
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*, Issue 26, May 2000.

Competition in e-commerce

A joint study by the Office of Fair Trading and the Office of Telecommunications, 'Competition in e-commerce', was done to identify emerging barriers to competition in electronic markets and issues that could affect the development of e-commerce in the UK. It looks at ways markets are likely to develop as a result of new technologies and how companies could evolve to take advantage of it.

The study drew the following preliminary conclusions:

- 'unmetered' Internet access, higher bandwidth access and new access devices such as Internet-enabled phones and set-top boxes will shape the growth of e-commerce in the future;
- convergence, vertical integration and further consolidation were identified as key themes in the market for the next couple of years;
- the key e-commerce related issues for competition and regulatory authorities are likely to be access to networks and platforms, standards and intellectual property rights;
- regular assessments of the market, co-regulation between regulators and industry, and powers and guidelines to stop anti-competitive behaviour will play an important part in promoting competition.

The study is available on both OFT and OFTEL websites at

<http://www.oft.gov.uk>
<http://www.oftel.gov.uk>

Clampdown on Internet con artists

The Office of Fair Trading joined 143 organisations from five continents to sweep the Internet for 'get rich quick' scams. This is the third time that the OFT has participated in a global sweep. The USA's Federal Trade Commission led the initiative called GetRichQuick.Con. Using particular key words, the net was surfed for three hours looking for bogus schemes.

Nearly 100 potentially misleading websites were found and sent email warnings that there might be legislation regulating their activities. The websites will be monitored to see if they change their potentially deceptive, misleading or false claims. If they do not, they will be referred to the respective enforcement bodies.

General information about online scams can be found on the OFT's shopping online web pages at <http://www.oft.gov.uk/html/shopping/index.html>

Competition in beer market under review

The Beer Orders, made 10 years ago, sought to widen consumer choice, reduce prices and barriers to market entry. The OFT is now reviewing the orders and undertakings

The market has changed quite a bit structurally from when it was examined by the Monopolies and Mergers Commission in the late 1980s. Pub chains now have a large share of the retail trade and the brewing sector has consolidated. Many pubs have closed in rural and inner city areas and the number of regional brewers decreased during the past year. There are, however, some indications of a widening choice. There were 45 more microbrewers and 77 more brands of beer on offer in 1999 than in the year before.

Beer supply arrangements between pub tenants and brewers or pub chains have already been considered by the OFT and the European Commission and did not pose any threat to competition.

OFT is consulting big brewers, regional brewers, small brewers' trade associations, wholesalers, pub operators, the larger pub chains and the Campaign for Real Ale.

Play by the rules

The OFT has issued guidelines for lenders to adhere to when advertising credit. Lenders promising more than they can deliver will be in trouble for potentially misleading advertising.

The cost of Payment Protection Insurance (PPI) must be reflected in the annual percentage rates (APR) when it amounts to a condition of a loan. Advertising a minimum APR is only acceptable if a typical APR is mentioned prominently in the ad. Failure to comply may lead to prosecution under the Consumer Credit Act.

Director General of Fair Trading, John Bridgeman said that headline figures are often used to hook new borrowers. 'Some breaches may be out of ignorance,' he said, 'but sometimes consumers are deliberately misled.'

Local authority trading standards departments will take the initiative in prosecuting alleged infringements of the regulations.

Excellence in Trading Standards Award

Trading standards departments throughout the UK have been invited to apply for the Director General of Fair Trading's Excellence in Trading Standards Award.

The criteria on which the award is based have been amended to reflect the work of this important public service in meeting the challenge of 'Best Value'. The criteria are now based on the European Foundation for Quality Management (EFQM) model, which has replaced the Business Excellence model.

Many in the public sector and business community use the EFQM model for self-assessment and improvement.

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>

New acquisition test for business

The Commerce Commission will work closely with business groups to develop new processes for handling business acquisitions. It will also have to revise its investigation and decision-making processes depending on the details of the Government's proposed changes to the Commerce Act.

The Commission will give guidance on how it intends to apply the new acquisition test. It expects an initial increase in the number of applications under the new regime, but a decrease as business becomes more familiar with the Commission's and the court's interpretation.

The Acting Minister of Commerce, Trevor Mallard, recently outlined the Government's proposed changes to the Commerce Act. It included a recommendation to lower the threshold for business acquisitions prohibited by the Act. The proposal will prohibit acquisitions that substantially lessen competition.

Warning: do not use distribution agreements to set prices

The acknowledgment by Vtech Distributors Limited and another cordless phone distributor of price fixing sends a warning to all business sectors: competitors should not use distribution agreements to set prices.

