International developments

From the USA

The following item is based on a press release from the US Department of Justice, dated 15 October 1996.

ADM to pay $100m fine for price fixing

On 15 October 1996 Archer Daniels Midland Co. (ADM) agreed to plead guilty and to pay a $100 million criminal fine — the largest ever penalty in a US criminal antitrust matter — for its role in two international price fixing conspiracies in the lysine and citric acid markets worldwide.

The charges were brought after extensive investigation by the Chicago and San Francisco Field Offices of the Antitrust Division of the US Department of Justice, the office of United States Attorney James B. Burns in Chicago, and the Federal Bureau of Investigation in Springfield, Illinois and San Francisco.

Lysine is an amino acid used by farmers as a feed additive to ensure the proper growth of livestock. It is a $600 million a year industry worldwide. Citric acid is a flavour additive and preservative produced from various sugars. It is found in soft drinks, processed food, detergents, pharmaceutical and cosmetic products. Citric acid is a $1.2 billion a year industry worldwide.

These are the Justice Department's second round of charges brought as a result of its ongoing antitrust investigation into the food and feed additives industries. In August 1996, two Japanese and one US-based Korean subsidiary and their executives agreed to pay more than $20 million in criminal fines for their participation in the lysine conspiracy.

'These fines should signal to corporations throughout the world that they had better take a hard look at their own behaviour,' said Joel I. Klein, Acting Assistant Attorney General in charge of the Antitrust Division. 'We have reason to believe that international cartels are by no means rare. We will vigorously pursue such violations on our own as well as in cooperation with law enforcement authorities in other countries.'

The US Department of Justice said that feed companies, large poultry and swine producers — and ultimately farmers — paid millions more to buy the lysine additive. Also, the Department said that manufacturers of soft drinks, processed foods, detergents, and others, paid millions more to buy the citric acid additive, which ultimately caused consumers to pay more for those products.

The two-count felony criminal information against ADM was filed in US District Court in Chicago. ADM authorised the government to disclose the basic terms of the plea agreement under which these charges were filed. The plea agreement must be accepted by the Court. As part of its plea agreement, ADM agreed to cooperate in the ongoing government investigations. Two ADM executives will receive no protection from prosecution under this plea agreement. The Department's investigation is continuing.

The felony case charges that ADM conspired with the three previously charged companies — Ajinomoto Co. Inc., Kyowa Hakko Kogyo Co. Ltd., Sewon America Inc.— and other unnamed corporate and individual

co-conspirators, to suppress and eliminate competition in the lysine market from June 1992 to June 1995 in violation of the Sherman Antitrust Act. ADM produces lysine at its plant in Decatur, Illinois.

The case also charges ADM with conspiring with others to suppress and eliminate competition in the citric acid market from January 1993 to June 1995. ADM produces citric acid at its plant in Southport, North Carolina.

The felony case charges that ADM met separately with their co-conspirators in the lysine and citric acid markets to set the prices and allocate the sales volumes of those products.

The corporate defendants previously charged agreed to cooperate fully with the ongoing investigation by providing documents and witnesses who will be available to testify in the United States. Each of the individual defendants also agreed to cooperate with the investigation, including giving testimony in the United States.

ADM is charged with violating s. 1 of the Sherman Act, which carries a maximum fine of $10 million for corporations. The fine may be increased to twice the gain derived from the crime by the defendant or twice the loss suffered by the victims of the crime, if either of those amounts is greater than the statutory maximum fine of $10 million for corporations. The Court will determine the appropriate sentence to be imposed under the United States Sentencing Guidelines.

From Canada

The following item is based on a press release from the Competition Bureau, Canada, dated 9 September 1996.

Price fixing brings jail sentence

On 9 September 1996, Francine Matte, QC, Acting Director of Investigation and Research under the Competition Act, announced that a sentence had been handed down against the accused in the Sherbrooke and Magog Driving Schools case in Quebec. The accused, Mr Jacques Perreault, was found guilty on each of the six counts charged against him on 15 June 1996. Mr Perreault had exercised his right to a trial by jury.

In the Quebec Superior Court in Sherbrooke, Mr Perreault was sentenced to one year's imprisonment for his part in the offences committed. The conviction in this case was for a number of offences under the criminal provisions of the Competition Act, including conspiracy to fix prices. The case was the first trial by jury ever held with respect to a Competition Act offence.

After an extensive criminal investigation, it was concluded that a number of sections of the Competition Act had been breached in the Sherbrooke and Magog driving school markets in Quebec. The charges included conspiracy to set prices, engaging in price maintenance, predatory pricing and regional predatory pricing policies in the Sherbrooke market during 1987. The accused was also charged for his role in engaging in predatory pricing and regional predatory pricing policies in the adjoining Magog market during 1988–91.

