or less a copy of

²² Salonen 1955, 81–90.

²³ Tamminen, 1958, 8.

²⁴ Paakkanen, Jouko, Kilpailulainsäädännön yleiset tavoitteet ja keinot. *Kansatantaloudellinen Aikakuskirja* 1960, no X.

²⁵ Lag om konkurrensövervakning. Sweden had a so called Monopoly law (swe: *Monopollag*), which had come into force in 1925. See further Lundqvist, Torbjörn, *Konkurrensvisionens framväxt*. Institutet för Framtidsstudier, Stockholm 2003.

²⁶ It has been - wrongly - claimed that the British anti-trust law worked as a model for the Finnish law of 1958. See e.g. Schröter, Harm, Small European Nations. Cooperative Capitalism in the Twentieth Century. In Chandler, A., Amatori, F. & Hikino, T. (eds.), *Big Business and the Wealth of Nations*. ... Cambridge University Press. 1997. Schröter is relying on Finnish sources, where this misinterpretation has been presented.

the legal work done in Sweden.²⁷ This notion that Finland followed Sweden strictly on this respect is also found in the Swedish sources.²⁸

According to the law, cartels and other types of firms' voluntary agreements to restrict competition were to be notified and registered with the authorities and the content of the agreement made public. Such notification was, however, to be done on the authorities' request. Tender cartels were, moreover, declared illegal, 'unless given an exemption order by the cartel agency'. Also vertical price fixing agreements could be banned by the authorities in case they were 'particularly harmful for the public'. An overall prohibition of vertical price fixing had been on the agenda in the committee's proposal and included in the Government proposition in 1954, in line with the new competition law in Sweden from 1953²⁹, but the Parliament decided for a more permissive formulation. It was seen as important to have a less prohibitive law first in order to 'study the general effects' from such a law.

All types of cartel agreements, i.e. loose 'recommendations' about prices and quantities, strict written agreements, and all kinds of sales associations were in principle covered by the law, as well as horizontal and vertical agreements. Moreover, monopolies and agreements giving a dominating market position were also covered by the law.³⁰ Export cartels and other types of cartel agreements concerning activities on foreign markets were, on the other hand, excluded. This was motivated by the fact that their activities did not affect the Finnish market and customers. However, in case such cooperation also had consequences on the domestic market, they should be registered. For example, several of the export cartels and sales association had departments for taking care of sales on the domestic market and as such they had to register. The law was based on a principle of publicity: by increasing transparency and knowledge about various price and other agreements, the law would work as a deterrent. As the committee stressed, the firms themselves would abstain from unscrupulous agreements as a consequence of the compulsory notification.³¹ This had also been the idea of the Swedish law of 1946. In case of illegal agreements (tender

²⁷ Eerola, Niilo, Kartellilain soveltaminen Suomessa. *Kansataloudellinen Aikakuskirja* 196X

²⁸ Ny Konkurrensbegränsningslag SOU 1978:9. Stockholm 1978.

²⁹ Konkurrensbegränsningslagen 1953, which was again tightened in 1956. Cf. Lundqvist 2003, 20.

³⁰ Employers' federations and trade unions were not covered by the law, while agrarian cooperatives and central organisations were included, something that the strong agrarian interest organisations strongly criticized.

³¹ *Kartellitoimikunnan mietintö*. Komiteamietintö A 1952:33,19

cartels, or harmful price fixing agreements), the cartel members could be fined or even sentenced to 6 months imprisonment.

To take care of the surveillance, control and registration activity a cartel agency (fi: *Kartellvirasto*) was to be established. Also an Advisory Board (fi. *Kartelliasian Neuvottelukunta*) with representatives of certain interest organisations was appointed. This Advisory Board was to provide statements and advice for the Agency. The cartel authorities were to take care of the notification, keep up the cartel register and in general monitor and control the market situation and carry out branch investigations and market research.

