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*.

Airlines to drop unfair contract terms

Six airlines are to make international flight contracts fairer to passengers following intervention from the OFT.

British Airways, British Midland, Cyprus Airways, Iberia Airways, Kenya Airways and Thai Airways have all amended their terms and conditions to reflect the International Air Transport Association's (IATA) revised Conditions of Carriage for member airlines. The OFT had previously negotiated improvements to IATA's model contract terms to ensure that they meet the requirements of the Unfair Terms in Consumer Contract Regulations (UTCCR) 1999.

The most significant changes include:

- Transferability—in the revised terms, anyone prevented from travelling by 'force majeure' (i.e. unusual and unforeseeable circumstances beyond his or her control) will be entitled to a credit note for any non-refundable travel. The credit can also be used to buy a flight for another person.
- Schedules/rescheduling—the revised contracts improve the clarity and fairness of the terms dealing with the right to reschedule flights. The revised terms state that ticket purchasers should be told of a flight time change as soon as possible. Passengers also have the right to a refund if there is a significant change in the flight time and the airline is not able to book an acceptable alternative flight.
- Agents—a term under which airlines could evade responsibility for what their agents agreed has been deleted from contracts.
- Code shares—where an airline operates a code share (where a flight is sold under the code of one airline but is operated by another), passengers now have the right to be told this at the time of buying the ticket.

John Vickers, Director General of Fair Trading, said that these changes represent a welcome improvement in air passenger rights. The OFT will continue to challenge unfair contract terms and press other airlines flying into and out of the UK to adopt terms that are at least as fair to consumers as the improved IATA Conditions of Carriage.

Record fines for toys price fixing

Argos and Littlewoods have been fined a record £22.65 million by the OFT for fixing the price of toys and games together with Hasbro in breach of the *Competition Act 1998*.

Argos, Littlewoods and Hasbro entered into agreements to fix the prices of Hasbro toys and games between 1999 and May 2001, breaching chapter I of the Competition Act from 1 March 2000 when it came into force.

Argos was fined £17.28 million, reflecting its high turnover, and Littlewoods was fined £5.37 million. Hasbro was granted full leniency, and so its potential penalty of £15.59 million was reduced to zero, because it provided crucial evidence that initiated the investigation and co-operated fully. In November 2002 Hasbro was however fined £4.95 million for entering into price-fixing agreements with 10 distributors.

The OFT has calculated the fines in accordance with its published guidance on financial penalties. These take into account the serious nature of price fixing, the need for deterrence and the turnover of the parties concerned. Hasbro's full cooperation with the investigation and provision of crucial evidence was taken into account in granting 100 per cent leniency. Argos has the highest turnover of the three parties and therefore incurred the highest penalty. The financial penalties on Argos and Littlewoods, though the largest so far under the Competition Act, are well below 10 per cent of their respective UK turnovers.

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.

Companies to pay $735 000 for charging for misdialled toll-free numbers

The Federal Trade Commission today announced federal court settlements with three defendants who allegedly charged more than one million consumers without their consent for directory information services after the callers misdialled various toll-free numbers. According to the Commission the defendants, Florida-based 800 Connect, Inc. (800 Connect), its owner and president, David Stein, and its billing aggregator ILD Telecommunications, Inc. (ILD), violated the toll-free provisions of the FTC's Pay-Per-Call Rule and the FTC Act through a range of unfair and deceptive acts and practices. Under the terms of the settlements, 800 Connect and Stein will pay $60 000 in redress or disgorgement, while ILD will pay $675 000 in redress or disgorgement.

According to the FTC's complaint, 800 Connect, based in Sarasota, allegedly sold information services to consumers who incorrectly dialled toll-free numbers for various legitimate companies, including Federal Express and Sovereign Bank. Consumers reached 800 Connect, which answered lines associated with telephone numbers that were close, but not identical to the other companies' toll-free lines. The FTC alleged that a pre-recorded message informed consumers that they could still receive the correct number. Consumers had three options. They could: 1) 'press one, now' for the correct number, with no disclosure that the subscribers would be billed either $1.99 or $2.99; 2) wait to 'press one', continue listening to the pre-recorded message, and eventually be informed about the $1.99 or $2.99 charge (they could then hang up, allegedly before charges were incurred); or 3) neither 'press one' nor hang up after hearing the cost disclosure, in which case they received the correct number and were billed the $1.99 or $2.99 per call.

