International developments

From New Zealand

New Zealand's Commerce Commission enforces both the Commerce Act 1986, which contains restrictive trade practices provisions, and the Fair Trading Act 1986, which deals with consumer protection matters.

The following are extracts from the Commerce Commission's newsletter Fair's Fair *(May 1998).*

New Chairman appointed

Mr Peter Allport has been appointed as the Commerce Commission's new Chairman.

Mr Allport was first appointed to the Commission in June 1992, has been its Deputy Chairman since July 1995 and has been Acting Chairman since 1 February 1998. He replaces Dr Alan Bollard who resigned as Chairman when he was appointed Secretary of the Treasury.

Together with his extensive knowledge of the Commission's operations, Mr Allport has business experience including 33 years in engineering, manufacturing and senior corporate management.

His appointment is for a one year term.

Southpower settles with Commerce Commission

On 8 April 1998 the Commerce Commission and Southpower settled their court action. Under the settlement Southpower will no longer contest the Commission's allegations that it breached the Commerce Act. It also agreed to restructure its businesses and pay the Commission $450 000 in costs.

The Commission acknowledged that the breaches occurred at an early stage of the industry's deregulation and that it was not Southpower's intention to breach the Act. It asked the court not to impose penalties on Southpower.

The Commission began court action on 4 March 1997 alleging that Southpower had acted anti-competitively in the way it tried to prevent competitors selling electricity to Christchurch consumers.

Allegations included that Southpower overstated the costs of its monopoly network business, understated the costs of its competitive electricity sales, and imposed excessive access charges on competitors that its own electricity sales business did not have to pay.

Under the settlement Southpower will create three separate businesses — a network business, an electricity retailing business and a business providing billing and metering services — which will operate as separate companies. It will establish a holding company to own the businesses in such a way that they operate independently of each other. The businesses will treat independent electricity retailers in the same ways that they treat each other. The network business will offer the same forms of

contracts to independent electricity retailers as it does to Southpower's electricity retailing business. Overall corporate costs incurred by Southpower will be allocated to the three businesses on the basis that the network business is the core business.

The restructuring is intended to:

- ring fence and limit the scope of Southpower's monopoly network business;
- organise Southpower's contestable businesses as separate corporate entities to help effective competition develop in those markets; and
- make it easier for Southpower to ensure that it treats its competitors in the same ways that it treats its own businesses.

From the United Kingdom

This item was extracted from issue 19 of the newsletter Fair Trading, produced by the *UK Office of Fair Trading.*

Codes of practice report

In February 1998 the OFT launched a report advocating a complete overhaul of the system of codes of practices which apply to sectors of business from double glazing to dating agencies.

The report, *Raising standards of consumer care*, addresses the perceived deficiencies in the current system of codes and proposes a new core standard which will apply across all businesses.

The proposals stem from consultations by OFT last year which returned the overwhelming message that the system needed sweeping changes.

The report identifies four main areas where the current system falls down. The first is that trade associations, in order to avoid imposing high costs on their members, may be tempted to adopt the lowest common denominator as their standard. Second, trade associations rarely punish members for breaking the code. Third, the trade associations' redress systems are not being used. Trade associations often have neither the power nor the will to force members to quickly put things right. Fourth, public awareness of the existence of codes is generally very poor, with the exception of one or two such as the ABTA code for tour operators and travel agents.

An essential component of the proposed new scheme is that standards would be set by an independent body. Currently, trade associations play the leading role in standard setting. The report argues that the appointment of an independent body would make standard setting more open and bipartisan. The OFT has proposed that the British Standards Institution, the nationally recognised independent body for setting standards for products, be appointed to that role.

The report also proposes the creation of an independent approvals body to vet applications by traders to join a register. Registered traders would have the right to display a 'better trader' logo. The approvals body would take action against traders on the register who did not adhere to the standard, including in the final event removing recalcitrant traders from the register and publicising their removal. The approvals body would also administer a redress scheme, which could be run along the lines of an ombudsman scheme where an independent expert acts as a referee between individual consumers and a trader.

OFT plans a conference in September 1998 for interested parties to discuss their views on the proposals.

The report is available from Office of Fair Trading, PO Box 366, Hayes, UB3 IXB.
Tel. 0870 60 60 321 or
email *oft@echristian.co.uk*

From Canada

Draft merger guidelines — bank mergers

The Competition Bureau is currently reviewing the way it examines bank mergers. On 28 February 1998 it announced the launch of a formal consultation process on the preliminary draft of the merger enforcement guidelines as applied to bank mergers.

The Bureau sought comment on the draft guidelines from almost 600 organisations and individuals including representatives of banks, other financial institutions, the business community, consumer associations, labour and social policy groups.

The draft guidelines originally formed the appendix to the Bureau's submission to the Task Force on the Future of the Canadian Financial Services Sector in November 1997. The full text of the Bureau's submission is available from its website at *http://www.ic.gc.ca/competition*

$16 million fine for price fixing in food and feed additive industries

On 27 May 1998 the Competition Bureau announced that Archer Daniels Midland Company (ADM), a United States corporation, had pleaded guilty to participating in international price fixing and market sharing conspiracies in the lysine and citric acid industries. ADM will pay fines totalling $16 million, the largest ever imposed under the Competition Act.