As mentioned above the Finnish law was more or less a copy of the Swedish law. Interesting enough, it was the law of 1946 that finally stood as the model, although the Swedish law had been revised in 1953, i.e. prior to the Finnish Government proposition to the Parliament. In the Government proposition some details from the revised Swedish law of 1953 was included, but the Finnish Parliament ‘diluted’ the proposition. For example a total ban on vertical price-fixing, which finally was left out, was studied and discussed by using research and argumentation carried out in Sweden.³² It has been seen that the reason behind this ‘watering down’, originated from the obstruction from business circles and interest organisation. For instance, the big role of the export sector was later evaluated as an important motivation for the permissive attitude towards cartel and industrial co-operation in various forms.³³ This is more likely the case, but more deep investigation of it is needed, in order to draw some very definite conclusions. As Peter Sandberg in the case of Sweden has stressed, the ‘manufacturing sector’ or the ‘labour movement’ can not be seen as homogenous groups, which had within themselves one joint opinion in the cartel debate.³⁴ Diverging opinions and possible tensions within the business community is an interesting question that should be studied further.

However, the ban on tender cartels was a straight copy from Swedish law. Mikko Tamminen actually pointed out that the – suddenly – extremely negative attitude towards tender cartels was somewhat peculiar. Firstly, the law was so permissive in general, but, secondly, there was actually no evidence whatsoever about the extent and prevalence of such agreements or they formed a great problem on the

³² Tamminen 1958, 14.

³³ *Kilpailutoimikunnan mietintö* 1982: 48, 8.

³⁴ Sandberg, Peter, *Kartellen som sprängdes. Svensk bryggeriindustri under insitutionell och strukturell omvandling*. Göteborg 2006, 64.

Finnish market in comparison to other types of cartel cooperation. There were much more research available on e.g. vertical price fixing, and on horizontal agreements on price and quantities. According to Tamminen, the ban on tender cartels was included as the only form of cartels to be forbidden, as this was the case also in the Swedish law! The cartel register to be established was also to be seen as a Scandinavian feature, first adopted in the Norwegian law of 1926 and in Sweden since 1946, although later adopted in many other countries as well.

It can be concluded that the target of the Finnish law of 1958 was not to forbid cartels or other agreements to restrict competition, but to control and monitor them and keep track of the overall market situation. Only in the most flagrant cases the authorities could and would intervene. Cartels were not as such seen to be something harmful. On the contrary, it was pointed out in the report that in some case cartels were favourable, and that this was not only the case of the export cartels, but also for the consumers. The existence of price agreements decreased 'search costs' of the consumers and bettered the service, as the firms did not engage in fierce price cutting policies. It was stressed that cartels and cooperation even could be of advantage for the whole economy: by spurring rationalisation, by preventing 'unnecessary' overinvestment and improving technological development. It appears that the cartel committee did not see cartel agreements as conflicting with the idea of free competition as they were voluntary agreements between firms. Moreover, they did not restrict market entry - at least not in principle.³⁵

Soon it, however, turned out that the law was ineffective from the perspective of prohibiting or abolishing harmful agreements. The authorities had in reality little power to interfere in single cases and no real effects came from the principle of publicity. The bulletin of the cartel authorities had a minute circulation and in the general newspapers, cartel cases were published as small announcements. What was to be seen as 'harmful' or 'unjust' was never defined, and as a result by 1962 no price fixing agreements had yet been declared illegal on such grounds, while for example, tender cartels, which were illegal, were 'due to their nature' difficult, if not impossible, to disclose.³⁶

³⁵ This receives support also from contemporary sources. Tamminen presented the same view in his fairly critical article of the outcome of but also the planning work and the motivations behind the first cartel law. Cf. Tamminen 1958.

³⁶ *Komiteanmietintö A* 1962:4, 21, 25

Moreover, the law was also ineffective from the control or surveillance perspective, as the registration of cartel agreements was to be done on the request of the authorities', not on the members' own initiative. Thus, the registration was slow and ineffective. The cartel authorities were, on the other hand, also fairly active to send out requests to companies already from the start: by 1962 the authorities had sent out 9750 enquires to firms, and 243 cartels had registered. This can also be observed from Figure 1: the number of registered cartels is fairly extensive from the beginning.

The law also received some harsh criticism of being ineffective and of having neglected all available theoretical economic knowledge.³⁷ It was pointed out that the committee members represented primarily Government authorities and business interest organisations (trade, co-operatives, manufacturing) and agrarian interest organisations, while politicians and consumer representatives had had little to say. These interest groups were not particularly interested in an effective anti-trust/cartel legislation.

