
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 27, August 2000.

Improvement in air passenger rights

Airlines are to make scheduled flight contracts significantly fairer to consumers after intervention by John Bridgeman, Director General of Fair Trading. Changes to the airline contract were made after Mr Bridgeman challenged 30 airline contract terms as potentially unfair and unenforceable, including terms covering transferability of tickets and the rescheduling of flights.

The new terms include:

- the entitlement to a credit note for a non-refundable ticket if the passenger is prevented from travelling;
- return tickets can no longer be cancelled by airlines if the outward ticket is not used for reasons beyond the consumers control; and
- the entitlement to a refund for significant delays in flights which is the airline's fault and if no alternative flight can be provided.

The International Air Transport Association (IATA) has revised its recommended contract and the way is now clear for airlines to adopt the new terms.

Car servicing and repair under scrutiny

Poor workmanship in the car servicing and repair industry in Britain is costing consumers up to £170 million a year. An investigation launched by the Office of Fair Trading revealed that the service provided by many large firms,

franchised dealers and local garages needs a thorough overhaul.

This has been the third time in four years that the OFT has had to investigate a part of the motor industry after consumer complaints. Some of the more common concerns were higher than expected bills and vague explanations about costs and precise details of the service.

The OFT report proposed five recommendations which includes the appointment of a high-level task force of industry, consumer and government representatives to prepare an agenda for action. The OFT will also produce its own consumer guidance on car servicing and repair later this year.

Law Society told to clean up its act

Concerns about the Law Society of England and Wales failing to deal with complaints against solicitors nearly cost them their Group Consumer Credit Licence. The licence, normally issued for five years, was renewed for only one year with quarterly reviews.

John Bridgeman, Director General of Fair Trading said that the volume of complaints against solicitors and the failure of the Law Society to effectively deal with it serve to undermine public confidence in the profession. He issued the society a final warning to get its act together.

Approvals body for e-commerce

A new cross-industry initiative to distinguish businesses which have signed up to approved e-commerce codes of practices will soon give shoppers more peace of mind and confidence to buy online.

TrustUK was launched in July and is an approvals body for e-commerce codes. Which? Web Trader, Direct Marketing Association and the Association of British Travel Agents had their codes approved. These organisations and other future 'code owners' have to ensure that their members adhere to the terms of their codes. In return, members can display the TrustUK logo on their websites. To earn approval, codes have to adhere to the TrustUK approvals criteria, which include guidelines produced by the Organisation for Economic Cooperation and Development.

The TrustUK hallmark indicates that consumers can, among others, expect security of payment, data protection, fair cancellation rights and access to an independent redress mechanism when a dispute cannot be resolved.

Economist to take over OFT helm

Professor John Vickers, previous Chief Economist and Executive Director of the Bank of England, is now at the helm of the OFT replacing John Bridgeman who completed his five-year term as Director General of Fair Trading at the end of September.

Vickers has an extensive knowledge and experience of business issues and markets, combined with detailed expertise in competition matters. He joined the Bank of England in 1998 after working in the oil industry and teaching economics at Oxford University.

John Bridgeman said that he was delighted with Vickers' appointment and that he was taking over at a time when consumer issues were getting more and more prominence.

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.

More unsubstantiated ADHD treatment claims

The New York company, Natural Organics Inc. have been charged by the Federal Trade Commission for making unsubstantiated claims

that its dietary supplement, Pedi-Active A.D.D., treat or alleviate attention deficit hyperactivity disorder (ADHD).

This is the fifth action by the FTC involving ADHD products in the United States. Up to 2.5 million school children suffer from this behavioural disorder, which includes inattention, impulsiveness and hyperactivity. The advertisements representing Pedi-Active A.D.D. as a treatment to alleviate inattention and poor scholastic performance appear in many magazines, a brochure and an informational letter.

The notice order would prohibit Natural Organics from making misleading representations about the product's health benefits, performance or efficacy unless it is substantiated by reliable scientific evidence.

Internet retailers settle FTC charges over shipping delays

Seven large Internet e-tailers agreed to settle Federal Trade Commission charges for providing buyers with inadequate notice of shipping delays or continuing to promise specific delivery dates when timely fulfilment was impossible during the 1999 holiday shopping season. The companies have agreed to change their procedures and to pay civil penalties of up to \$1.5 million.