Charges for 800 Connect's services typically appeared on the line subscriber's phone bill on a separate page titled 'ILD Teleservices, Inc.' The subscriber's local phone company inserted the page into their telephone bill, with the charges usually identified as being on behalf of '800 Connect' or 'Call Connect'.

According to the Commission's complaint, 800 Connect violated the toll-free provisions of the Pay-Per-Call Rule by using toll-free numbers in a way that resulted in charges to the calling party. The FTC also contended that ILD violated the rule's billing and collection provisions by failing to comply with its dispute resolution requirements. Specifically, the complaint alleges ILD failed to recognize that under the rule, 'a reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll-free number' is a billing error that the biller must forgive. While ILD received many complaints about 800 Connect's services, it allegedly forgave the charges of less than half of the consumers who complained, thus repeatedly and routinely violating the rule, according to the FTC.

Finally, the FTC's complaint contends line subscribers could not reasonably avoid the defendants' billing and collection efforts because a line subscriber cannot reasonably anticipate or prevent charges incurred through use of his or her telephone line to a toll-free number. As these consumers could not avoid receiving, and being billed for, 800 Connect's services, the Commission alleges that the defendants' business practices were unfair and violated the FTC Act.

Crack down on bogus cancer treatment

In coordination with officials in Canada and Mexico, the Federal Trade Commission has charged CSCT, Inc., based in British Columbia, with falsely claiming that it can treat cancer by using an electromagnetic device to kill cancer cells. The FTC alleges that the company used its internet website to advertise this treatment to consumers in the United States and elsewhere. According to the FTC, the defendants charge consumers $15 000 up front for several weeks of 'treatments' with the electromagnetic device. Consumers must travel at their own expense to Tijuana, Mexico for these treatments. The FTC complaint asserts that the treatments consist of exposing consumers to the 'Zoetron machine', a device which purportedly uses a pulsed magnetic field to heat and kill cancer cells. The FTC alleges that the device cannot kill cancer cells, and that the claims made for this therapy are false.

A federal district court in Chicago has issued an injunction prohibiting these claims, freezing the defendants' assets, and ordering the website to be shut down. COFEPRIS (part of Secretaria de Salud) in Mexico inspected the clinic in Tijuana and discovered that the defendants were violating Mexican law by using an unapproved treatment. It shut down the office that was providing the treatment.

The FTC developed today's law enforcement action in cooperation with Canada and Mexico as part of the Mexico–US–Canada Health Fraud Work Group (MUCH). MUCH was established in 1994 to strengthen the three countries' ability to prevent cross-border health fraud. The participating agencies include the FTC, Mexico's Secretaria de Salud (Ministry of Health), and Profeco (Federal Agency for Consumer Protection), Canada's Health Canada and Competition Bureau, the US Food and Drug Administration (FDA, the lead US agency), the attorney general offices, and state health departments.

The FTC's complaint names CSCT, Inc., a Canadian company based in Naramata, British Columbia; CSCT, Ltd., a British company based in London, England; and their officers, John Leslie Armstrong and Michael John Reynolds, as defendants. Both corporate defendants have acted as a common enterprise.

Top 10 consumer complaint categories in 2002

The Federal Trade Commission has released its annual report detailing consumer complaints about identity theft and listing the top 10 fraud complaint categories reported by consumers. As in 2000 and 2001, identity theft topped the list, accounting for 43 per cent of the complaints lodged in the FTC's Consumer Sentinel database. The number of fraud complaints jumped from 220 000 in 2001 to 380 000 in 2002, and the dollar loss consumers attributed to the fraud they reported grew from $160 million in 2001 to $343 million in 2002.

The increased numbers of complaints could have to do with the success of the outreach efforts and that more people know where to go to complain about fraud and ID theft. The top 10 categories of consumer fraud complaints in 2002 include:

- internet auctions—13 per cent
- internet services and computer complaints—6 per cent
- advance fee loans and credit protection—5 per cent
- shop-at-home/catalogue sales—5 per cent
- foreign money offers—4 per cent
- prizes/sweepstakes and lotteries—4 per cent
- business opportunity and work-at-home plans—3 per cent
- telephone services—2 per cent
- health care—2 per cent
- magazines and buyers clubs—2 per cent

Consumer Sentinel is a database established in 1997 by the FTC in conjunction with the state Attorneys General and Canada's Phonebusters. It currently provides about 630 law enforcement agencies in the US, Canada and Australia with access to one million complaints. Consumer Sentinel has become law enforcement's virtual water cooler—a place where information can be shared, investigations can be coordinated, and resources can be pooled.