The law of 1964

The law was taken up for revision already in 1959, when a new committee was appointed, primarily to assess the effects of the 1958 law and suggest needs for revisions or readjustments. The committee stressed that (vertical) price fixing agreements were to be banned as in Sweden. The enforcement of the law was also seen by the committee as ineffective. The publicity principle did not work as a deterrent. Instead a system based on negotiation processes was to be introduced according to a model from Sweden introduced in the revised law of 1953. This negotiation system was a system where the concluding of 'harmful' cartel agreements or in general inappropriate market behaviour could lead to negotiations with the authorities and in case the negotiations ended in no results and the cartel members did not adjust their agreement, the authorities could declare the agreements illegal.³⁸

Another particularly problematic issue was the notification of the agreements. As notification was to be done only on request, a significant share of cartels remained outside the register. The notification and registration process had to be made more efficient. Finally, the effect on competition legislation from the Finn-Efta-agreement

³⁷ Tamminen 1958.

³⁸ *Komiteanmietintö A 1962:4*, 20

of 1961, when Finland became an associated member in Efta, was to be evaluated and the law adjusted accordingly.³⁹

The revised law was passed in 1964. Firstly, vertical price fixing was declared illegal, in case it was not clearly stated that prices could be undercut. However, the proposition was again diluted as the final formulation was that both tender cartels and price fixing agreements could be allowed by getting special permission from the authorities. The negotiation principle was included and cartel agreements 'harmful' to the society could be dissolved. The monitoring and research activities of the cartel authorities were to be improved and intensified.⁴⁰

One of the most important reforms in the 1964 law concerned the notification and registration of cartels. This clause was specified. It was stated that only cartels taking the form of associations or a joint-stock companies had to notify the authorities and be registered, but the notification was to be done on the cartel's own initiative within 30 days of the signing of the agreement/establishment. Also changes in the agreement were to be notified to the authorities within 30 days. The registration of agreements done by individual entrepreneurs and/or companies was voluntary.

There was also a wave of new registrations after this (cf. Figure 2). However, still many cartel agreements remained outside the law, mainly as it now was voluntary to register for other cartels than those taking the form of associations or joint stock companies, but also many of those cartels under obligation to register failed to comply with the regulations. When studying the cartel register, several competition restriction agreements within the same branch was often registered simultaneously, as a result of investigations done by the authorities. The large amount of cartels still remaining outside the register was a fact also well recognised by the authorities themselves. In the committee report of 1982, it was evaluated that the register only consisted of part of all existing cartel agreements.⁴¹

The law of 1973

The law was revised a third time before the extensive transformations of the Finnish regulative environment of the 1980s and 90s. In 1971 a new committee was appointed, which submitted its report already in May 1972. The problem of the time -

³⁹ *Komiteanmietintö A 1962:4*: see also Eerola 1961.

⁴⁰ Laki.... 1964.

⁴¹ *Kilpailutoimikunnan mietintö 1982: B:52, 64*

a persistently high inflation - was to the fore in the report, where the cartels were recognised as one factor pushing prices upwards. The revision of the competition law was connected to the revision of price surveillance law.⁴² The target was also to renew the law – again – in order to make it more effective, i.e. to have some real effects in prohibiting ‘harmful’ agreements, and more ‘in accordance with the competition law in the other Nordic countries’, particularly the Swedish one.

The revised law – the law for the promotion of competition (fi: *laki taloudellisen kilpailun edistämisestä*), was passed in 1973, but no larger revision were put through. The notification clause became stricter by also compelling agreements between single entrepreneurs and/or firms to be notified and registered in case the price or pricing principles were binding. Since 1973 also dominating market position had to be registered.⁴³ Complaints against cartels could now also be submitted to the authorities by individual (competing) firms or consumer organisations. The promotion of competition was more often stressed which shows a new attitude. A new competition *ombudsman* (fi: *Kilpailuasiamies*) was appointed. This authority was to take initiative for the negotiation in the Competition Council (fi: *Kilpailuneuvosto*). This new position was a direct copy from Sweden.

After 1974 the cases dealt with by the authorities grew and some real effects from the activity of the authorities to avoid harmful agreements could be observed. In the period 1974-1981, 145 cases of inappropriate and harmful activities in order to restrict competition had been dealt with in the Council some of which led to voluntary actions of the firms or cartel. Some negotiations did not give rise to any further measures.

However, no large basic changes in the legal system or in the outlook on voluntary activities between companies in order to restrict competition occurred. Free competition was to be seen as the ideal situation, but cartels and various sorts of cooperation between firms were not as such a problem, as long as they were not particularly ‘harmful’ by e.g. preventing entry to markets or raising the price level unreasonably. The amount of cartels in the register grew, and the number of new cases exceeded the number of abolished cartels (cf. Figures in Appendix).

