International developments

From the UK

The following items come from the Office of Fair Trading's website <http://www.oft.gov.uk> and its magazine, *Fairtrading*.

Cartel busters collude in Brighton

International cartel busters, involved in fining businesses more than £860 million over the previous 18 months, gathered in Brighton for a two-day conference in November 2000 organised by the OFT.

Senior officials from around 30 competition authorities, including the US Department of Justice, the ACCC, the Fair Trade Commission of Japan and authorities from throughout Europe, met to share experiences and methods.

The conference, the largest ever of its kind, gave delegates an opportunity to discuss leniency policies, education programs, ways of discovering secret price-fixing arrangements and third party action.

The conference also looked at forensic IT, including various techniques to access material thought to have been deleted from computers.

John Vickers, Director General of Fair Trading, commented that:

> Global cartels demand a global response. Cartels are prime targets of competition authorities worldwide and some record fines have been imposed over the past two years.
>
> In response to the crackdown, some cartels have ceased. But others are trying harder than ever to cover their tracks and make detection difficult. In a bid to unearth them, many authorities, including the OFT, have set up or are in the process of setting up dedicated cartel investigation sections to root out price-fixing and market sharing.
>
> By sharing such information we can keep ahead of the fight against cartels and ensure that consumers and businesses reap the benefits of competition — lower prices and better products.

Rogue credit brokers warned

Credit brokers who fail to refund fees when a consumer does not take up a loan may risk losing their consumer credit licences.

The warning follows the revocation of the credit licence belonging to Baronsmede Finance. Baronsmede's licence was taken away because the company failed to refund fees of more than £300.

Section 155 of the Consumer Credit Act 1974 states that if a borrower does not take up a loan offered by a broker — for whatever reason — the broker can only keep £5 of the arrangement fee.

The OFT received complaints about Baronsmede and a copy of a letter sent by the business to consumers stating that should an application not lead to a loan, a minimum processing fee (£240) would be deducted from fees paid.

Importer promises not to supply dangerous toys

Academy International Plc, a London-based importer and wholesaler of toys, electrical and fancy goods has agreed that it will not supply unsafe or falsely described products. The company and its officers, Surjit and Harjit Sachdeva, have given written assurances to the Director General of Fair Trading about their future conduct.

The OFT investigated the company after receiving details of six successful trading standards prosecutions for breaches of consumer law. The company had been convicted of 12 offences under the Consumer Protection Act 1987 and three under the Trade Descriptions Act 1968. These convictions related to the safety and packaging of a variety of goods ranging from a dinosaur egg toy to Christmas tree lights.

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.

Markets to go before merger gets go-ahead

Before agreeing to a merger of SmithKline Beecham and Glaxo Wellcome that would form the world's largest research-based pharmaceutical manufacturer the FTC asked the companies to divest themselves of six significant product markets, including:

- antiemetics (drugs used in chemotherapy to reduce the incidence of side effects);
- the antibiotic ceftazidime;
- oral and intravenous antiviral drugs for the treatment of herpes, chicken pox and shingles;
- topical antiviral drugs for the treatment of cold sores;
- prophylactic vaccines for the treatment of genital herpes; and
- over-the-counter H-2 blocker acid relief products.

In three markets where competitive overlaps exist due to existing agreements with other research and development firms, the consent order addressed:

- topoisomerase I inhibitor drugs used to treat certain tumours;
- drugs for treating migraines; and
- drugs to treat irritable bowel syndrome.

After the merger, the newly formed company, Glaxo SmithKline plc, will have an estimated market capitalisation of $182 billion and annual sales of $26 billion.

The agreement was to be subject to public comment until 17 January, 2001, after which the FTC would decide whether to make it final. Copies of the agreement are available from the FTC's website.

FTC reaches record financial settlement

A recent $100 million settlement with Mylan Laboratories, Inc. was the largest monetary settlement in FTC history. If the settlement is approved by the federal district court, Mylan will pay the money into a fund for distribution to injured consumers and state agencies.

The FTC had alleged that Mylan, Cambrex Corporation, Profarmaco SRL, and Gyma Laboratories of America, Inc. carried out a plan intended to give Mylan the power to raise the price of generic lorazepam and clorazepate tablets by depriving its competitors of the active pharmaceutical ingredient (API) necessary to manufacture them. Generic drugs are identical versions of branded drugs and typically sell at a substantial discount from the price of the branded drug. Many companies that manufacture generic drugs purchase the API from a third party.

