
International developments

International Competition Network launched

The ACCC will serve on the interim steering group of the newly launched International Competition Network. Competition officials gathered from around the world for its launch at the Fordham Corporate Law Institute's International Antitrust Conference on 25 October 2001. It is the latest initiative designed to enable procedural and substantive convergence in international competition enforcement.

At the launch US Assistant Attorney General for Antitrust, Charles A. James said:

The ICN will help us resolve emerging issues that concern both the business community and antitrust enforcers. The launch of ICN is an important step forward in achieving common ground on important substantive and procedural antitrust matters and protecting competition worldwide.

Once again James was scathing in his criticism of the EU's 'portfolio effect' approach saying:

One must be careful to distinguish between seemingly benevolent attempts to create competitive outcomes and competition itself.

... we appear to disagree over the meaning of competition ... divergence between the world's antitrust regimes on an issue this fundamental could undermine the growing consensus favouring competition over regulation.

The disagreement between the US and the EU was exacerbated in July when the EU blocked the GE/Honeywell merger, which was given the go-ahead in the US. The US cleared the transaction arguing the combined firm would be a more effective competitor, the prospective strength of the new entity being the reason the merger was blocked in the EU.

The US claims its approach favours consumers, not competitors, allowing the firms to consolidate, requiring divestiture when a consumer (the US Military) could be affected. However, the EU tends to favour pluralism in the market, concentrating on projected

effects on price and non-pecuniary effects such as product innovation, equitable wealth distribution and even employment achieved through dilution of market power. (This issue is discussed in greater detail by Mr James Griffin, Antitrust Division, US Department of Justice, in the Forum chapter of this issue of the journal.)

James says the ICN will not concentrate on broad policy issues, such as the 'portfolio effect' debate. Initially, it will focus on the merger control process as it applies to multi-jurisdictional mergers and on the competition advocacy role of antitrust agencies, particularly in emerging economies.

The concept, suggested by the International Competition Policy Advisory Committee, which explored the increasingly global nature of enforcement issues, will see Australia, Canada, European Union, France, Germany, Israel, Italy, Japan, Korea, Mexico, South Africa, United Kingdom, United States and Zambia serving on the interim steering group with Canada's Konrad von Finckenstein acting as interim chairman.

The ICN will not have a permanent secretariat or headquarters, and will only deal with competition issues. It is designed primarily for government decision-makers but will seek input from international organisations and the private sector, and will have no substantive authority, with consensus on particular recommendations being voluntarily implemented.

IMSN meets in Switzerland

The International Marketing Supervisory Network (IMSN) met in Berne, Switzerland, on 12-14 September. The network of consumer protection agencies discussed the future of the IMSN, cross-border remedies, and the eConsumer.gov project. It also heard presentations on consumer protection in Estonia, the USA's presidency of the IMSN, and cross-border advertising.

Of particular interest to the Commission was the operation of the conference itself, in light of the Australian presidency starting in mid-2002, during

which Australia will host two conferences. In preparation for this role, the Commission is currently filling a nominal 'vice-president' role in support of the Swiss presidency.

Ways to improve international cooperation were further explored. A representative from the Universal Postal Union spoke on cooperation with law enforcement agencies. A stocktake was presented of the common elements of misleading and deceptive practices, including discussion of the *OECD guidelines for consumer protection*, the *EU Council directive concerning misleading advertising*, the *UN consumer protection guidelines*, and the *Paris Convention for the protection of industrial property*.

In its country report the Commission presented several recent cases that have tested the courts' approach to Internet and cross-jurisdictional matters, including Skybiz, Purple Harmony Plates, Crowded Planet, Greenstar, and World Netsafe.

The Commission gave a brief presentation about the sweep day, planned for 28 January–1 February 2002. It was agreed that the Commission would coordinate the sweep, and some modifications to the sweep day paper were to be made before re-circulating it to all members.

From the UK

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

Investigation into prescription-only veterinary medicine

The £200 million-a-year veterinary medicine market has been referred to the Competition Commission after the OFT examined evidence that prices in the UK are substantially higher than in other European countries. Complaints have been received from farmers' groups and individual consumers.

The OFT's preliminary investigation also raised concerns about:

- a lack of transparency in prices as the medicines are often dispensed by veterinarians in the course of treatment and may not be itemised separately; and
- reluctance by manufacturers to supply veterinary pharmacies;

John Vickers, Director General of Fair Trading, said:

I am concerned by the high level of prices for prescription-only veterinary medicines and about possible restrictions on supply. It seems that competition in the market may not be working well.

The Competition Commission will report on:

- whether a 'complex monopoly situation' exists in the sector; and, if so
- whether the situation is being exploited; and
- whether the monopoly operates, or may be expected to operate, against the public interest.