⁴² *Hinta- ja kilpailukomitean mietintö*. (The report of the price- and competition committee) 1972: B 52. Also in Sweden the promotion of competition had been seen as important for preventing inflationary pressures. Lundqvist 2003, 44ff.

⁴³ *Kilpailutoimikunnan mietintö* 1982: 48, Liite 3.

Although the Finnish legislation was until the 1980s more or less a copy of the Swedish one, in Finland this development did not mean a first step towards decartelisation as it has been claimed to have been the case in Sweden. Although the cartel register in Sweden still consisted of a high number of registered competition restrictions in the 1960 and 70s, according to Finnish sources, the number of cartels in the Swedish register had been declining since 1968. The number of new cartels fell short of the number of abolished cartels. The decartelisation in Sweden sprang partly alternative strategies to cartels, for example mergers and acquisitions, which decreased the need for cartel agreements, and as such could not be seen as decartelisation.⁴⁴ A Finnish analyst evaluated that this trend also originated in the Swedish authorities' activities, as cartels were in the neighbouring country dissolved at growing pace.⁴⁵ However, the evidence is not conclusive. At the same time the concentration rate in Swedish manufacturing had increased all the time. Also among existing cartels in Sweden the development had been towards more tightly and more formalised co-operation, i.e. in the form of common sales organisations or associations. Moreover, the registration of abolished cartels was in Finland partly ineffective (see Appendix, Note on the database). To what extent this was the case in Sweden is a question we can not answer. However, it appears that the Swedish authorities were a little more active in negotiating with the cartels and the negotiations having real effects.

In Finland this period did not mean decartelisation, as the number of new registrations constantly exceeded the number of the abolished although also in Finland cartels were abolished both as a result of mergers and acquisitions and in some case due to the activities of the authorities. Harm Schröter has concluded that in the post war decades, Sweden and Finland both had 'anti-abuse legislation', but this legislation was more strictly applied in Sweden, while Finland had more cooperative tendencies.⁴⁶ Moreover, in Finnish sources it was at several occasions stressed that big business', particularly within the *Industriförbundet* (Swedish Federation of Industries) took a more active negative attitude towards cartels: the Swedish general opinion including the business community favoured a more competitive environment.

⁴⁴ *Industrins struktur och konkurrensförhållanden. Koncentrationsutredningen III*. Statens offentliga utredningar SOU 1968:5. Stockholm 1968, 26

⁴⁵ *Komiteanmietintö* 1982: 49, Appenix 1.

⁴⁶ Schroter 1996.

Industriförbundet formed already in the late 1950s a working committee to promote policies to increasing competition, break up cartels and improve better productivity.⁴⁷

In the Finnish sources, it is on several occasions claimed that in Sweden the opinion had already since the 1960s become more negative on cartels and other forms of industrial co-operation to restrict competition. However, by turning to Swedish sources it appears that in the 1950s, the Federation of Industries and other business associations were clearly against stricter competition legislation. The business sector wanted to continue with the cartel register and ‘self-regulation’. Competition was to be increased, but by means a general liberalisation of all segments of the economy, not through a more restrictive competition legislation. The business associations were irritated that they were seen as the only guilty part for the lack of competition. The criticism for example against the ban on tender cartels was under harsh criticism in Sweden in the 1960s and 70s.⁴⁸ Every time the Swedish competition legislation was under scrutiny and planned to be made more ‘effective’ i.e. stricter, the business organisations were opposing it. Thus, by studying the Swedish sources the view of the contemporary Finnish analysts were not perhaps really accurate. However, it appears that other interest groups had a stronger influence than in Finland. For instance, the Swedish central organisation of trade unions (LO) appears to have been actively in favour of a tightening of the competition legislation.⁴⁹ Consumer organisations in Finland appear also to have had a fairly limited saying in the legal reforms before the 1970s.

Peter Sandberg, has, however, stressed that a favourable attitude towards promotion of competition as an instrument to a more competitive and efficient economy gained ground in Sweden in the 1950s.⁵⁰ Productivity and efficiency was to be improved, and policies against monopolistic tendencies and instead towards the promotion of competition were to be support this.⁵¹ Conflicting interest and diverging opinion between various types of firms and sectors existed, however, both between and within sectors.