By early 1997 vigorous competition among generic manufacturers had driven down the prices of both lorazepam and clorazepate to very competitive levels.

In late 1997 the defendants entered into exclusive licenses that deprived Mylan's competitors of the API for lorazepam and clorazepate.

Subsequently Mylan raised prices up to 2000–3000 per cent and the FTC alleged that through its agreements with the other defendants, Mylan had earned an additional $120 million.

Internet retailers swept for dodgy shipment promises

The FTC recently surfed more than 200 Internet retailer sites searching for shipment promises made to entice consumers to their sites during the holiday buying-season. They found nearly 100 sites that claimed they would quick-ship within 24–48 hours after an order is placed. Internet shipment claims are governed by the mail or telephone order merchandise rule, which covers promises about shipment time periods, notifying consumers about unexpected delays, and refunding consumers' money.

Tips provided by the FTC staff to e-tailers included:

- basing shipment claims on facts, not hopes — there must be a reasonable basis for stating that a product can be shipped within a certain time;
- revising shipment representations in ads or websites before accepting an order — the rule permits you to notify consumers at any time before they complete their order that shipment may take longer than the originally advertised time provided you have a reasonable basis for that new shipment time;
- if you unexpectedly cannot ship within the promised time, you must notify the consumer of the delay within the original shipment time; and
- notifying your customers of their right to cancel and get a full and prompt refund.

After the previous holiday season, the FTC acted against seven well-known e-tailers for allegedly violating the rule and the companies paid more than $1.5 million in total penalties. It was expected that during the 2000 holiday period, 35 million online holiday shoppers would purchase online.

FTC closes down fake ID mill on the Internet

An Internet business that bragged about the high quality of the templates it sold to help produce false identity documents was recently ordered to halt the sales by a US District Court at the request of the FTC. The FTC was seeking a permanent bar on the illegal activity and recovery of the defendant's illegally-earned income.

According to the FTC, identity thieves often use fake IDs to steal someone's identity. They buy goods they have no intention of paying for, run up mountains of debt and destroy the innocent person's credit record.

Internet pyramid artists settle FTC charges

An FTC settlement bans the defendants in a pyramid scheme from engaging in such schemes in the future, and misrepresenting the availability and profitability of jobs. The defendants were required to pay $72 000 in consumer redress.

The FTC alleged that DP Marketing and its principals sent consumers unsolicited commercial email (spam) with messages such as:

> National Marketing Company seeks individuals to handle office duties from home. This is a full or part-time position with a salary of $13.50/hr. The position consists of processing applications for credit, loans or employment, as well as online consumer service.

Consumers were informed that the $13.50 per hour jobs were for processing orders for DP Marketing from the comfort of their own homes. They were told that no experience was necessary, and that for a 'registration fee' ranging from $9.95 to $28.72 they would be sent everything they would need to get started, including telephone scripts, product sheets, time sheets and an ID number. What the consumers actually got was a kit instructing them first to place advertisements identical to the ones they had responded to, and then to read the same script to people who responded to their ads. Instead of $13.50 per hour, the money consumers could earn was based on the number of new victims they could recruit.

$28 million fines awarded against postal jobs scam artists

As well as imposing fines totalling more than $28 million a federal district court banned William Tankersley and his eight corporations from marketing career advisory goods and services, engaging in telemarketing, and misrepresenting any material fact regarding any employment program or employment with the US Postal Service. The FTC had alleged that the Indiana-based operation had fraudulently offered employment with the U.S. Postal Service.

Manufacturers of rapid HIV tests settle FTC charges

Two manufacturers of rapid HIV tests not approved by the Food and Drug Administration have settled FTC charges that, in some instances, their tests did not accurately detect the presence of HIV antibodies. Under the terms of the settlements, Chembio Diagnostic Systems, Inc. and Alfa Scientific Designs, Inc. will be barred from making, or assisting others in making, any false or misleading representations about the accuracy of any unapproved HIV test or other unapproved device. The two settlements are the latest in a series of FTC enforcement actions against marketers of unapproved rapid HIV tests, and the first cases against manufacturers of the devices.

Crack down on deceptive mail offers, unsolicited faxes and spam

The FTC recently announced that as part of Project Mailbox IV, the FTC and its federal and state law enforcement partners brought hundreds of actions in the past year against scam artists who used mail, unsolicited faxes and email spam to bilk [cheat] millions of dollars out of consumers and businesses. The results of their year-long effort are summarised in the just-released Project Mailbox IV report, which covers 1 October 1999 to 30 September 2000.