The settlements were the culmination of an FTC investigation, Project TooLate.com, into promises made by major online retailers about express delivery during last year's holiday season. The Mail and Telephone Order Rule requires that goods are shipped within the date promised or within 30 days of the order's receipt. If the company cannot honour its deadline, a notice should be sent to the buyer with a revised shipping date, giving the consumer the option to cancel the order.

The settlement shows that FTC takes the violations of the rule seriously and will expect e-tailers to comply with the law or face stiff penalties.

United States and Australia sign two consumer protection agreements

The Federal Trade Commission and the ACCC have signed two agreements to facilitate law enforcement cooperation in the consumer protection area of the United States and Australia.

Cross-border Internet transactions are taking place more regularly and consequently there is a greater need for cross-border law enforcement cooperation. These two agreements will enable both parties to better combat fraudulent, misleading and unfair commercial conduct in each other's jurisdiction.

The first, the FTC-ACCC Cooperation Agreement, provides for enhanced cooperation and information sharing between the FTC and the ACCC. The purpose is to increase law enforcement assistance between the two countries. The second agreement, the Consumer Sentinel Agreement, allows the ACCC to participate in the FTC's Consumer Sentinel system — a consumer complaint database used by more than 250 law enforcement agencies. This will enable both countries to prosecute consumer fraud more efficiently.

Fraud and deception in US travel industry

The Federal Trade Commission has recently completed the third sweep in four years of the United States travel industry. Jodie Bernstein, Director of the Commission's Bureau of Consumer Protection said that the FTC is working diligently to ensure that consumer's plans for enjoyable travel do not unravel. The FTC has been working with state authorities to uncover fraud and deception costing consumers hundreds of thousands of dollars each year. The investigation, known as Operation Travel Unravel, resulted in 85 actions for alleged violations ranging from failure to disclose the actual cost of travel packages to misleading representations about time-share presentations.

Crackdown on credit-repair scams

The Federal Trade Commission, the Department of Justice and 47 other federal, state and local law enforcement and consumer protection agencies did an Internet search for illegal scams promising consumers a restoration of their creditworthiness for a fee. More than 180 websites were put on notice that their credit-repair claims may violate state and federal laws.

A number of credit-repair advertisements made claims that they can remove negative information from consumer's credit reports and others advertised instructions on substituting a false social security number for a current one to

start fresh with a new credit identity. These claims are misleading and false and contravene a new federal law designed to help consumers combat fraudulent credit-repair scams — the Credit Repair Organizations Act.

Email warnings have been sent to website operators who may be violating this law. These warnings encourage credit-repair operators to access the FTC website that contains the statutes and consumer credit information.

From Canada

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

German corporation fined \$12.5 million for price fixing

The Competition Bureau announced recently that the German corporation, SGL Carbon Aktiengesellschaft (SGL AG) has pleaded guilty to fixing prices in Canada and has been fined \$12.5 million. This is the largest fine ever imposed under s. 46 of the Competition Act.

SGL AG was convicted of implementing price directives as part of an international conspiracy to fix prices and allocate markets for graphite electrodes. Harry Chandler, Deputy Commissioner of Competition, Criminal Matters said that the conspiracy struck at the heart of the Canadian steel industry reaping illegal profits at the expense of Canadian businesses and consumers.

As a result of the international cartel, operating from May 1992 to June 1997, a regime of uniform price fixing existed between the two main suppliers of electrodes to the Canadian market. Alternative supply sources were essentially eliminated. Electrode prices in Canada increased by more than 90 per cent over this period.

In imposing this fine, the court took into consideration the accused's agreement to cooperate with the Bureau's ongoing investigation, its limited ability to pay and the significant amount paid in restitution to the affected Canadian companies.

Deceptive telemarketing and direct mail practices

A director of three Montreal-based telemarketing companies pleaded guilty to three criminal charges of misleading advertising under the Competition Act. The companies carried out deceptive telemarketing and direct mail practices resulting in hundreds of victims reporting losses totalling close to a million dollars.

From March 1994 to November 1997 the companies solicited consumers by phone and through the mail asking them to buy items such as pens and coins at inflated prices. Two of the companies are currently awaiting trial on charges of misleading advertising.