What kind of real divergences might have existed in the cartelisation trends between Finland and Sweden needs to be investigated more in depth in order for us to

⁴⁷ Eerola 1960, check?

⁴⁸ Lundqvist, 2003 53-55

⁴⁹ Ibid.

⁵⁰ Sandberg 2006, 70.

⁵¹ Sandberg 2006, 68.

be able to make any strong conclusions, but it appears that the same type of legal framework can have somewhat diverging outcomes, especially if the legal framework is so loose as it was in the case of Sweden and Finland during these decades and the controlling authorities actually had fairly few instruments to interfere.

Liberalisation, Economic Integration and Decartellisation: Transformations 1980-2000

The 1980s and 90s brought with it radical transformations in the Finnish economy and model of capitalism. At the same time, the Finnish economy went through one of its worst peace time crises in the early 1990s, with negative growth for three subsequent years, bankruptcies, a rapid increase in unemployment and a severe banking crises. Fortunately, the recovery was also very fast in the second half of the 1990s, due to huge depreciations of the currency in 1991 and 1992, the success of some big corporations, and the public sector working as a buffer. The rapid structural reforms and changes in the institutional environment were partly induced by and called for by the crisis, some a result of political choice about a new regime which had started already earlier. Finally, some were also a result of the decision to apply for membership in the European Union, which became possible after the collapse of the Soviet Union. In 1992 the application for membership was submitted and in 1995 Finland became simultaneously with Sweden member of the European Union.

The EU membership required among other things the harmonisation of competition policies and legislation with the EU legislation. However, already before the membership was on the agenda, voices which demanded the promotion of competition and a more restrictive attitude to cartels and competition restrictions can be traced in the Finnish society.

In the early 1980s a new legislative committee was appointed to look over the competition legislation was – again - established, and which submitted its report in 1982. This work did not end up in a revision of the competition legislation.⁵² A new way of thinking is, however, discernable in the 1982 report. The arguments presented in the report indicate also a more profound theoretical knowledge about economic theory. The committee work was, however, motivated by a need to improve the instruments of the authorities to act against unhealthy competition restrictions.

⁵² Komiteanmietintö 1987-., xx

Another important reason was, again, a revised competition law in Sweden, which was passed in 1982.⁵³ Moreover, cartel and competition legislation was under much attention elsewhere in Europe. Although Finland did not yet have any plans or even thoughts about joining the EC at this stage, the influences from abroad did not go unnoticed, but penetrated also the Finnish society slowly. Such changes in the general outlook on market behaviour, on cartels and on competition policies should, thus, be seen as connected to the transformation in the economic and institutional environment and a move towards a more competitive environment - towards the 'competition state'. The radical transformations of the competition legislation in the 1988 and 1992 were not only linked to the application of EU membership, but a process within Finnish society starting earlier.

Although no pressures direct from Europe yet, a growing international orientation was evident also from the cartel committee report. The committee monitored and considered the supranational antitrust and competition policies and legislation in detail. The committee also considered the demands for change in legislation and for institutional adaptation from pressures from the international environment. Although Finland did not participate through membership in the deepening integration in Europe, Finland had through its free-trade agreements become increasingly dependent on international order. The growing activities of multinationals in the Finnish economy were also evaluated.

Finland's associated membership in Efta in 1961 and the free trade agreement with the EEC (1973), put demands on Finnish competition policies. According to the Efta convention no 15, agreements between companies, which aimed at restricting or distorting competition in order to undo the advantages achieved from the abolishing of tariffs and duties within the Efta area, were in conflict with the Efta convention. In the 1964 law a clause was added that price agreements were not to be taken under negotiations without the Government's permission in case it affected activities on foreign markets or could be seen as being affected by agreements with other countries. Such permission was only granted if the agreement with foreign states so required (§11).

According to EEC free trade agreement's 23rd article, cartel agreements to restrict competition, although limited to the domestic market, were affected by this

⁵³ SOU 1978:9., XX

clause in case such agreements affected trade between member states and Finland. However, no instruments to prevent or abolish such agreements existed in reality, as the free trade agreement was between the EEC and the Finnish Government, and thus not binding for individual companies, neither was it a binding in a way as supranational legislation is for member states. So it was more a question of bad image for Finland, if the cartels prevented the development of increasing free trade between the Community and Finland.⁵⁴ As Finnish big business's 'path abroad' started in the 1970s and became significant in the 1980s, which made them more motivated to keep up a good reputation on the European markets.

