
International developments

From the UK

The following items come from the Office of Fair Trading's website (<http://www.offt.gov.uk>) and its magazine *Fairtrading*, Issue 25, February 2000.

New Competition Act

All businesses, irrespective of their size, had until 1 March 2000 to comply with the new Competition Act. It gives the UK Office of Fair Trading (OFT) wide-ranging powers of investigation, plus the ability to impose penalties of up to 10 per cent of turnover on those found to be in breach of the legislation.

The Act introduces two broad prohibitions, similar to those used by the European Commission to control commercial arrangements that affect trade between EU member states. Examples could be agreements to fix prices or to share out markets.

One makes it unlawful for companies to enter into an agreement or practice which prevents, restricts or distorts competition in the UK to an appreciable extent, or has that intention. The other makes it unlawful for companies to abuse a dominant market position, for example by imposing unfair purchase or selling prices, or by applying different trading conditions in a way that puts some parties at a competitive disadvantage.

The head of OFT's Education and Compliance, Kate Pitt, believes many companies will find doing business under the Act easier than under the old Restrictive Trade Practices Act. Notification of any agreement is voluntary and parties must decide for themselves whether or

not their agreements or courses of conduct fall within the scope of the prohibitions.

Under the new rules, the OFT, along with sector regulators for gas and electricity, water, telecommunications and the railways, will have extensive powers to investigate potential infringements. This includes the right to use reasonable force to enter premises and demand relevant documents and information. The OFT will also provide an incentive for members of cartels to blow the whistle on their illegal activity, with the possibility of total immunity from financial penalties if they are the first to come forward.

The Act is published on OFT's website at <http://www.offt.gov.uk>.

Expanded Competition Policy Division

The Competition Policy Division of the Office of Fair Trading has expanded from five branches to seven to cope with its extra powers under the new Competition Act. It is now based on the structure of the European Commission Directorate for Competition with four of the new branches organised along industry sector lines: Media, Sport and Information Industries; Service Industries; Basic Industries, Energy and Vehicles; and the Consumer Goods Industries. Policy Coordination, Mergers and Cartel Investigations are the three remaining branches.

Distance selling

The Department of Trade and Industry has invited comments on a paper detailing how the

EU Distance Selling Directive will be implemented from 4 June this year. The directive covers the protection of consumers who have been supplied goods or services agreed at a distance, but it doesn't apply to contracts between businesses.

According to the document, three new offences will be created under UK law. It will be a criminal offence for companies: not to inform customers about their cancellation rights; not to refund money to customers if they cancel an order; and to fail to provide a refund if a good or service is not delivered within the time period laid out in the contract.

The new legislation will be significant in two regards. Firstly, the enforcement base will be widened and will include the OFT, Trading Standards, the Data Protection Registrar and the Consumers' Association. This is consistent with action already taken regarding unfair contract terms and with the proposals in the Government's consumer White Paper (see Journal 25). Both the OFT and Trading Standards will be able to act against rogue traders.

Secondly, the legislation covers the domestic elements of the EU's Injunctions Directive, which comes into force by 1 January 2001. It will apply to areas such as distance selling, misleading advertising, package travel, unfair contract terms, timeshare and consumer credit. Qualifying bodies will be able to take action to stop breaches of the law, even if it arises from a business based in another member state.

Beating the rogues

A partnership between two councils in England and the local constabulary is putting the boot into the 'cowboys, conmen and fraudsters who live off the misery and gullibility of others'.

The intention is to defeat car thieves, one-day sales organisers and sellers of stolen, unsafe and counterfeit goods.

They have set up an anonymous phone line, which warns consumers about buying from dodgy dealers.

Every year about half a million cars are stolen in the UK and of those, only about half are recovered.

Unfair contracts

The Unfair Contract Terms Unit of the UK's Office of Fair Trading is finalising with qualifying bodies how they will share responsibility for acting against unfair contract terms.

Sharing responsibility will avoid duplication of resources and will make the process clear for consumers, suppliers and enforcement agencies.

Shopping rights website for students

The Office of Fair Trading launched a new website targeted at young people in higher education, giving them information about consumer rights, consumer credit, money management and debt.

Of the 300 000 young people who start higher education courses each year, many are young people living away from home for the first time.

The site helps them to shop wisely and get effective redress when things go wrong.

Issues it covers include:

- legal rights in buying goods and services
- returning faulty goods
- how to complain, going to court
- buying used cars
- Internet shopping
- borrowing money and using credit
- a debt action plan

The website can be found at <http://www.ofthelp.com>.