The charges are the result of an extensive criminal investigation conducted by the Competition Bureau into a scheme designed to inflate prices of lysine and citric acid and divide world markets, including Canada.

Lysine is an amino acid feed additive used in hog and poultry feeds with annual sales totalling $960 million worldwide. Citric acid is used as an ingredient in a variety of consumer products, including as a flavour enhancer and preservative in the food and beverage industry and more recently as a replacement for phosphates in the manufacture of environmentally friendly detergents. Worldwide sales total about $1.7 billion.

In addition to the fines the Federal Court of Canada imposed a prohibition order on the company to ensure that it does not repeat these offences.

From the USA

Fraudulent sale of 'US consumer protection agency' franchise

On 1 July 1998 the Federal Trade Commission announced that it had sought a permanent injunction in the federal District Court to stop the sale of purported franchises for local agencies of the US Consumer Protection Agency.

It is alleged that Robert M. Oliver, doing business as US Consumer Protection Agency (USCPA) and Consumer Protection Agency of Bay County, violated the FTC Act by falsely representing that his franchise was a government agency and by failing to make disclosures required by the Franchise Rule.

According to the complaint, Oliver promoted the USCPA franchise through the Internet, promising potential purchasers that for a minimum investment of $6000 he would provide training, licensing, certification and support to set up the consumer protection agency for the city or county chosen by the purchaser.

In addition, the complaint states that Oliver represented that purchasers of a USCPA franchise could earn large sums by selling their membership services to businesses within their franchise area. The promotion claims that even a small agency should initially earn $6000 weekly gross income, with a total gross income of $303 240, based on the experience of an actual agency. The complaint alleges that Oliver failed to provide prospective franchisees with complete and accurate disclosure documents.

In addition to permanent injunctions the complaint asks the court to permanently enjoin Oliver from violating the Franchise Rule and award civil penalties for each of his alleged violations of the rule.

Intel abuses monopoly power

On 8 June 1998 the FTC charged that Intel Corporation, the world's largest manufacturer of microprocessors, used its monopoly power to cement its dominance over the microprocessor market. It alleges that Intel unreasonably used its market power to cut off three customers — Digital Equipment Corporation, Intergraph Corporation and Compaq Computer Corporation — which sought to protect their own patent rights in microprocessor and related technologies that rival Intel.

Over the years Intel has formed mutually beneficial relationships with its customers — computer systems manufacturers — by providing them with technical information in advance of the official commercial release of its new microprocessor products. Intel benefits because its customers commit resources to designing new computer products that incorporate the new Intel microprocessor, and the customers benefit because they are able to introduce leading edge computer products with the latest microprocessor technology on a timely basis.

The FTC alleges that on at least three occasions Intel terminated, or threatened to terminate, its mutually beneficial relationships to retaliate against firms that sought to protect or assert patent rights in rival microprocessor technologies or that refused to license such rights to Intel. This retaliation primarily took the form of cutting off access to technical information that was needed to design computer systems based on soon-to-be-released Intel microprocessors.

Following a trial by an administrative law judge the FTC is seeking a notice of contemplated relief that would prevent Intel from repeating the kind of conduct it has engaged in with respect to Digital, Intergraph and Compaq. It is seeking an order that would leave Intel free to change customers' access to products and technology when it has legitimate business reasons, rather than to coerce licensing or sale of property.

US/European Communities agreement on antitrust enforcement

On 4 June 1998 the United States and the European Communities signed an agreement clarifying the circumstances under which they will refer cases of anti-competitive activities to each other under the doctrine of 'positive comity'.

Under a 1991 antitrust enforcement cooperation agreement the US and EC agreed that one party's antitrust authorities could ask the other's antitrust authorities to take measures against activities there that violated the latter's competition laws and that harmed the requesting country's commerce.

The new agreement identifies the types of cases that the authorities will normally refer to each other and spells out the obligations that they undertake in handling these cases. Specifically it provides that one side (the requesting party) will normally defer or suspend its enforcement activities aimed at anti-competitive conduct in the other's territory in favour of a positive comity referral to the other party in two types of cases:

- where the foreign anti-competitive activities do not directly harm the requesting party's consumers;
- where the foreign anti-competitive activities occur principally in, and are directed principally towards, the other party's territory, but incidentally harm the requesting party's consumers.

An example of the latter kind of case was a production quota agreement in Italy among Parma ham producers that affected consumers in both Italy and the United States. The FTC suspended its investigation in favour of an investigation by the Italian competition authority, which ultimately issued an order to phase out the production quota.

Under the agreement each side pledges to devote adequate resources and its best efforts to investigate matters referred to it and to inform the other side's competition authorities on request or at reasonable intervals of the status of the case. The US and EC have also agreed that some circumstances will justify parallel investigations and that neither side waives its authority to institute or reinstitute its own enforcement actions.