The committee of 1982 also wanted to include the banks to be covered by the competition law. This was part of a gradual loosening of the tight interest rate regulation of the Bank of Finland. The lending rate was strictly regulated, while the banks since the inter-war period had a fairly effective deposit interest rate cartel.⁵⁵ However, the inclusion of banks and insurance companies met with objections also within the committee, although many also saw that competition should be promoted also in these sectors. Finally, the notification clause was to become stricter.⁵⁶

This preparatory work did not lead to any renewal of the legislation apart from some amendments primarily making the jurisdiction of the authorities more efficient and the notification of cartels somewhat stricter, but already in 1985 a new committee was formed. This time a new competition law was passed, which came into effect 1988. This law is usually seen to have meant a significant and symbolic step towards a new phase, although no radical transformations occurred. The law of 1973 became significantly stricter. In this report a clearer detachment from the Swedish legislation and preparatory work is discernable. A thorough approach to study the Finnish situation from the perspective of the Finnish economic situation was evident from the report.⁵⁷ The competition policies of the European Community was considered as one alternative, but rejected as not 'suited the Finnish economy'. It was evaluated that it would also be difficult to decide what kind of activity was to be seen as violating the

⁵⁴ *Kilpailukomitean mietintö* 1982:49, 50–55.

⁵⁵ *Kilpailukomitean mietintö* 1982:49, 68

⁵⁶ *Kilpailu- ja hintakomitean mietintö* 1987:43, 6.

⁵⁷ Cf. Purasjoki, Matti & Jokinen Juhani, *Kilpailupolitiikan odotukset, saavutukset ja haasteet*. At <http://www.kilpiluvirasto.fi>. 12.2. 2007.

law.⁵⁸ An interesting interpretation, as this had been one of the problems with the more permissive laws.

The committee decided for a solution where competition restriction which where harmful for the competitive environment should be abolished.⁵⁹ The law did not yet prohibit cartel agreements and agreements to restrict competition, apart from those prohibited already in the previous law. The authorities were provided with better instruments to interfere in case of illegal cartels. Moreover, the attitude towards dominating market position in case it had harmful effects became explicitly negative. One important change was the §6 according to which horizontal agreements concerning prices and pricing principles, quotas or market areas, and which included a penalty clause, the penalty clause was declared 'ineffective', i.e. no penalties or fines could be imposed on cartel members violating the agreement or wanting to exit from the cartel. Also competition restrictions having negative effects on market efficiency, distorting pricing or hindering entrepreneurial activity or the activity of non-members could be declared illegal (7§).

The clauses concerning the notification of competition restriction agreements became significantly stricter. All agreements, apart from such which were clearly temporary, were to be notified to competition authorities within 30 days. The authorities' instruments to enforce the law and prohibit harmful and unjust agreements were also improved. Agreements between companies restricting competition could since then be declared illegal and dissolved. Cartel members engaged in illegal activities could be fined or sentenced to imprisonment. The exploitation of dominating market positions with harmful effects also became illegal.

The Finnish competition authorities also got a pronounced role in the exercising of the law. The Cartel Agency was transformed into a Competition Agency (fi: *Kilpailuvirasto*), which started in 1988.

In 1991 the legislation was renewed in order to gradually harmonise the Finnish legislation with the European Union legislation. The key principle became a ban on all forms of restrictions of competition. The new law came into force 1992, with a 6 months transition period for the business sector to be able to respond and adjust. Since then cartel agreements and other agreements which affect pricing, hinder business activities, decrease efficiency and is incompatible with international

⁵⁸ *Kilpailu- ja hintakomitean mietintö* 1987:43, 13-14

⁵⁹ *Kilpailu- ja hintakomitean mietintö* 1987:43, 176

agreements were declared harmful. This of course had to do with the Finnish application for membership in European Union, the application being submitted in 1992. In 1998, the legislation was transformed in accordance with the EU legislation.⁶⁰

As a curiosity, the Finnish law of 1992 was for once used as a model in Sweden by their legislative committee in 1992 when they had the same process of adapting to EU competition policies.. However, the Finnish model met with resistance in the Swedish parliament and instead the Swedish Government decided to go straight for the EU legislation.