Redressing the balance

A recent report by the Office of Fair Trading, *Vulnerable consumers and financial services*, shows that regulation in that market has often benefited those towards the upper end of the income scale at the expense of those on low incomes or dependent on state benefits.

The report suggests that those who can afford mortgages, pensions and savings products, have effectively been receiving subsidies from taxpayers in general.

Part of the answer is to give weighting to low income consumers in cost-benefit analysis, according to two economists who were commissioned by the OFT to review the evidence.

In their report, *Welfare weights*, they conclude that for every 1 per cent fall in individual income, weighting in cost-benefit analysis should rise by between 1.2 and 1.4 per cent of its former value.

The OFT will now be actively promoting this welfare-weighting approach by a wide range of government departments and regulatory bodies.

To obtain a copy of the report, email oft@echristian.co.uk.

From New Zealand

The following items came from the NZ Commerce Commission's media releases listed on its website at <http://www.comcom.govt.nz>.

Precedent holds partners liable

A partner can be criminally liable under the Fair Trading Act for the actions of other partners, following the setting of an important precedent in the criminal convictions of two partners who ran Folio Model and Talent Management.

The Commerce Commission prosecuted the two for breaching the Fair Trading Act by making misleading claims about the cost of modelling training. They had not disclosed the additional costs involved in taking professional photographs of the women who signed up for training and putting the selected photos of them on a card for prospective clients.

Judge Rushton in the Auckland District Court said that partners must take personal responsibility for how their business is run and not hide behind the partnership and say 'nothing to do with me'.

Briefing paper for the new Government

In a briefing paper for the new Government, the Commerce Commission outlined its immediate challenges:

- emerging issues in network industries and possible new regulatory functions such as electricity price control;
- amendments to the Commerce Act that would likely increase the volume and complexity of cases, particularly until new case law develops; and
- major authorisation applications, which usually require extensive investigative and analytical resources, and price fixing and predatory pricing cases, which can span several years and entail significant legal costs.

Copies of the briefing paper are available from the Commerce Commission's website at <http://www.comcom.govt.nz>.

New policy seeks public comment

When should the Commerce Commission show leniency to a whistleblower? To answer this question, the Commission has just published a draft leniency policy for public comment.

It proposes to consider requests for leniency where individuals or businesses:

- inform the Commission about behaviour that might breach the commerce, electricity industry reform and fair trading acts;
- are prepared to fully cooperate, which includes disclosing their own behaviour and all relevant information, and giving evidence in court if necessary;
- are prepared to pay compensation where the Commission considers it appropriate;
- immediately stop the behaviour that might breach one of the acts; and
- are willing to put in place an effective compliance program.

In releasing the draft, Commerce Commission Chair John Belgrave said much of the activity that they investigate occurs behind closed doors and sometimes the Commission has to rely on the assistance of individuals and businesses. 'Their cooperation should be recognised', he said.

He also pointed out that treating people more leniently might make others more willing to cooperate.

Copies of the draft policy have been sent to 800 businesses, consumer groups, government organisations, lawyers, economists, academics and business advisers.

Penalties for petrol price fixing

Possibly in a worldwide first, a group of major oil companies in New Zealand were found in the Auckland High Court to have acted anti-competitively over the price of petrol and fined NZ\$1.175 million.

Caltex New Zealand Limited, Mobil Oil New Zealand Limited and Shell New Zealand Limited were found to have breached the Commerce Act after a long-defended hearing.

According to Commerce Commission Chair John Belgrave, successful cases have been held against individual oil companies but not previously against a group of major companies.

In taking action against the oil companies, the Commission alleged that they had colluded to jointly withdraw a discount from the price of petrol at more than 50 Auckland petrol stations. The discount was in the form of a free car wash offered to customers who spent \$20 or more on fuel.

Caltex and Mobil took unsuccessful strike-out actions against the Commission's case to the High Court and the Court of Appeal. The courts rejected both challenges. The trial was held in August and September last year, with a decision being handed down in October. The sentencing hearing was held at the beginning of February this year.

Car dealers increase 'sale' prices

The Commerce Commission is targeting false claims about cars, especially the common practice among dealers of increasing prices for 'sale' and trade-in promotions.

Information from car dealers about each other and from consumers suggest that prices are frequently inflated for such promotions. The Fair Trading Act prohibits false or misleading claims about prices.

A car dealer in Wellington, Avery Motors, advertised that a Suzuki Vitara 'was NZ\$19 990, reduced to NZ\$16 930' when in fact the car had been available from the same company at a different car yard for NZ\$14 990.