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.

Microsoft US\$1 billion settlement offer rejected

On 11 January 2002 US District Judge, J Frederick Motz, rejected Microsoft Corporation's offer to donate computers and software to schools. Microsoft, which in 2000 earned US\$7.3 billion on revenue of US\$25.3 billion, had offered to give the poorest schools in the US more than US\$1 billion (A\$1.92 billion) in cash, products and services to settle most of the private antitrust lawsuits filed against it. These alleged that Microsoft abused its monopoly power in the software market and overcharged millions of computer buyers.

The proposed five-year settlement, under which Microsoft admits no wrongdoing, would have payed for teacher training, technical support, refurbished computers and copies of Microsoft's most popular software, such as Windows and Office, at more than 12 500 schools.

Motz J said the settlement is 'critically underfunded' and would have anticompetitive effects on the market, especially on Microsoft rival Apple Computer Inc. and that it:

... raises legitimate questions since it appears to provide a means for flooding a part of the kindergarten through high school market, in which Microsoft has not traditionally been the strongest player (particularly in relation to Apple), with Microsoft software and refurbished software.

Motz agreed with critics of the deal who argued that the donation 'could be viewed as constituting court-approved predatory pricing'. The ruling means Microsoft now will have to renegotiate the settlement or fight the scores of suits in court.

(The above article is a summary of information from <<http://www.cbsnews.com>>.

Buying clubs to pay US\$9 million to settle deception charges

A group of buying clubs including Triad Discount Buying Service Inc., a Boca Raton-based business, its related companies and their operator, Ira Smolev, will pay more than US\$9 million to settle charges brought by the Federal Trade Commission and state Attorneys General that they misled consumers into accepting trial club memberships and obtained consumers' billing information from telemarketers without the consumers' knowledge or authorisation.

The telemarketers generally advertised products such as kitchen gadgets and diet pills to consumers via outbound calls and through media advertising, direct mail or catalogues that result in inbound calls. Consumers then were enrolled in the clubs and charged up to US\$96 in yearly membership fees. Of the amount to be paid, US\$8.3 million is earmarked for consumer restitution and US\$750 000 will cover state investigative costs.

Playgirl.com operators to pay US\$30 million

The owners and operators of www.playgirl.com, www.highsociety.com and scores of other adult entertainment websites will pay US\$30 million to settle FTC and New York State's Attorney General's charges that they illegally billed thousands of consumers for services that were advertised as 'free' and billed other consumers who never visited the websites at all. The settlement bars the illegal practices in the future, and requires that the defendants post a bond — US\$2 million for the corporate defendants and US\$500 000 each for the individual defendants — before they are allowed to continue to market adult entertainment on the Internet.

The 'free tour websites' claimed that consumers' credit card numbers were required solely to prove that the consumers were of legal age to view the adult material, and that the credit cards would not be billed.

A list of names that the defendants billed under is available at <<http://www.ftc.gov/opa/2001/11/crescentstlmt.htm>>.

From Canada

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

Pfizer Inc. in international price fixing conspiracy

The US-based Pfizer Inc. recently pleaded guilty to a price fixing charge and was sentenced to pay a CAN\$1.5 million fine.

The Bureau's investigation, which started in 1999, revealed that Pfizer was involved in an international price fixing conspiracy from 1992 to 1994. The conspiracy fixed prices for sodium erythorbate which is used primarily as a food preservative agent to maintain colour and flavour in meat and other processed foods commonly sold in grocery stores.

From Europe

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

Commission fines vitamin cartels

The European Commission recently fined eight companies a record A\$1.458 billion for participating in eight distinct, secret, market sharing and price fixing cartels affecting vitamin products. The cartels operated between September 1989 and February 1999. Because Swiss-based company Hoffman-La Roche was an instigator and participated in all the cartels it was given the highest cumulative fine of about A\$784 million. BASF (AG) Germany was fined about A\$502 million.

The following eight companies received fines between A\$8.55 million and A\$62.87 million: F. Hoffmann-La Roche AG (Switzerland), BASF AG (Germany) Aventis SA (France), Solvay Pharmaceuticals BV (Netherlands), Merck KgaA (Germany), Daiichi Pharmaceutical Co Ltd (Japan), Eisai Co Ltd (Japan) and Takeda Chemical Industries Ltd (Japan).

Five other companies, Lonza AG (Germany), Kongo Chemical Co Ltd (Japan), Sumitomo Chemical Co Ltd (Japan), Sumika Fine Chemicals Ltd (Japan) and Tanabe Saiyaku Co Ltd (Japan) were not fined because the cartels in which they were involved ended five years or more before the Commission opened its investigation. Under EU law, prescription applies under these circumstances.