
International developments

From Europe

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

Telling air passengers their rights

The European Commission has noted that passenger dissatisfaction with the level of service is growing even with legislation to protect their interests and increasing competition in the air transport market. It considers that this is partly because passengers do not know their rights. A poster publicity campaign has been introduced to increase passengers' understanding of their rights, under what conditions they can complain, who they can complain to, and whether there is a good chance of obtaining reasonable compensation for inconvenience or for lost money and possessions. The poster covers the following points:

- Information on flights and reservations: a passenger is entitled to neutral and precise information on the flights available when making inquiries or booking through a travel agent in the European Union (EU) and, whether the ticket is booked by means of a travel agent or directly through an airline, they must receive full information about the service.
- Overbooking: if, at an EU airport, an airline prevents a passenger from boarding because it has overbooked the flight, it must offer the following:

- a choice between reimbursement of the relevant part of the ticket or an alternative flight (re-routing);
- compensation in cash; and
- care during the delay (meals, refreshments, hotel, telephone calls or faxes).
- Compensation in case of an accident: passengers travelling with an EU airline, or their relatives, have the right to full compensation for death or injury (there is no upper limit to the airline's liability). They also have the right to up-front payments if needed to help with immediate economic hardship.
- Air travel as part of a package holiday: air passengers travelling as part of a package holiday or tour must receive precise information from the organisers about their trip. The consumer has the right to transfer his or her booking to another person. The organiser is responsible for any failure to meet the terms of the contract, so problems with the flight element of a tour or holiday should generally be taken up directly with the organiser. He will act on the passenger's behalf in dealings with the airline.

Commission fines companies in lysine cartel

The Commission recently fined Archer Daniels Midland, Ajinomoto and three other companies a total of almost 110 million Euro for operating a global price fixing cartel for lysine.

Lysine is the most important amino acid used in animal foodstuffs for nutritional purposes. The five cartel participants manufacture and sell synthetic amino acids.

This case started in July 1996, shortly before several cartel participants were charged by the US antitrust authorities with engaging in illegal conspiracy. In July 1996 one of the companies, Ajinomoto, decided to inform the Commission about the existence of the cartel.

Ajinomoto's decision came right after the Commission had adopted its Leniency Notice on the non-imposition or reduction of fines in cartel cases. This notice sets out the conditions under which companies cooperating with the Commission during its investigation into a cartel may be exempted from fines or granted reductions in fines.

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 26, May 2000.

OFT consults on professions

The OFT recently published a consultation document that will allow customers and consumer bodies to contribute to the competition authority's review of anti-competitive practices within the more economically significant professions. The review covers legal and accountancy services and related professions such as auditors and insolvency practitioners, and may extend to a range of other professions, for example pharmacists, actuaries, architects, engineers and surveyors. Teachers and the medical professions are unlikely to be covered.

Restrictions on conduct

Information is being sought on fee scales or rules, regulations and codes that affect charges, particularly recommended fee scales that exist for various professions. Similarly, although advertising of professionals is now generally permitted, the OFT will examine limitations to advertising to ensure they are justified and proportionate.

Restrictions on entry

These include disproportionately tight standards for obtaining and retaining the right to practise.

Views are sought on the training and qualifications needed for entry to the professions and on requirements for ongoing professional training.

Restrictions on demarcation

These include restrictions that require certain professional services to be conducted only by certain members of the professions with particular qualifications and seniority.

The consultation document can be downloaded from the OFT's website at <<http://www.offt.gov.uk>>.

UK consumers shortchanged on protection — Bridgeman

Publishing the final annual report of his five-year term, the head of the Government's competition and consumer protection authority, John Bridgeman, stated that a combination of weak law and long-term apathy has allowed disreputable and irresponsible business to flourish at the expense of UK consumers. He went on to say:

The best that can be said of the buying experience in Britain is that it is mediocre. Consumer protection agencies, including the Office of Fair Trading, fight a frustrating battle against increasingly sophisticated and widespread unfair trading. There have been successes but much more could have been done if the law had been up to the task.

Unfair trading is costing UK consumers billions every year. Their biggest source of complaint — defective goods and services — is damaging the economy by at least £8.3 billion a year. ... The cost of competition failure is at least £9 billion a year — 1 per cent of GDP — cartels alone are estimated to add 20 per cent to prices. ... Global trade and e-commerce are increasing the financial risks to consumers. Cowboys, frauds, confusion selling, misleading claims and the hidden pitfalls of long-term investments are among the problems which demand a new approach. ... For too many years both the law and funding of central and local consumer protection have been inadequate — the OFT has just £10 million a year for this work. The quality of protection and advice consumers can expect is often dependent upon the 'lottery' of where they happen to live.

