
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*.

Amazon.co.uk and BOL.com

After discussions with the OFT, Amazon.co.uk and BOL.com have agreed to include delivery charges in refunds that they provide to customers who return goods within the legal cooling off period.

Under the distance selling regulations consumers have the right to a cooling off period of seven working days after receipt on most goods. The OFT view is that the normal postage and packing charges for the delivery, but not the return, of distance sales purchases must always be refunded in addition to the cost of the goods when orders are cancelled during the cooling off period.

John Vickers, Director General of Fair Trading said:

The Distance Selling Regulations give consumers the security to buy from home, confident that they can change their mind once they have received and seen their goods. Consumers are entitled to a refund of normal delivery charges when goods are returned.

From Ireland

The following is a summary of an article contributed by McCann FitzGerald to the International Law Office online competition newsletter at <http://www.internationallawoffice.com/ld.cfm?Newsletters__Ref=5132>

Prison sentences introduced for collusion

New provisions in the Competition Act 2002 which will replace most existing Irish competition legislation include imprisonment for up to five years for hardcore offences such as participating in cartels. The new legislation also provides for enhanced powers of detention and questioning.

Fines of up to Euro\$4 million or 10 per cent of the turnover of the undertakings involved (whichever is the greater) may be imposed when a conviction is obtained for any infringement of the Act.

Other changes

For notifications, the authority will lose its exclusive right to decide whether a restrictive agreement should nonetheless be regarded as compliant with the act because, on balance, its beneficial economic effects outweigh its negative impact. Businesses and their advisers will now have to assess this instead of relying on a decision of the authority. However, the authority retains the power to issue declarations stating that, in its opinion, specific categories of agreement that satisfy stated conditions comply with the Act.

The authority's powers of investigation have been greatly increased. For example, a search warrant for a 'dawn raid' will continue in force for one month and will allow repeat raids within that period. The authority will be entitled to take original documents and not merely copies, and will be entitled to raid the homes of company executives (using reasonable force to gain entry when necessary).

Infringements of EU competition law become criminal offences under the Act.

From the US

Unless otherwise stated, 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.

Accuracy of 'WHOis' database

The Director of the Federal Trade Commission's Bureau of Consumer Protection, Howard J Beales III, has discussed the importance of data accuracy for domain name registrations in fighting Internet fraud.

In recent testimony to the US Congress, Mr Beales, the FTC Director of the Bureau of Consumer Protection outlined the need for accurate information in the Whois database, which holds information including the names and locations of web site operators. He noted that the database is often the first tool used in investigations into Internet fraud, emphasising that accuracy and integrity of this information was critical in quick identification and action against wrongdoers.

FTC enforcement efforts have sometimes been hampered by inaccurate names, addresses, and telephone numbers listed in the database and the FTC had now called on Internet registration body ICANN to support efforts to improve data accuracy. Measures currently available to registrars include eliminating blank or incomplete registration forms, and suspending registrations for failure to correct outdated contact details.

Scam artists exploit 'do not call' registries

Scam artists are exploiting the popularity of existing state 'do not call' lists and the proposed FTC 'do not call' registry to trick consumers into giving up personal information, such as their social security number, bank account number, credit card number or telephone calling card number. They claim to represent a 'do not call' registry or the FTC and ask people for information, supposedly to verify that they are on the 'do not call' list.

Electronic abdominal gadgets

(also see enforcement chapter, this journal)

The FTC recently challenged in federal district courts various claims made for three widely advertised electronic abdominal exercise belts—AB Energizer, AbTronic, and Fast Abs. The FTC alleges that the marketers of the devices, which use electronic muscle stimulation (EMS), have falsely advertised that users will get 'six pack' or 'washboard' abs without exercise.

FTC Chairman Timothy J. Muris said:

For years, marketers of diet and exercise products have been preying on overweight, out-of-shape consumers by hawking false hope in a pill, false hope in a bottle, and, now, in a belt'. Unfortunately, there are no magic pills, potions, or pulsators for losing weight and getting into shape. The only winning combination is changing your diet and exercise.

The FTC complaints also challenge refund, shipping, and warranty practices.