Concluding Remarks:

From above we can see that the legal and regulative framework with respect to cartels and competition policies has been increasingly influenced by international models and trends, but also partly by the Finnish business dependence on international market. In particular Sweden has formed to model: the Finnish legislation followed with a certain lag the Swedish one until the 1980s. However, as the Swedish regulative framework in turn was influenced by trends in other countries the Finnish legislation was obviously also part of larger international trends. On the other hand, the competition/cartel legislation in the Scandinavian countries had until the 1980s also their own ‘Scandinavian’ characteristics, for instance the establishment of cartel registers, first established in Norway as away to monitor the situation. Both in Finland and Sweden the approach until the 1980s was the same: competition was in principle good, but to have a very prohibitive legislation was not a good idea, but the authorities were to evaluate every case individually.⁶¹

In Sweden the apparatus of official investigations and research in connection to legislative reforms have been much more extensive, and as such Finland did not only follow the Swedish experience, but also relied strongly on the knowledge and preparatory work done in Sweden. In two reports from 1951 both more theoretical investigations, for example concerning price-fixing (sve: *bruttoprís*) and empirical branch investigations were carried out in Sweden order to have a profound basis for the authorities to work with. Finland made use of this information and it is only after the foundation of the Cartel agency (*Kartellvirasto*) that branch investigations

⁶⁰ Purasjoki & Jokinen 2007.

⁶¹ Sandberg 2006, 75.

became regularity in the Finnish case. This supports the claim of Tamminen that Finland adopted clauses just by copying them from the Swedish law, without really investigating, analysing and discussing the need for them. Moreover, it was not only Tamminen who presented such a view but in the committee report of 1987 it was claimed that Finland had adapted the Swedish legal framework without any considerations for Finnish circumstances.⁶²

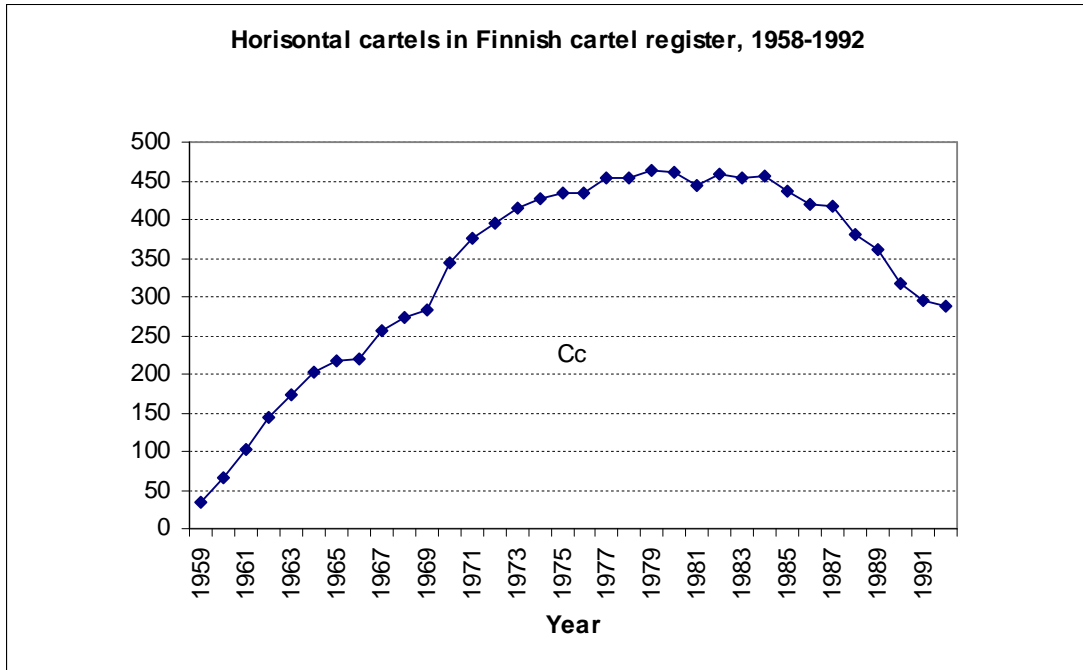
However, the Finnish legislation also evolved within and in connection to the domestic institutional and economic context. Firstly, the Finnish and Swedish institutional environment and economic structure are fairly similar and as such the Swedish legal framework possibly suited the Finnish institutional setting well. Moreover, the law was until 1980s so permissive and vaguely formulated, that it allowed for various policies and practices. Finland chose in the beginning a more cautious line, but in the law of 1973 Finland's legislation started to 'catch up' with the Swedish one. This had to do with the problems of inflation, and it was recognised that cartels and monopolies tended to drive prices up, but probably also with Finland's participation in economic integration by means of free-trade agreements. This did not yet require changes in domestic legislation, but was from an image perspective important.