From the US

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

Disclosure of cigar health risks

The seven largest USA cigar companies have agreed to include warnings about significant adverse health risks of cigar use in their advertising and packaging after action by the FTC.

The landmark settlements represent the first national requirements for health warnings on cigar products and follow a report by the National Cancer Institute detailing the health risks of cigar smoking. FTC efforts were assisted by the Office of the Surgeon General of the United States and the California Attorney General's Office.

Under the agreements virtually every cigar package and advertisement will be required to clearly and conspicuously display warnings on a rotating basis.

Strategic alliances and cyber tools fight 21st century fraud

The Council of Better Business Bureaus, the United States Postal Inspection Service, the National Association of Attorneys General (NAAG), and the FTC have formed an alliance to fight consumer fraud in the 21st century. The alliance features consumer sentinel, an investigative cyber tool and complaint database available to more than 240 law enforcement agencies in the USA and Canada.

The consumer sentinel database, maintained by the FTC, now contains more than 250 000 consumer fraud complaints that have been filed with federal, state and local law enforcement agencies and private organisations. These include the FTC, the Better Business Bureaus, the National Consumer League's National Fraud Information Center and Internet Fraud Watch projects and Canada's Project Phone Busters, an organisation that targets

telemarketing fraud. The database can be accessed by law enforcers in the USA and Canada through an encrypted website. In addition to complaint data it can be used to determine trends in fraud, search an index of fraudulent telemarketing sales pitches and check for companies already sued for fraud, or those under investigation.

New York designer failed to provide proper care labels on its garments

Karin Stevens, Inc., a New York City designer and importer of ladies dresses and pant suits, has agreed to pay a \$20 000 civil penalty to settle FTC allegations it did not have a reasonable basis for the care instructions it placed on some of its garments, in violation of the FTC's care labelling rule. The FTC alleged that Karin Stevens failed to state on some care labels a regular care procedure needed for the ordinary use of the product and that garments were damaged when cleaned according to the instructions.

One million dollar settlement in shark cartilage case

Lane Labs-USA, Inc., Cartilage Consultants, Inc. and their principals agreed to settle FTC charges that they made unsubstantiated claims about the efficacy of two products — BeneFin and SkinAnswer — in the prevention, treatment and cure of cancer. The FTC alleged the defendants also falsely represented that clinical studies have shown that BeneFin and SkinAnswer are effective in preventing, treating, and curing cancer, and falsely represented that the Food and Drug Administration had evaluated the effectiveness of BeneFin. In separate settlements, both companies would be prohibited from making unsubstantiated health-related claims about any food, drug or dietary supplement. In addition, the proposed settlement with Lane Labs and its president Andrew J Lane included a \$1 000 000 judgment.

The settlements were part of 'Operation Cure.All' an ongoing federal and state law enforcement and consumer education campaign targeting false and unsubstantiated health claims on the Internet.

FTC and state investigators check used car dealers for required 'buyers guides'

In a recent survey of 637 used cars displayed by 14 dealers, FTC staff found that 208 cars had no or unsatisfactory buyers guides.

The FTC's used car rule requires that used car dealers post a one-page buyers guide in each car to ensure consumers get information about warranty protection.

The rule also provides that the buyers guide becomes a part of the sales contract and overrides any contrary provisions contained in that contract.

The buyers guide also contains various important warnings and suggestions for consumers. Copies of the consumer publication *Buying a used car* and the guide for used car dealers *A dealer's guide: the used car rule* are available from the FTC's web site at <<http://www.ftc.gov>>.

Marketers of dietary supplements settle FTC charges

Efamol Nutraceuticals, Inc., and J & R Research, Inc. which sold or marketed dietary supplements that claim to mitigate or cure the effects of attention deficit disorder or attention deficit hyperactivity disorder (ADHD), agreed to settle FTC charges that the claims for their products were unsubstantiated. The products are Efalex, Efalex Focus and Pycnogenol.

The proposed consent agreement with Efamol would prohibit the company from making claims that any food, drug or dietary supplement can cure, prevent, treat or mitigate ADHD or its symptoms; or that such product is effective in reducing attention and behavioural problems, unless it has competent and reliable scientific evidence to substantiate the claims.