From Canada

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

Rhône-Poulenc Biochimie S.A. sentenced to $500 000

The Competition Bureau announced today that Rhône-Poulenc Biochimie S.A., a wholly-owned French subsidiary of Aventis S.A., pleaded guilty in the Federal Court of Canada to a charge of price fixing under the Competition Act and was sentenced to a $500 000 fine. This international conspiracy resulted in higher prices for taxpayers for a chemical ingredient used in medical X-rays.

Richard Taylor, Acting Senior Deputy Commissioner of Competition said that this criminal conviction once again demonstrated the Bureau's resolve in holding foreign firms accountable for their participation in illegal anti-competitive agreements affecting Canadians.

The Bureau's investigation, which started in 2000, revealed that Rhône-Poulenc Biochimie S.A was involved in a price-fixing conspiracy from 1990 through 1999. The conspiracy agreement fixed prices for methylglucamine, a specialized chemical ingredient primarily used to facilitate the recording of high contrast X-ray images.

Under the conspiracy provisions of the Competition Act it is a crime for competitors to agree on the prices they charge customers when it unduly lessens competition or unreasonably raises prices.

Telemarketing company fined $300 000

Telemarketing company Farber Blake Corporation has pleaded guilty to one criminal charge and has been fined $300 000 for misleading consumers in Canada and New Zealand.

Farber Blake victims were contacted by telemarketers and told that they had won prizes such as cash, a boat or a cruise in the Bahamas. However, to claim their prize, they were informed that they had to buy one of the company's promotional items, such as coin sets or art work. The Bureau found that the company sold these promotional items at highly inflated prices and misrepresented the nature, value and quality of both the prizes and the promotional items.

Raymond Pierce, Deputy Commissioner, Competition Bureau said consumers should be sceptical about telemarketing offers that require payment in advance or purchase of another product before a prize or payout is awarded.

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>.

Pyramid scheme to refund members $300 000

The High Court has ordered that money collected from the membership fees of Alpha Club New Zealand Limited be redistributed to some members after deeming the scheme to be pyramid selling in breach of s. 24 of the Fair Trading Act.

The High Court ruling followed a Commerce Commission investigation into Alpha Club, a scheme entitling members to discounts for travel and accommodation and the ability to earn commissions by recruiting new members. The court found that overall there were no real financial benefits available to members and the primary objective of the scheme was to earn financial rewards through the sale of memberships.

Alpha Club was introduced into New Zealand in 1998 by directors Stuart Baldwin and Vladislava Buha who engaged in a program of invitation-only sales presentations during which prospective members were told they could obtain incomes of $71 700 within ten months from recruiting new members

The promoters of the scheme placed considerable pressure on people who attended presentations to the extent of accompanying potential members to their banks to obtain loans to pay the membership fees. The cost of membership was $6750.

When the Commission initially sought an interim injunction against the scheme in 1999 the High Court ordered Alpha Club to pay 26 per cent of the membership fee into a trust account. The funds, totalling around $300 000, will now be distributed to those members who joined after 20 December 1999 and suffered a loss by joining the scheme.

Membership of Alpha Club cost individuals $6750, which for 89 per cent of members was money never recovered. People need to be very wary of schemes that make promises about future earnings and that require people to recruit members to obtain those earnings. These types of schemes are illegal.

Out of court settlement with British American Tobacco

The Commerce Commission has settled out of court with British American Tobacco Holdings (New Zealand) Limited (BAT) for alleged breach of the former s. 47 of the Commerce Act. The settlement includes divestment of certain international cigarette brands with an estimated net present value of $10 million, plus a contribution of $350 000 to the Commission's costs.

The Commission alleged that following the global merger in 1999 between BAT and Rothmans International BV and their subsidiaries, the New Zealand companies acquired a dominant position in the New Zealand markets for tobacco products and pre-rolled cigarettes. The Commission issued proceedings in July 2001 seeking orders for divestment of shares or cigarette brands and pecuniary penalty.