The company cooperated with the investigation and gave signed undertakings.

From the US

The following items come from the Federal Trade Commission's press releases found on its website (<http://www.ftc.gov>) and from *Antitrust & Trade Regulation*, published by the Bureau of National Affairs, Inc.

Reaching for the stars

A bogus talent agency, Screen Test USA, misled parents into believing that the chances of their children being selected by well-known talent agencies were heightened by buying the company's 'screen test services'.

In a case brought by the US Federal Trade Commission (FTC), Screen Test USA has been permanently banned from marketing and selling their screen test services, as well as having to pay a US\$972 000 settlement which represents all existing assets of the corporate defendants and a portion of individual defendants' assets.

According to the FTC, the defendants marketed and sold US\$45 'screen tests' primarily to parents of infants and young

children. The screen test was, in fact, a ploy to sell expensive, unnecessary packages of photos costing hundreds of dollars.

The company also encouraged parents to check them out through the American Child Actor and Modeling Association which was actually nothing more than a sham corporation set up by one of the defendants, Fred Vanore, to lend credibility to the deceptive scheme.

Stemming the scams on Internet auctions

In February this year, the major US law enforcement organisations, including the Federal Trade Commission, the Department of Justice, the US Postal Inspection Service, the National Association of Attorneys General and others, announced a scheme to stem the fraud faced by Internet auction-goers.

The scheme was announced on the first day of National Consumer Protection Week and offered suggestions to help consumers who shop online, through catalogues and by phone.

The number of complaints the FTC has received about Internet auctions has exploded in recent years — from 107 in 1997 to 10 700 in 1999.

The program, targeting Internet auction fraud, combines law enforcement, training of other federal and state law enforcers about tracking and prosecuting Internet scammers, and a consumer education campaign.

One recent case involved an online auction house, ReverseAuction.com, Inc, which the FTC alleged it had harvested consumers' personal information from a competitor's site (eBay) and then sent deceptive spam soliciting their business.

Settlement of the FTC charges bans ReverseAuction from making the misrepresentations in the future and requires the company to notify consumers who, as a result of receiving ReverseAuction's spam, registered or will register with ReverseAuction.

Restrictions on disclosing personal information

The Federal Trade Commission has proposed a Rule, which will implement the financial privacy provisions of the Gramm–Leach–Bliley Act, enacted in November 1999.

The Act places certain restrictions on when financial institutions may disclose non-public personal information about consumers to nonaffiliated third parties.

A financial institution under the Act must provide consumers with a privacy policy at the time of establishing a 'customer relationship' before personal information can be disclosed. The customer is also able to opt out of the information sharing, subject to certain exceptions.

The FTC sought public comment on the proposed Rule until 31 March 2000.

Reporting identity thieves

In February this year the FTC launched a scheme to help consumers combat identity theft. This occurs when a consumer's personal identifying information — name, address, credit card or social security numbers — is used to open new charge accounts, order merchandise or borrow money.

Victims are usually not even aware of the theft until the thieves fail to either pay the bills or repay the loans.

The FTC has set up a toll-free number where victims of identity theft can report the crime and get advice from trained counsellors. It has also set up a consumer complaint database via a website: <http://www.consumer.gov/idtheft>. The third component of its new campaign is a comprehensive consumer education program.

Seal of approval sought for children's websites

The FTC has also recently sought public comment on a plan by PrivacyBot.com to issue a 'seal of approval' indicating that Internet websites meet the requirements of the Commission's Children's Online Privacy Protection Rule.

In October 1999 the FTC issued a rule requiring children's website operators to post comprehensive privacy policies on their sites, notifying parents about their information practices and obtaining parental consent before collecting any personal information from children younger than 13. The rule, which complies with the Children's Online Privacy Protection Act, applies from 21 April 2000.

The Act also directed the Commission to review and approve industry self-regulatory guidelines that would comply with the Act. The PrivacyBot.com application is the first it has received.

Bayer launches campaign in settlement

The Bayer Corporation has launched a US\$1 million consumer education campaign to settle Federal Trade Commission charges that it made unsubstantiated claims in a series of aspirin ads, in violation of a previous FTC order.

The Bayer ads claimed that a regular aspirin regimen is appropriate for the prevention of heart attacks and strokes among adults.

The FTC alleged that since some adults are less likely to benefit from a daily aspirin regimen, and some may suffer adverse health effects from taking aspirin on a daily basis, the ad claims were unsubstantiated.

The consumer campaign features a brochure, 'Aspirin Regimen Therapy — Is It Right For You?' that Bayer will distribute free.