The two companies colluded over prices, agreeing on minimum wholesale and retail prices for cordless telephones. The Commission's Act Manager, Geoff Thorn, said that such arrangements were fundamentally anti-competitive. However, the investigation was ended with a settlement as it was accepted that the companies did not deliberately set out to break the law. Court action will be considered if the companies do not honour the settlement.

A summary of the two companies' settlement includes:

- an acknowledgment that their distribution agreement and pricing schedule constitute price fixing under the Commerce Act;
- to modify their distribution agreement to ensure that it complies with the Act;
- to not enter into, enforce or attempt to enforce any contract arrangement or understanding that fixes the price of goods or services; and
- that if they do not honour the settlement, the Commission will consider further action.

Second major finance industry application for clearance

Commonwealth Bank of Australia Group (CBA) has applied for clearance to merge its New Zealand businesses and Colonial Limited. The proposed acquisition is the New Zealand arm of the planned merger of CBA and Colonial in Australia.

The Commission's General Manager, Ken Heaton, said that the Commerce Act prohibits business acquisitions that result in dominance in any market. If clearance is granted, it protects an acquisition from court action under the Act.

Ihug risked breaching Fair Trading Act

In not disclosing an additional compulsory fee in advertising an Internet access offer and by exaggerating the savings customers could make when buying a computer and Internet package, the Internet Group Limited (trading as Ihug) risked breaching the Fair Trading Act.

In a settlement with the Commerce Commission, Ihug admitted that some of its advertising was contrary to the Act and could mislead the public.

According to Rachel Leamy, Commission Fair Trading Manager, courts have convicted and fined businesses for not disclosing costs and conditions clearly.

Ihug ran television advertising in August to November 1999 offering Internet connection for 'from \$34.95 a month'.

The advertisements did not disclose a compulsory joining fee of \$39.

In November 1999 customers were promised a \$700 rebate if they bought a Value Plus PC and an lhug Internet connection. As lhug had inflated the cost of its Internet connections, customers who took up this offer saved considerably less than \$700.

The Commission rejected lhug's argument that by using the words, 'rebate' and 'subsidy', it was not claiming that customers would make a saving.

Fined for not honouring settlement

Husband and wife, Seung Ho Ahn and Choon Hee Ahn (trading as Unicorn Trading), were fined \$2000 in the Auckland District Court for failing to honour a settlement with the Commerce Commission.

The couple admitted breaching the Fair Trading Act by selling clothing that did not comply with mandatory consumer information standards — it did not have fibre content or care labels.

Commission Chair John Belgrave said that warnings and settlements were part of the Commission's education role. If these were ignored, further action would be considered.

Under the Fair Trading Act consumer information standards are mandatory. To date there are mandatory standards for:

- country of origin labelling of clothing and footwear;
- care labelling of textile goods; and
- fibre content labelling of textile goods.

Courts can impose fines of up to \$30 000 for an individual and \$10 000 for a company.

From the US

The following items come from the Federal Trade Commission's press releases found on its website (<http://www.ftc.gov>) and from *Antitrust & Trade Regulation*, published by the Bureau of National Affairs, Inc.

Review of smokeless tobacco regulations

As part of the Federal Trade Commission's review of all its rules and regulations, it announced that it will be reviewing its smokeless tobacco trade regulation rule.

Congress enacted the Comprehensive Smokeless Tobacco Health Education Act of 1986 to educate the public about the detrimental health effects of smokeless tobacco use. The Act requires that all advertising and labelling display three rotational warnings:

WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER;

WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS;

WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES.

The Commission will be seeking comments on the economic impact of the smokeless regulations; possible conflict between the rule and state, local or federal laws; the effect of technological, economic or other industry changes on the rule and specifically:

- whether the existing regulations are effective in meeting the Smokeless Tobacco Act's format and display requirements;
- whether the regulations are sufficiently enforceable; and
- whether the Commission should revise the format and display provisions for can rolls and individual packages that can also be used as retail displays.

Comments were received up until 24 April 2000.

Misrepresenting Elvis

US District Judge, Stephen V Wilson of the Central District of California has permanently prohibited Automated Systems & Concepts International, Inc. and its president, John R Munoz, from making misrepresentations in telemarketing or the sale of any investment. They engaged in deceptive practices to induce investments in three partnerships formed to produce television infomercials to market various products and were ordered to pay consumer redress of more than \$11.8 million. Munoz was also ordered to post a \$1 million performance bond before engaging in any future investment sales or telemarketing.

Judge Wilson found that Automated Systems and Munoz misrepresented the nature of an Elvis Presley product to be featured in one of the infomercials. They falsely claimed that the product, a coffee table book, would:

- contain a CD featuring a previously unreleased Elvis song;
- contain photographs from Elvis' personal photographer;
- be considered as the 'official book of Graceland', Elvis Presley's estate; and
- be advertised in the infomercial to be aired on the twentieth anniversary of Elvis Presley's death.