This case is part of an ongoing criminal prosecution that will involve further court proceedings against other driving schools and individuals in Sherbrooke.

From New Zealand

The following item was extracted from the October–November 1996 issue of the New Zealand Commerce Commission's newsletter Fair's Fair.

The Commerce Commission enforces both the Commerce Act 1986, which contains restrictive trade practices provisions, and the Fair Trading Act 1986, which deals with consumer protection matters.

NZ Electricity Market rules

The Commerce Commission has concluded that the proposed rules for the New Zealand Electricity Market (NZEM) will not lessen competition.

The NZEM administrator, the Electricity Market Company (EMCO), applied for authorisation of the pricing mechanisms, prudential provisions and metering standards for NZEM.

It is proposed that, from 1 October 1996, NZEM will provide a market for the wholesaling of electricity and a market for short-term financial hedges for electricity traders. It will offer facilities for trading electricity, and for trading electricity contracts for the following day. In the Commission's view, the matters which were the subject of the application are important elements in the development of the wholesale electricity market. It considers that they will not result in a lessening of competition.

Among the concerns raised about the pricing mechanisms was that the price at which electricity would be traded would not be known with certainty until after the electricity had been used. It was argued that this would mean that the ability of purchasers to engage in demand side management — that is, to adjust consumption in response to price changes — would be reduced.

The Commission noted, however, that these purchasers would have access to price forecasts and would also be able to hedge against unforeseen price changes. It concluded that the rules would have only a small impact which would be more than offset by an enhancement of competition among generators.

The Commission accepted that the prudential provisions in the rules impose a cost on some purchasers (and may benefit generators) but this would not lessen competition in the relevant markets.

In addition, the Commission concluded that the adoption of common metering standards by the rules appeared to be logical and would have no detrimental competitive impact.

Commission Chairman, Dr Bollard, said that as the rules for which authorisation had been sought would not lessen competition, authorisation is neither required nor within the jurisdiction of the Commission.

He added that these rules are only a small portion of all the rules for NZEM. The Commission has made no judgment on the competitive implications of the rules which are not part of the application.

Health authority contracts

The Central Regional Health Authority has changed its contracts with community laboratories because of Commerce Commission concerns that the contracts would substantially lessen competition.

The Central RHA contracts were based on the cost of work done in the previous year by each laboratory, with the RHA paying reduced rates for work done above that level. The level would be reassessed each year. The reduced rates went down in steps, with the lowest being 40 per cent.

The effect of these contracts was to prevent any new laboratories starting in the area and to prevent laboratories operating in other areas expanding into the Central RHA's area. Because these laboratories would not have previously provided any work to the Central RHA, they would have been paid at reduced rates.

Laboratories already doing work for the Central RHA were effectively prevented from competing with each other to change their market share. If, for example, the total amount of work done for the Central RHA remained the same as the previous year, a laboratory would be paid reduced rates for any extra work that it did compared to the previous year.

The Central RHA has signed undertakings to:

- remove all parts of the laboratory contracts which may breach the Commerce Act;

- not put into effect any part of the contracts which may breach the Commerce Act;
- not enter into any future contracts which may breach the Act; and
- have the Commission publicise this settlement.

The Commission noted that the Commerce Act does not prevent RHA from capping their spending on laboratory services or choosing to buy services from some organisations and not others. It does prohibit this being done in a way that substantially lessens competition.

ACCC signs Arrangement with Taipei

On 13 September 1996, ACCC Chairman, Professor Allan Fels, exchanged letters with the Chairperson of the Fair Trade Commission (FTC), Taipei, Ms Chao Yang-Ching, recognising the signing of an Arrangement between the Representative of the Australian Commerce and Industry Office, Taipei, and the Representative of the Taipei Economic and Cultural Office, Canberra.

The purpose of the Arrangement is to provide a framework to promote cooperation and coordination between the ACCC and the FTC in the application of competition and fair trading laws in their respective countries. The exchange of information and cooperation in a number of areas will enable each agency to be more efficient and effective.

The Arrangement will operate concurrently with the Mutual Assistance in Business Regulation and Mutual Assistance in Criminal Matters legislation in Australia. It will also operate alongside the Osaka Action Agenda of the Asia-Pacific Economic Cooperation Forum Concerning the Competitive Environment in the Asia-Pacific Region, adopted on 16 November 1995, which encourages the establishment of cooperation arrangements such as this among the competition authorities in the region.

The Arrangement makes provision for the agencies to notify each other whenever an investigation, enforcement or related activity of an agency may affect important interests of the other. There is provision in the Arrangement for the exchange of information, subject to confidentiality constraints, as well as provision for each agency to make requests of the other agency for assistance in the enforcement of competition and fair trading laws.