The first cartel law in Finland in 1958 can not be seen as the beginning of decartelisation in Finland, as in many other European countries. Such a development started much later in Finland. On the contrary, the decade after the wars until the 1970s was apparently was a period of increasing cartelisation. It is only the strongly prohibitive regulation since the late 1980s which and a generally more negative view on competition restriction, which made cartels a less attractive solution, and at the same time promoting other alternatives to gain market control, e.g. consolidation.

Appendix

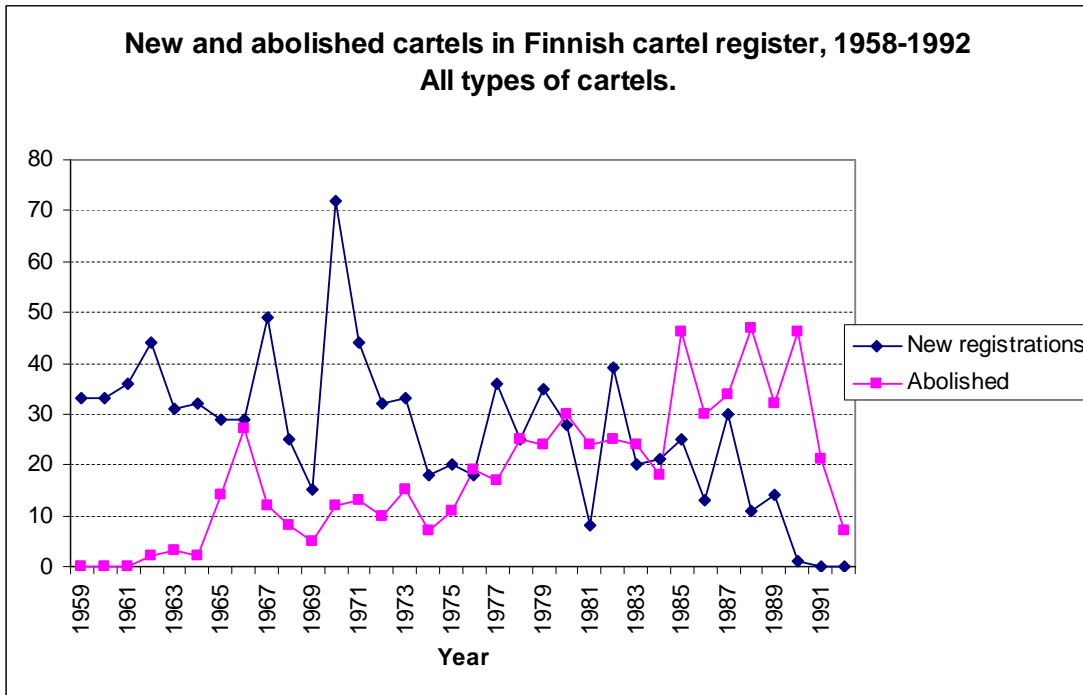
Figure 1.

⁶² *Kilpailu- ja hintakomitean mietintö 1987:4, 1.*



Source: Database based on registered cartels in Finland.

Figure 2



Source: Database based on registered cartels in Finland.

Note on the database used as basis for the figures:

This database consists of registered cartels in Finland 1958-1988. The results are very preliminary, as the database has just been completed. Basically, the database consists only of cartels notified to the authorities in accordance to legislation. Thus, the rise in the number of cartels partly reflects changes in the legislation. For instance a

substantial share of the existing cartel agreements remained outside the register before 1973, as it was not until then compulsory to register. It was well known by the authorities that also many cartels required to register failed to do so. Moreover, many registered only upon request, which means a big delay between registration date and the signing of the agreement. The big variations in the number of new registrations (Fig.2) originate in “peaks” in the registration activity, not in a sudden wave of cartelisation. Several cartels within the same branch were registered at the same time as a result of the authorities’ making branch investigations. This also shows the reluctance to register on the members’ own initiative. Finally, the number of abolished cartels removed from the register is also a somewhat problematic figure, as the authorities did not follow closely changes occurring, and as the cartels often forgot to inform the authorities about the abolishment, the removal from the register often occurred after a certain lag.