Order bars operator from hijacking, mousetrapping surfers

A US District Court has ordered the perpetrator of an Internet scheme to halt his illegal practices. The defendant employed more than 5500 copycat Internet addresses to divert surfers from their intended Internet destinations to one of his sites, and hold them captive while he pelted their screens with a barrage of adult-oriented ads. At the request of the FTC, the court permanently barred the defendant from diverting or obstructing consumers on the Internet and from launching websites or website pages that belong to unrelated third parties. The court also has barred the defendant from participating in advertising affiliate programs on the Internet, and has ordered him to give up more than US\$1.8 million in ill-gotten gains.

The FTC had charged that the defendant, John Zuccarini, was registering Internet domain names that were misspellings of legitimate domain names or that incorporated transposed or inverted words or phrases. For example, Zuccarini registered 15 variations of the popular children's cartoon site, www.cartoonnetwork.com, and 41 variations on the name of teen pop star, Britney Spears. Surfers who looked for a site but misspelled its Web address or inverted a term—using cartoonjoe.com, for example, rather than joecartoon.com—were taken to the defendant's sites. They then were bombarded with a rapid series of windows displaying ads for goods and services ranging from Internet gambling to pornography. In some cases, the legitimate website the consumer was attempting to access also was launched, so consumers thought the hailstorm of ads to which they were being exposed was from a legitimate website.

Once consumers were taken to one of the defendant's sites, it was very difficult for them to exit. In a move called 'mousetrapping', special programming code at the sites obstructed surfers' ability to close their browser or go back to the previous page.

Three tenors prices agreement hits wrong note with judge

Administrative Law Judge, James P Timony, recently ordered a series of companies, all of which are subsidiaries of French corporation Vivendi Universal S.A., among other things to cease and desist from entering into 'any combination, conspiracy, or agreement'—with producers or sellers at wholesale of audio or video products—to

'fix, raise, or stabilise prices or price levels' in connection with the sale in or into the United States of any audio or video product. The respondents, which include PolyGram Holding Inc.; Decca Music Group Limited; UMG Recordings Inc.; and Universal Music & Video Distribution Corp., are now barred from entering into agreements that prohibit, restrict, regulate, or otherwise place any limitation on 'any truthful, nondeceptive advertising or promotion in the United States' for any audio or video product.

It had been alleged that the companies entered into an agreement with Warner Communications Inc. to fix prices and limit advertising for a defined period for the first two of three compact disc and video products developed from a series of concerts by The Three Tenors—Luciano Pavarotti, Placido Domingo, and Jose Carreras.

From Canada

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

Consumers misled by gas saving device

Canadian consumers will no longer be duped by false claims about an alleged fuel saving/emission reducing device known as the Platinum Vapour Injector (PVI), which sold for up to Can\$300. The Competition Tribunal recently found that PVI International Inc. had made false and misleading representations to the public in promoting the PVI.

The Tribunal ordered PVI International to cease making the representations for 10 years. The company was also ordered to pay an administrative penalty of Can\$75 000. The individuals behind PVI International were ordered to pay Can\$25 000 each for their role in the conduct.

Telemarketing companies plead guilty

Telemarketing company Tamec Inc., and its subsidiaries Commercial Information Bank of Canada and Deev Inc., recently pleaded guilty in a Montreal court to deceptive telemarketing and misleading advertising charges under the Competition Act. The guilty pleas result from an investigation by the Competition Bureau into deceptive telemarketing activities aimed at Canadian businesses and government institutions, as well as religious, educational and non-profit organisations, across Canada.

After a criminal investigation by the Bureau the accused parties pleaded guilty in the Court of Quebec and were fined Can\$300 000, and prohibited from engaging in similar deceptive marketing practices for 10 years. Tamec has also agreed to commit an additional Can\$180 000 towards a remediation program which will offer victims up to Can\$300 each in free goods and services.

The Bureau received hundreds of complaints alleging that the telemarketers misrepresented the purpose of their calls, provided false information on the prior existence of a business relationship with Tamec, and did not disclose restrictions which applied to the return of products. Complainants also alleged that the telemarketers did not disclose that, by agreeing to accept delivery of one edition of a Tamec business directory, they were entering into a multi-edition subscription.