Big fine imposed on international conspiracy

A Japanese corporation, Daicel Chemical Industries Ltd, and one of its senior executives have been convicted of an international price fixing and market sharing conspiracy that affected prices over a 17-year period. The conspiracy involved sorbic acid and potassium sorbate (known together as 'sorbates').

Total sales of sorbates in Canada during the period of offence were about \$37 million, with Daicel's sales at approximately \$8 million. Daicel Chemical Industries Ltd was fined \$2.46 million and the senior executive \$250 000 for his part in the conspiracy.

From New Zealand

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

Chief Investigator seconded to set up new Zimbabwe competition agency

The Commerce Commission's Chief Investigator, Business Acquisitions, John Preston, has been seconded to the Commonwealth Secretariat for a year to set up a competition law agency in Zimbabwe.

Zimbabwe has a considerable private sector economy with large mining and manufacturing operations. It has passed competition law similar to New Zealand's Commerce Act and legislation in Australia, North America and Asia.

Mr Preston will be based in Harare and will work with the Permanent Secretary to the Minister of Industry and Commerce, but be responsible to the Commonwealth Secretariat in London.

He will be involved in planning the structure of the Industry and Trade Competition Commission, determining its enforcement activities, developing its investigation, analysis and decision-making processes and organising the recruitment and training of its staff.

Pyramid selling scheme liable for more than \$3.1 million

The Auckland High Court recently imposed the highest order ever under the Fair Trading Act on Maximus Intermediaries Limited, a pyramid selling scheme, to pay more than \$3.1 million to people who had bought into the scheme.

The liquidators stated that the preferential creditors are Maximus employees, who are owed \$18 585 and the Inland Revenue Department (IRD), which is owed more than \$3.1 million. It is therefore very unlikely that the 12 000 people who bought into the scheme will ever see their money again. They can file a claim with the liquidators in the hope of receiving some payment after the debts owed to Maximus' employees and the IRD have been paid.

Big changes in store for Commerce Commission

Commerce Commission Chair, John Belgrave, said in his foreword to the *Annual Plan 2000-01* that the Commerce Commission's responsibilities will undergo the greatest change ever since its inception as a stand-alone agency in 1986.

These changes will include:

- proposed amendments to the Commerce Act that will possibly affect the volume and complexity of Commerce Act work, particularly until new case law develops, and potentially on an ongoing basis;
- possible extensive new functions in the electricity industry as the Government considers the recommendations of the ministerial inquiry into that industry; and
- the potential enforcement of several new product safety and consumer information

standards to be enforced through the Fair Trading Act.

From Europe

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

Investigation of nuclear joint venture

The European Commission has decided to investigate the proposed joint venture of French companies Framatome SA and Cogema SA and Germany's Siemens.

Framatome is a designer and manufacturer of nuclear power plants. Cogema is a state-owned company, mainly active in the nuclear field and Siemens is an electrical engineering and electronics company. The new joint venture will combine the nuclear activities of Framatome and Siemens.

The creation of this joint venture will affect certain nuclear technology markets, particularly the design and manufacture of fuel assemblies, instrumentation and control systems and the replacement and installation of nuclear power plant components. The EC has serious doubts about the operation's compatibility with the common market and its overall impact on the nuclear technology markets.

Focus on B2B transactions

The European Commission has published a notice stating its intention to clear agreements between a number of major European and US banks. At stake is the need to provide a worldwide network for the authentication of electronic signatures and related financial and e-commerce transactions.

A joint venture, Identrus, has been set up by the notifying parties to initially focus on business-to-business (B2B) transactions. The company is incorporated under US law, with a limited number of equity owners, but no single shareholder in control. The European Union (EU) has recognised the importance of such a service to develop e-commerce in the recent Directive on electronic signatures.

The notifying parties are ABN-AMRO, Bank of America, Barclays Bank, Hypo-Vereinsbank, Chase Manhattan Bank, Citibank, Deutsche Bank and Pyramid Ventures. The certification system is open to other financial institutions and will operate with other systems developed by financial industry ventures, such as postal authorities and telecommunications carriers.

Euro-zone exchange probe

Shortly after the introduction of Europe's single currency, the euro, in January 1999, the European Commission received consumer complaints alleging that banks in Germany and the Netherlands had collectively fixed charges to exchange euro-zone currencies.