Commission Chair John Belgrave said the settlement resolves a case that raised some important issues under the Commerce Act, not least of which was the application of the Act to off-shore business acquisitions.

The Commission alleged the relevant transaction was a merger agreement between the two New Zealand subsidiary companies. BAT argued that the transaction was no more than a reconstruction of the companies already under common control following the international merger.

In settling, BAT continued to deny liability under the Commerce Act. The agreed settlement includes:

- the defendants divesting themselves of certain cigarette brands namely Sportsman, Cameo, Pacific, Topaz, Northpole, Matinee and the Three Castles tobacco brand
- the party acquiring the brands, if required, to be granted the right to manufacture the divested brands on normal commercial terms for a period not exceeding five years

- the party acquiring the brand will, if required to, have access to all requisite retail furniture in New Zealand for a period not exceeding 12 months
- the defendants will contribute to the Commission's costs of $350 000 (plus GST if any).

From Europe

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

Court of Justice confirms validity of tobacco products directive

Health and Consumer Protection Commissioner David Byrne welcomed today's ruling of the European Court of Justice on the Tobacco Products Directive which toughens EU rules on manufacture, presentation and sale of tobacco products. He said that the directive is one of the most effective pieces of European legislation in the fight against tobacco consumption. The court further concluded that the ban on manufacturing cigarettes that do not comply with the maximum levels set by the directive—10 mg per cigarette for tar, 1 mg per cigarette for nicotine and 10 mg per cigarette for carbon monoxide—does not only apply to products for the internal market but also affects cigarettes manufactured in the EU for exports to third countries. However, the ban on misleading descriptors such as 'mild' or 'light' only applies to tobacco products marketed within the EU.

The main features of the Tobacco Products Directive include that as from 1 January 2004, the yield of cigarettes released for free circulation, marketed or manufactured in the member states shall not be greater than:

- 10 mg per cigarette for tar
- 1 mg per cigarette for nicotine
- 10 mg per cigarette for carbon monoxide.

The rules regarding cigarettes to be exported will apply from 1 January 2007.

Tobacco products will need to carry a general warning covering not less than 30 per cent of the surface:

- 'Smoking kills/Smoking can kill' or
- 'Smoking seriously harms you and others around you'

An additional warning should cover no less than 40 per cent of the corresponding surface. A transitional period for products not complying with these health warnings is foreseen until 30 September 2003.

The Commission will soon adopt rules for the use of colour photographs or other illustrations to depict and explain the health consequences of smoking. Member states can decide themselves if they want to make use of photographs within the agreed rules.

To ensure product identification and traceability, the tobacco product must be marked in an appropriate manner on the unit packet, by batch numbering or equivalent, stating the place and time of manufacture. This will ensure that products can be recalled or traced to verify the implementation of the directive.

Stricter labelling rules for meat in 2003

A directive amending current EU labelling legislation to tighten up the definition of the term 'meat' for the labelling of meat-based products came into force on 1 January 2003 with a double circulation period of affected products until end of June 2003. Consumers generally perceive meat to mean muscle-meat. The new definition will allow consumers to clearly see if they are eating muscle-meat, fat or offal. The directive applies to products that contain meat as an ingredient, while meat sold without further processing is excluded. Affected products include sausages, pâté, cooked meats, prepared dishes and canned meat.

David Byrne, EU Commissioner for Health and Consumer Protection, welcomed the move towards a clearer definition and said that it will allow consumers to make an informed choice. Transparent and precise labelling is essential to giving consumers information on what they are eating. The directive also provides for the systematic indication of which species the meat comes from, distinguishing for example 'beef meat' from 'pig meat'. This information is very important for consumers in helping them to better understand the price differences between products and to make choices based on personal preferences.

There will be a six-month transitional period from 1 January to 30 June 2003, allowing industry to conform to the new requirements. During this period, goods produced in keeping with the new rules and the old rules will both be allowed on the market. New labels can appear as of 1 January 2003 but the biggest changes will become visible in July, when all products will have to be labelled in conformity with the new rules. However, the trade in goods labelled before the end of June will continue to be authorised while stocks last.

Some member states previously adopted their own definitions of meat for labelling purposes. This definition will now be harmonised at EU level. The directive contains a set of provisions to improve consumer information on meat products in a variety of ways.