Special constable status granted to competition law officers

The Nova Scotia Department of Justice recently granted special constable status to six competition law officers from the Competition Bureau's Atlantic Region in Halifax, Nova Scotia.

The special constable designation allows competition law officers to serve summonses and subpoenas in Nova Scotia while fulfilling their duties under the competition and other acts. It should improve the criminal investigative process and relieve police agencies from the burden of serving court documents for anti-competitive offences.

From New Zealand

The following item is from a NZ Commerce Commission's media release at <<http://www.comcom.govt.nz>>

Fine for misleading timeshare marketing

Holiday Marketing International (NZ) Limited (HMI) was recently fined NZ\$17 000 and ordered to pay court costs for misleading the public about timeshare presentations.

A Commerce Commission investigation revealed HMI made misleading statements in its telemarketing, inviting members of the public to attend a travel show, when in fact they were being invited to attend a presentation to sell timeshare rights.

Late last year the Commerce Commissioner warned the public about Crownstar International—which has since ceased trading and left New Zealand—and is about to lay charges against One World Leisure for similar behaviour.

HMI solicits its customers through telemarketing and street surveys. It is a marketing agent for Worldwide Resorts (NZ) Ltd, Worldwide Resorts Club of New Zealand Incorporated and HMI Property Holdings Ltd.

From Europe

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

Competition policy

The European Union recently released its XXXIst *Report on competition policy*.

In his foreword Competition Commissioner Mario Monti said:

The year 2001 saw intense activity in all three areas of competition policy: antitrust, merger control and State aid. ...

One of the things for which 2001 will doubtless be remembered is the unprecedented activity that took place in the sphere of cartels. With 10 negative decisions against 65 enterprises, fines totalling over Euro\$1800 million, nearly half of which in the Vitamins case alone, and the largest individual fine ever imposed (in the Carbonless paper case), the year will go down as a milestone in the Commission's struggle against cartels. ...

I have stated on a number of occasions, clearly and publicly, that I consider cartels to be a veritable cancer in an open, modern market economy. Unlike other forms of anticompetitive behaviour, they serve one purpose and one purpose alone: that of reducing or eliminating competition. They bring no benefit to the economy and can therefore never be viewed favourably from an economic standpoint.

Commission fines eight Austrian banks in Lombard Club cartel case

The European Commission recently imposed fines totalling Euro\$124.26 million on eight Austrian banks for participating in a wide-ranging price cartel. In a highly institutionalised price fixing scheme, the CEOs of the banks met regularly, as the 'Lombard Club', a cartel that covered the entire Austrian territory 'down to the smallest village', as

one bank put it with a view to fixing deposit, lending and other rates to the detriment of businesses and consumers in Austria. The cartel started well before the accession of Austria to the European Economic Area in 1994. But in this case, the Commission can only levy fines for the period starting with EU membership (1995) until June 1998, when it carried out surprise inspections at the banks' premises putting an end to the cartel behaviour.

Competition Commissioner Mario Monti said:

The institutionalised set-up of this cartel and its comprehensiveness, both in terms of the banking services covered and geographical scope, makes it one of the most shocking cartels ever discovered by the Commission.

New marketing standards for olive oil will protect shoppers

The European Commission today adopted new rules laying down clearer marketing standards for olive oil intended to help shoppers throughout the EU.

To better protect the consumers, the new rules lay down the requirement that olive oil should not be sold in containers of more than five litres with a closing system where the seal is broken after first use and has proper labelling including the categories: 'extra virgin olive oil', 'virgin olive oil', 'olive oil composed of refined olive oil and virgin olive oil' and 'olive-pomace oil'.

For mixtures of olive oil with other vegetable oils, the new regulation prohibits highlighting the presence of olive oil on the label, unless olive oil represents a minimum of 50 per cent of the oil.

For promotional purposes, the food industry is increasingly making use of the positive image of olive oil to sell margarine, sauces, mayonnaise and canned products like vegetables and fish. If the manufacturer wants to highlight a reference to the product containing or being based on olive oil on the label, the regulation lays down new requirements in addition to provisions that already exist. Immediately after the reference to olive oil, the food manufacturer must either indicate the share of olive oil in the total weight of the product or the percentage of olive oil as percentage of the total fat contained in the product on the label.