More than one-third of the federal cases and just over half the state actions were taken against companies that used the mail, or sent spam and unsolicited faxes and who also had a website or advertised on the Internet.

Offers using sweepstakes and prize promotions led the list of law enforcement actions and millions of dollars were returned to consumers who were taken in by such offers. The second largest category focused on deceptive travel and vacation scams with more than 50 law enforcement actions against major players in the vacation certificate and timeshare industry.

Other cases included investment scams conducted through the mail, spam or fax, many of which attempted to manipulate stock prices or to sell unregistered securities.

Copies of the report on law enforcement actions and consumer education initiatives are available from the FTC's website.

From Canada

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

Deceptive telemarketing attracts big fine

Telemarketing company C.S.R.H. Heritage Group Inc. was recently fined $700 000 and the company's manager, Ronald Howell, sentenced to a six-month conditional jail term for infringing the Competition Act by using deceptive telemarketing and direct mail practices.

The company had phoned and sent letters to consumers telling them they would get valuable awards or premiums if they bought promotional products such as pens and coins that the company was selling at what turned out to be inflated prices. Consumers stated they were misled about the nature, value and quality of the awards, and that extra conditions and restrictions required to collect the awards were either not mentioned or only partially disclosed by the company.

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>.

Consumers warned to watch cellphone charges

The Auckland District Court recently fined Freedom Communications Limited $8000 for breaching the Fair Trading Act by advertising cellphone calls at 5 cents a minute but charging 99 cents a minute.

Commission Chairman, Mr Belgrave, said that the case was a warning to all consumers who use pre-paid cards for cellphones, telephones or Internet services and to the companies that provide pre-paid cards. Consumers cannot easily check what they are charged and must rely on the companies to charge what was offered.

Candles may release lead fumes

In recent settlements with the Commerce Commission five businesses have recalled banned candles that have wicks containing lead. The businesses are Freedom Furniture Limited, Spotlight Stores (NZ) Limited, Glatt Holdings Limited trading as Casa, Designer Closeout Limited and Cosmopolitan Agencies Limited.

All admitted breaching the Act by selling banned candles.

The Commission pointed out that:

- burning the candles releases lead fumes into the air and that lead is absorbed into the body much faster when it is breathed in than when it is swallowed;
- the banned candles can be identified because they have a metallic thread in the wick;
- although some metallic threads in candles are zinc, some of these are contaminated with lead — such candles are also covered by the ban, even if the level of contamination is low; and
- the only way to ensure that a metal thread in candlewicks does not contain lead is to have it scientifically tested.

The traders gave undertakings to recall the candles, offer refunds to consumers and ensure that unsafe candles or wicks are not sold in future.

Pyramid selling schemes come under scrutiny

The Auckland District Court fined an Auckland man, Terrence Samuel Wall, $8000 for promoting in New Zealand two overseas-based pyramid selling schemes, Focus International Credit Card Plan and World Net International Inc. The judge took into account Mr Wall's limited ability to pay fines — he is currently unemployed — and that he made little if any money from the illegal schemes.

Earlier this year, the Auckland High Court ordered Kerry Lindsay Paul and Coralee Ngaio Judson to pay back more than $3.1 million to people who had bought into their Maximus Intermediaries Limited pyramid selling scheme. However, Maximus owes creditors and the Inland Revenue Department more than $1.3 million, and the 12 000 people who bought into the scheme will probably get nothing back.

Last year the Napier District Court fined Lisa Sharon Morton $30 000 and ordered her to pay back $200 000 to people in the Joker 88 and Liberty Group Bonds pyramid selling schemes.

In Mr Wall's case, Focus International is based in Jamaica and Antigua. People paid $US299 to join, plus an additional annual fee of $US149 and a monthly fee of $US69. World Net is based in Texas and people made a one-off payment of $US149 to join.

Mr Belgrave warned that Focus International and World Net are typical of pyramid schemes that are deliberately promoted in ways that hide their true nature. In reality they rely on constantly recruiting more and more people, and the goods or services they offer provide little or no return.

Computer retailer fined for small print advertising

The Auckland District Court recently fined two companies for breaching the Fair Trading Act by describing compulsory additional costs in small print only.

Computer retailer Gateway New Zealand Limited was fined $21 500 and Air New Zealand subsidiary South Pacific Air Charters Limited, which trades as Freedom Air International, $4000.

Gateway had listed compulsory delivery costs in small print only. Customers could not buy computers at the prices advertised — they always had to pay an additional $45.