J & R touted Pycnogenol as effective in treating ADHD as well as cancer, heart disease, arthritis, diabetes and multiple sclerosis.

Record companies settle FTC charges of restraining competition in CD music market

The FTC recently reached separate settlement agreements with the USA's five largest distributors of recorded music to end allegedly illegal advertising policies that affected CD prices. The distributors, Universal Music and Video Distribution, Sony Corp. of America, Time-Warner Inc., EMI Music Distribution and Bertelsmann Music Group (BMG), sell approximately 85 per cent of all compact discs (CDs) purchased in the USA. The FTC had alleged the companies had illegally modified their existing cooperative advertising programs to induce retailers into charging consumers higher prices for CDs, allowing the distributors to raise their own prices. It estimated that USA consumers may have paid as much as \$480 million more than they should have for CDs and other music because of their policies over the previous three years.



The FTC contended the company policies were developed to counter a retail price war that had developed in the early 1990s when many new music retailers, including major consumer electronics stores, started to sell CDs at low prices to gain customer and market share.

E-commerce

FTC staff issues guidelines on Internet advertising

The FTC recently issued a working paper on how its own consumer protection rules and guides — many of which were developed long before 'dot com' became a household phrase — apply to advertising and sales on the Internet. The paper *Dot com disclosures: information about online advertising* provides guidance to businesses about how FTC law applies to online activities and focuses on the clarity and conspicuousness of disclosures in Internet ads. The paper also discusses how Commission rules and guides that use certain words — 'written', 'writing', 'printed' and 'direct mail' — apply to new technologies.

The working paper advises online advertisers that the same consumer protection laws that apply to commercial activities in other media apply online and that any disclosures required to prevent an ad from being misleading must be clear and conspicuous.

The paper discusses, in the context of online ads, the traditional factors used to evaluate whether disclosures are likely to be clear and conspicuous.

Copies of the paper are available from the FTC's web site at <<http://www.ftc.gov>>.

Online Dispute Resolution Workshop

The FTC and the Department of Commerce recently hosted a workshop that explored alternative dispute resolution mechanisms for consumer transactions online. Topics included the following:

- Defining alternative dispute resolution and its applicability to the online world.
- Chargebacks as a model of alternative dispute resolution.
- What are the reasons for industry, consumers and governments to participate or not participate in developing alternative dispute resolution for the global online marketplace?
- What issues need to be addressed in developing alternative dispute resolution mechanisms for the online marketplace?

- What is the intersection between alternative dispute resolution and judicial dispute resolution?
- What are the proper roles for all stakeholders, including governments, industry and consumer representatives, in developing and implementing alternative dispute resolution mechanisms?

Workshop on competition issues in business-to-business electronic marketplaces

The FTC recently held a public workshop on business-to-business (B2B) electronic marketplaces. It brought together designers, owners, and operators of B2B electronic marketplaces, and the buyers and sellers who use them. The goal of the workshop was to enhance understanding of how B2B electronic marketplaces function and the means by which they may generate efficiencies, and identify any antitrust issues that they raise.

B2B electronic marketplaces are software systems that allow buyers and sellers of similar goods to carry out procurement activities using common, industry-wide computer systems. Issues addressed by the workshop included the following.

- How do B2B electronic marketplaces work? What can they do?
- What are the business reasons driving the creation of B2B electronic marketplaces? What new efficiencies can such marketplaces create?
- What competition issues may be raised by B2B electronic marketplaces?
- What are likely procompetitive benefits, and what are possible anti-competitive concerns?
- What issues are relevant to structuring and implementing B2B electronic marketplaces so as to realise efficiencies and avoid competition problems?

Report on electronic commerce (Telecommunications Reports International)

*Federal Trade Commission panel issues final
online access and security report*

A new FTC advisory committee study offers potential options for providing consumers access to personal information collected on web sites. The report by the committee also addresses the need for authenticating the identities of consumers who attempt to gain access to such information.

The report is available at
<<http://www.ftc.gov/acoas/papers/acoasfinal1.pdf>>.

*Television commerce puts interactive
shopping, transactions on TV*

At first glance, television commerce (T-commerce) may appear to be an updated term for current home shopping networks and infomercials. But as demonstrated at the National Cable TV Association annual convention in May 2000 in New Orleans T-commerce pushes tele-shopping much further. Prototype systems allow 'viewers' (a neologism for interactive viewers plus users) to purchase products or services seen anywhere on a telecast — in commercials, infomercials or even in a story line of a program. While rapid progress awaits the deployment of set-top receivers, mostly digital upgrades, that enable the two-way ordering to take place, most companies meanwhile are developing hybrid approaches with phone-in or Internet ordering.