The EC's investigation was based on surprise inspections at a number of banks and on replies to questionnaires sent to most euro-zone banks. The investigation showed that banks and national associations may have colluded to keep the commissions at a high level or to control their decrease. The EC has warned these banks that it has evidence of breach of EU antitrust rules concerning the setting of charges for exchanging euro-zone currencies.

EC Commissioner, Mario Monti, said that banks were free to set the level of charges for exchanging currencies, but that they cannot get together to fix those charges.

European Commission investigates Microsoft

The EC is investigating allegations that Microsoft Corp is abusing its dominant position in the market for personal computer operating systems software by leveraging this power into the market for server software.

The EC's actions follow a complaint by American software company, Sun Microsystems, that Microsoft had breached European Union antitrust rules by engaging in discriminatory licensing and by refusing to supply essential information on its Windows operating system.

Resolution of this case is very important, as operating systems for servers constitute a strategic sector in the development of a global market for information technology and e-commerce.

The EC's investigation of Microsoft is quite different from the subject matter of the US proceedings which revolves around Microsoft protecting its dominance in PC operating systems through measures aimed at weakening Netscape's Navigator Internet browser and Sun's Java system.

New food safety hygiene rules

David Byrne, Commissioner for Health and Consumer Protection announced the most radical shake-up for 25 years of the Community's food safety hygiene rules in July this year. The new regulations will merge and simplify very detailed and complex hygiene requirements previously scattered over 17 existing directives.

The basic principles underlying the new hygiene rules are the introduction of the farm to fork principle, the principle that food producers have primary responsibility for the safety of food and the traceability of all food and food ingredients. There will also be additional hygiene rules for food of animal origin and controls by national authorities.

This systematic set of uniform rules should fill the gaps in the existing legislation and enhance food safety throughout the food chain.

From South Africa

The following items come from the South African Competition Commission's media releases on its website at <http://www.compcom.co.za>.

Holistic review of regulatory framework in South Africa

South Africa hosted a conference on 17 and 18 April 2000 in Midrand on 'Regulation and competition: the role of a competition authority in a developing economy'. The conference addressed questions on the role of a competition authority in the regulation of public utilities, such as electricity and telecommunications. It also looked at the importance of competition in sectors that have been deregulated or privatised and the extent to which competition and public interest considerations need to be balanced in sectors such as the financial services and the media or broadcasting sector.

International speakers at the conference included Mr Allan Asher, Deputy Chair of the ACCC, Mr Ian Alexander, a World Bank Private Sector Development specialist, and the President of the Brazilian Competition Authority, Mr De Oliviera.

Search and seizure of cement companies

The Competition Commission recently embarked on its first search and seizure operation. The targets of the operation were Pretoria Portland Cement Pty Ltd and Slagment Pty Ltd. The Commission investigated a complaint of alleged collusive behaviour.

The Commission made several requests to the parties to submit information necessary for the investigation. Despite promises of cooperation the required information was not forthcoming. As the Commission had reason to believe that key information could be destroyed, it initiated a search and seizure operation.

In terms of s. 46 of the Competition Act, the Commission may initiate a search and seizure operation if 'there are reasonable grounds to believe that:

- a prohibited practice has taken place, is taking place or is likely to take place on or in those premises; and
- that anything connected with an investigation into that prohibited practice is in the possession of, or under the control of, a person who is on or in those premises.'

Unions involved in proposed sale

The Competition Commission approved the sale of Metro Gas to the Egoli consortium on 1 August 2000, as they believed it would not affect the market concentration in the provision of piped gas in the designated municipal area. Price increases would have to be negotiated with the Greater Johannesburg Metropolitan Council and therefore Egoli will not be in a position to unilaterally raise prices.

The Competition Commission held discussions with both the South African Municipal Worker's Union (SAMWU) and the Independent Municipal and Allied Trade Union (IMATU) to identify union concerns about the proposed sale. Union

concerns related mainly to the privatisation of utilities.

The Commission was satisfied that an agreement had been reached between the parties and the unions, that there would be no employment losses for a two-year period, that the transaction would not change the competitive market situation and that consumers would not be subjected to unilateral price increases. On this basis the transaction was approved.