Future advertising must include a clause that states, 'Aspirin is not appropriate for everyone, so be sure to talk to your doctor before you begin an aspirin regimen'.

Consumer reporting agencies pay up

Three US consumer reporting agencies, Equifax Credit Information Services, Inc, Trans Union LLC and Experian Information Solutions, Inc, agreed to pay US\$2.5 million as part of the settlements negotiated in a recent case brought by the FTC.

The FTC alleged the agencies had violated the Fair Credit Reporting Act by failing to maintain a toll-free telephone number at which personnel are accessible to consumers during normal business hours. They had allegedly blocked millions of calls from consumers who wanted to discuss the contents and possible errors in their credit reports, and kept some of those consumers on hold for unreasonably long periods of time.

Each of the proposed settlements required that the companies maintain a blocked call rate of no greater than 10 per cent and an average hold time of no more than three minutes and thirty seconds.

From Canada

The following items come from the Competition Bureau's website at <http://competition.ic.gc.ca/>.

New draft immunity policy

The Competition Bureau launched a new draft *Immunity Information Bulletin* in February this year, explaining the policy and procedures involved in granting immunity from prosecution for criminal offences under the Competition Act.

The Bureau was responding to an increasing number of requests for immunity, and its policy matches those of Canada's trading partners, such as the US and the European Union.

The consultation period for comment ended on 3 April 2000.

Clothing companies warned about price maintenance

The Competition Bureau has warned major suppliers of brand name clothing to observe the price maintenance provision of the Competition Act in response to such suppliers pressing the Hudson's Bay Company to stop its discounting policy.

The provision prohibits anyone engaged in business from attempting to influence upward, or to discourage the reduction of, the price at which a business offers to supply or advertises a product in Canada.

It also states that a supplier cannot discriminate against a business because of its low pricing policy.

From Europe

The following items come from the European Commission's website at <http://europa.eu.int/rapid/start/cgi/guesten.ksh?qry>.

Differentials on car prices between member states

While price gaps for new cars have diminished slightly across the EU, they are still substantial, the European Commission found in a recent report.

The UK remains the most expensive EU market, while member states Finland and the Netherlands are among the lowest. Among the members of the euro zone, prices are highest in Germany for most of the models examined.

The Commission is still receiving complaints from final consumers, mainly UK residents, who encounter obstacles in car purchase in other member states.

Germany and Austria agree on fixed book prices

Germany and Austrian publishers have now accepted the European Commission's position with regard to the application of fixed book prices.

The present cross-border system between the two countries of fixed book prices which contains elements contrary to EU competition rules will be replaced by national systems by 30 June this year.

EU to investigate proposed telco merger

The EU has decided to fully investigate the proposed merger between telco companies MCI WorldCom and Sprint.

The focus of the investigation will be the provision of top level connectivity services in the Internet (that is, those networks to whom anybody must directly or indirectly have access in order to get universal reach on the Internet). It will also examine global telecommunication services provided to multinational companies and the provision of termination in the US of international voice telephony calls.

MCI WorldCom is a global telecommunication company providing a wide range of telecommunications services, as well as Internet services, mainly through its subsidiary UUNet.

Sprint also provides Internet and telecommunications services in the USA, and in Europe its activities are largely conducted through its participation in Global One, a joint venture with Deutsche Telekom and France Telecom.

The European Commission has raised serious doubts about the merger because of its impact on competition in the market for top level Internet connectivity.

In 1998 the Commission allowed the merger of WorldCom and MCI to go through only after MCI had undertaken to divest its Internet business. The transaction under review raises similar issues with MCI WorldCom still enjoying an undisputed leadership role and Sprint being probably the second player in this market.

EC investigates complaints about Microsoft

The European Commission has received complaints that Microsoft, by virtue of Windows 2000, has bundled its PC operating system with its own server software and other Microsoft software products in a way which permits only Microsoft's products to be fully interoperable.

Microsoft's competitors, which do not have access to the interfaces, would therefore be put at a significant competitive disadvantage. This would ultimately allow Microsoft to extend its dominance in PC operating systems into the closely related markets for server operating system software and 'middleware' (which provides functionality enhancing the performance of client/server operating systems such as back office or security tasks).

The Competition Directorate General of the European Commission has formally requested Microsoft to provide information about the new technical features of Windows 2000 in the context of EC competition law.

The allegations come from end users, small and medium-sized enterprises in the IT sector and competitors of Microsoft. A major concern is that whoever dominates the server software market is likely to control e-commerce too.