The Federal Trade Commission sued the defendants as part of a multi-agency sweep targeting deceptive sales of entertainment-related investments.

FTC privacy campaign to educate kids

From 21 April commercial websites collecting personal information from children under 13 years without the consent of their parents are breaking federal law.

A survey of 212 commercial children's websites done in 1998 found that 89 per cent of the sites collected personal information from children, 24 per cent posted privacy policies and only one per cent required parental consent for the collection or disclosure of children's information. The Commission recommended that Congress enact legislation

to provide privacy protection for children online. The FTC issued the final rule on 20 October 1999 with its effective date 21 April 2000, giving websites six months to comply with the rule's requirements.

The Children's Online Privacy Protection Act (COPPA) and implementing rule put parents back in charge. It gives them the tools to control who collects personal information from their children, how it is used and whether it is shared with third parties.

The rule applies to operators of commercial websites and online services directed to children under 13. Sites must:

- provide parents with a notice of their information practices;
- obtain verifiable parental consent before collecting a child's personal information, with certain limited exceptions;
- give parents a choice as to whether their child's information will be disclosed to third parties;
- provide parents access to their child's personal information and allow them to review it and/or have it deleted;
- give parents the opportunity to prevent further use or collection of information;
- not require a child to provide more information than is reasonably necessary to participate in an activity; and
- maintain the confidentiality, security and integrity of information collected from children.

The FTC launched a special web page to facilitate understanding of the COPPA at <http://www.ftc.gov/kidsprivacy>

\$40 million for alleged pyramid victims

Under the terms of a settlement between the Federal Trade Commission and law enforcement authorities from eight states, and William Gould and Equinox International of Las Vegas, Nevada, consumers will share in as much as \$40 million. The consumers lost money in a pyramid scheme they thought was a legitimated multi-level marketing business.

FTC alleged that the defendants operated an illegal pyramid scheme, made deceptive earnings claims and provided distributors with the means and instrumentalities to violate federal law. State law enforcers alleged violations of state securities laws, deceptive trade practices law, false advertising laws, pyramid laws and licensing requirements law

The terms of the settlement bar Gould from ever again engaging in any multi-level marketing operation. All cash, corporate and individual assets will be placed in the hands of the court-appointed receiver for liquidation. The assets have an estimated book value of approximately \$50 million. Once liquidated it should yield nearly \$40 million. The proceeds will be used for consumer redress and payment of court-approved expenses.

FTC hits Internet health fraud

Internet health fraud continues to be a problem for consumers looking for solutions to serious health-related illnesses. Various cases were uncovered as a result of 'Operation Cure.All' — an ongoing federal and state law enforcement and consumer education campaign launched in June 1999 to target bogus health claims on the Internet.

The FTC's proposed settlements are with Michael D Miller (Natural Heritage Enterprises), CMO Distribution Centres of America, Inc. and its president, Kalon Samulonis, and EHP Products, Inc. and its president Elaine Parrish.

The proposed settlements would prohibit Miller, CMO Distribution and EHP from making unsubstantiated claims for any food, drug, dietary supplement or program and from misrepresenting the results of any tests, study or research. The settlements also require the respondents to offer full refunds and to notify their distributors of the settlements and monitor their future advertising.

Jodie Bernstein, Director of the FTC's Bureau of Consumer Protection, emphasised the importance for claims to meet legal standards:

The promotions for these supplements as 'miracle' cures are really reprehensible because they target people who have very serious, if not life-threatening, health conditions.

The Food and Drug Administration is also concerned about public health implications where sellers of unapproved drugs can bypass public health safeguards set in place by Congress, the States and FDA.

The FTC warns consumers to be on the lookout for typical phrases and marketing techniques used to deceive consumers. Words such as 'scientific breakthrough', 'miraculous cure', 'exclusive product', 'secret ingredient' or 'ancient remedy' should alert consumers to be circumspect.

From Canada

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

Competition Act maintains and encourages fair market practices

A Calgary-based manufacturer and retailer of pine shakes [roofing material] was convicted of bid-rigging, an offence under s. 47(2) of the Competition Act. Shakemaster Manufacturing Inc. was ordered to pay a fine of \$15 000 after pleading guilty to rigging bids for the purchase of commercial timber permits at an auction.

Charges of bid-rigging and attempting to impede an inquiry, contrary to s. 64 of the Competition Act, against Mr Lindemulder, president of the company, were withdrawn under a plea agreement. Evidence showed that Mr Lindemulder formed agreements with other pre-qualified participants to bid only on designated permits and not in competition with each other.