The above three articles are edited versions of ones in: *Report on electronic commerce, Telecommunications Reports International, Inc* Vol. 7 May 2000.

Website <<http://www.tr.com>>.

From Canada

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

Competition Bureau releases draft guideline on pet food labelling and advertising

The Competition Bureau recently launched the guide for the labelling and advertising of pet foods. The guide provides a set of principles for pet food labelling, guidance on using specific claims, and examples of acceptable claims.

Adherence to the guide will also help ensure consumers are provided with enough information to make informed purchasing decisions.

Warning to businesses: Beware of phoney invoices

The Competition Bureau has warned businesses to take precautions before paying questionable invoices that surfaced recently in various provinces. The invoices are sent to recipients requesting payment for a supposed listing in an Internet business directory, a service that had not been previously requested. The invoices look similar to those sent by legitimate publishers of business directories. For instance, the phoney invoices contain slightly modified, well known and nationally recognised business logos.

Auto starter removed from market

After the Competition Bureau raised concerns about adequate testing to substantiate performance claims for the auto starter, Interwood, the exclusive distributor in Canada agreed to remove it from the Canadian market and offer refunds. The auto starter was marketed as a device that would plug into the cigarette lighter and recharge a drained car battery.

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>.

Unsafe baby bottle toys

The Dunedin High Court recently ordered a permanent injunction preventing Myriad Marketing Limited and Sweetline Distributors Limited distributing Big Baby and Chewy Baby brand toy baby bottles with removable teats. The companies consented to the injunction being made. The toys contained sweets and were sold by a wide range of shops. The Commission alleged the toys were a choking hazard to young children and did not comply with the product safety standard for toys. This issue has yet to be finally determined by the courts. The 'Big Baby' and 'Chewy Baby' bottles have a screw cap and a plastic teat that is easily removed from the cap. The teat is too small to meet the standard and is a choking hazard. The safety standard applies to toys for children aged up to three because up to about that age children do not have a properly developed coughing reflex when they choke.

Misleading claims by furniture retailers

Interest-free offers

The Commission's prosecution of Waitemata Backcare Beds and Waterbeds Limited highlights one of the main concerns the Commission has about furniture retailing: that is, 'interest free' offers must be the same as the cash price. The Commission Chair John Belgrave made the following points.

- If customers pay more for hire purchase than the cash price, then it is not interest free.
- It is false or misleading and a breach of the Fair Trading Act to describe a hire purchase offer as 'interest free' when customers must pay insurance, booking fees, administration costs or any other charges.

- Retailers can impose fees and interest but they must then disclose them clearly and not call it an 'interest free' offer.

Courts first ruled on this issue many years ago, and have given the same decision many times since.

Fine-print gift offer

Commission action against misleading claims by furniture retailers has continued with the Auckland District Court ordering Panmure Furniture City to pay an \$8000 fine plus \$2000 costs. The Commission had alleged Panmure Furniture City breached the Fair Trading Act by offering free mountain bikes and cordless telephones with the intention of not providing them as offered. Panmure Furniture City used voice-overs in television advertisements to offer 'free mountain bikes and cordless phones'. At the end of each commercial a number of conditions appeared in small print. One of the conditions was 'free phone and bike offer on selected items'. This notice was not included in the voice over and was so fleeting and small in size it was unnoticeable.

Below-cost pricing of woollen insulation product

The High Court at Auckland has found that the manufacturer of 'Pink Batts' fibreglass insulation, Carter Holt Harvey Building Products Group Limited (Carter Holt), contravened the Commerce Act when it used its market dominance to prevent or deter Nelson-based company, New Wool Products Limited from competing with it. The Commission had claimed New Wool Products wholly woollen insulation product, 'Wool Bloc', significantly reduced sales of Pink Batts in Nelson and other areas. The Commission alleged that Carter Holt responded by launching a wool and polyester combination insulation product which it called 'Wool Line'. However, the price of Wool Line was about double that of Wool Bloc and sales of Wool Line, particularly in Nelson and Marlborough, were low. The Commission had claimed that as a result of New Wool Products' continued success, Carter Holt supplied Wool Line to outlets, mainly in the Nelson/Marlborough region, at below cost the offering of two bales for the price of one.