Mr Konrad von Finckenstein, Commissioner of Competition, said that this case demonstrated how enforcement of the Competition Act maintained and encouraged free and fair market practices in Canada.

Notaries Association guilty of price fixing

The Notaries Association of Rivière-du-Loup has pleaded guilty and was fined \$25 000 for fixing the prices of real estate services offered

by notaries in the regions of Rivière-du-Loup and Trois-Pistoles in Quebec. A prohibition order was also imposed against nineteen notaries of the two regions. The notaries will be required to attend training sessions on the provisions of the Competition Act offered by the Chambre des Notaires du Quebec.

The Notaries Association fixed the price for notarised real estate transactions. Being the only professionals in Quebec with the right to draw up such transactions, consumers buying or selling real estate property were forced to pay artificially inflated prices.

The Commissioner of Competition, Mr von Finckenstein, emphasised that the Bureau will take action against anti-competitive behaviour regardless of whether the conspiracy is regional, national or international. 'Members of a professional body are not exempt from the provisions of the Competition Act', he said.

The Quebec Government no longer regulates fees for notaries' services. The Bureau's intervention will ensure that consumers have access to notaries' services at competitive prices.

Canada gets low marks from Global Competition Review

Konrad von Finckenstein, Commissioner of Competition, responded to the *Global Competition Review*, a London based publication that attempted a comparative study on competition authorities worldwide. It gave Canada low marks for the speed of their merger review processes, transparency and leadership. Mr von Finckenstein felt that the information was anecdotal and that it was necessary to set the record straight.

The Bureau questioned the authors' methodology, selection of sources and techniques. The report admitted that the respondents were allowed to offer comments on competition jurisdictions in which they don't practice as well as on their own. The report also relies on comments that paint an inaccurate picture of the Bureau's work. It has taken numerous steps to make its processes more transparent, efficient and fair.

Despite the criticism, the Bureau commended the publication for its attempt to assess the

competition agencies on a global scale. Such comparisons are needed to level the playing field in competition matters for consumers to benefit from competitive prices, product choices and quality service.

From Europe

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

EU launches e-learning initiative

The European Commission launched the e-learning initiative to speed up the adjustment of education and training in Europe to the digital age.

The initiative has four components — to equip schools with multimedia computers, train European teachers in digital technologies, develop European educational services and software and speed up the networking of schools and teachers. The Socrates, Leonardo da Vinci and Youth programs will teach two million Europeans the use of new technologies and other languages to improve their employment prospects.

E-learning has the following objectives: by the end of 2001 all schools should have access to the Internet, multimedia resources and support services. By the end of 2002 all teachers should be equipped and skilled in the use of the Internet and multimedia resources and by the end of 2003 all pupils should be digitally literate by the time they leave school.

The Commission is proposing to reinforce the 'European Schoolnet' project, a joint initiative by the Commission and 20 education ministries in the European Union, the EFTA countries and certain acceding countries.

On 8 June details of the e-learning project will be presented to a council meeting of education ministers. This may be followed by a special operation to teach young people the difference between 'information' and 'advertising', between 'fiction' and 'reality' and between 'virtual' and 'real'.

Council of European Energy Regulators

The Council of European Energy Regulators was created on 7 March 2000 in Brussels. Its 10 members are the National Independent Regulators in the field of electricity and/or natural gas from Belgium, Finland, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden, Great Britain and Northern Ireland. They handed over a Memorandum of Understanding to Ms Loyola de Palacio, Vice-President for Energy and Transport.

In their memorandum, the members commit themselves to:

- promote the development of efficient electricity and gas markets in Europe;
- cooperate to achieve competitive European electricity and gas markets;
- set up cooperation, information exchange and assistance among themselves;
- establish coherent and expert knowledge and analysis;
- provide a framework for the discussion of regulatory issues and exchange of experience;
- provide the necessary elements for the development of regulation in the fields of electricity and gas;
- develop joint approaches vis-à-vis transnational energy utilities and companies that operate in separated regulated utility markets; and
- establish common policies among members towards agreed issues.

Reducing greenhouse gases

The Commission launched its European Climate Change Program (ECCP) on 8 March 2000. It is a twin-track strategy aimed at implementing the emission-reduction target to which the EU is committed under the 1997 Kyoto Protocol.

A lot more effort is needed to meet the Kyoto target of reducing greenhouse gas emissions by 8 per cent in the timeframe as compared to 1990. The latest data show that CO₂ emissions

are increasing rather than decreasing, emphasising the need to reinforce policies and measures across all sectors of the EU economy.

Another climate change strategy involves an internal EU greenhouse gas emissions trading scheme. The Commission has adopted a Green Paper to improve understanding of emissions trading as a potential tool for climate change policy within the EU.