
International developments

Inaugural ICN meeting

The inaugural meeting of the International Competition Network (ICN) Conference was held in Naples, Italy, on 28–29 September 2002. It was attended by top officials of 61 antitrust agencies worldwide.

Jurisdictions around the world (Australia, Canada, European Union, France, Germany, Israel, Italy, Japan, Korea, Mexico, South Africa, United Kingdom, United States and Zambia) joined in October 2001 to create the ICN.

It has two main goals:

- to provide support for new antitrust agencies both in enforcing their laws and in building strong competition cultures in their countries
- to promote greater convergence among antitrust authorities toward sound competition principles.

Commission Chairman, Professor Allan Fels, commented that:

While there are a number of other bodies concerned with international competition policy—OECD, WTO (which now includes competition as an item for discussion under the current round of trade negotiations), UNCTAD—the ICN is seen as particularly important because of the strength of support from major countries and also because of the involvement of developing countries, as well as the private sector. The ICN aims to improve competition law enforcement and administration to benefit business and consumers. It draws its expertise from antitrust agencies, the private sector, academia and other international organisations.

It is project-focused with consensus decisions. Proposals are non-binding on individual countries but once adopted tend to bring about convergence. Since it began, the ICN has concentrated on multi-jurisdictional merger review and the role of competition advocacy. This conference has moved forward in determining how competition agencies can bring about substantial and procedural convergence worldwide.

ICN is being guided by a steering committee whose members were confirmed by ICN at its first conference. Australia is a member of the committee. Further details on the ICN can be found at <<http://internationalcompetitionnetwork.org>>.

From the UK

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

OFT launches guide to new Enterprise Act

The OFT recently published a guide to the principal competition and consumer provisions of the *Enterprise Act 2002* and the OFT's new powers, role and structure under the Act. The Act makes major reforms to competition law and consumer law enforcement in the UK, including removing ministers from most decisions on mergers, criminalising individual participation in hard-core cartels, streamlining appeals mechanisms, and establishing new procedures for tackling trading practices that harm consumers.

The guide is available at <<http://www.oft.gov.uk>>.

Motor trade tops league of consumer credit licences refused or revoked by OFT

Under the Consumer Credit Act businesses that offer consumer credit or hire must have a consumer credit licence and the OFT monitors the fitness of those holding and applying for licences.

Some of the offences taken into consideration in the refusal or revocation of licences in 2002 have included 'clocking' car odometers, falsifying documents, supplying vehicles with false trade descriptions, receiving stolen goods and causing actual bodily harm.

Of 23 refused licences nine were for motor dealer and repair companies, five for financial services providers and three for home improvement and repair traders. The remainder were for various other retailers and one dating agency.

Of 16 revoked licences nine were for motor dealers and vehicle rental companies and five for financial service providers.

OFT advises shoppers to think before taking out extended warranties

In the run-up to Christmas the OFT advised consumers to think first whether extended warranties give good value for money.

Leaflets distributed in shopping centres posed the questions:

- do I need more time to make my decision?
- do I need this—or am I already covered?
- what are my alternatives? For example, using a local repairer if an item breaks down.

In 2001 the extended warranty market on 'brown and white goods' was worth around £800 million. This figure is expected to reach £1billion by 2006.

OFT research found that the average washing machine repair costs £45 to £65. So if a five-year extended warranty costs £150 on a £300 washing machine, it would need to break down four times for a consumer to benefit.

A recent *Which?* report highlights that modern domestic appliances are generally reliable. It found that 81 per cent of washing machines did not break down at all in the first six years.

The OFT also reminds customers that they may already be covered by law, or by their home contents insurance.

From the US

The following items come from the Federal Trade Commission's press releases on its website <<http://www.ftc.gov>>.

Bogus cancer cure guru settles FTC charges

An Internet entrepreneur who marketed bogus cancer cures claiming they made other conventional cancer treatments unnecessary agreed to settle FTC charges that his claims were unsubstantiated. The settlement permanently bars the defendant from making unsubstantiated claims about the health benefits and efficacy of health-related products and services.

The FTC charged that David L Walker maintained a website and conducted seminars and personal consultations promoting his purported cancer cure,

the 'CWAT—Treatment: BioResonance Therapy and Molecular Enhancer'. The website claimed his treatments, for which he charged between \$2400 and \$5200, make surgery, chemotherapy, and other conventional cancer treatments unnecessary. The site and promotional material also contained 'testimonials' from consumers who supposedly experienced miraculous cures using Walker's products. The FTC introduced testimony from a distinguished oncologist that suggested the therapies—which included herbal and mineral mixtures with exotic names—are potentially harmful to cancer patients.

Deceptive spam and Internet scams

The FTC and 12 federal, state, and local law enforcement and consumer protection agencies recently announced a four-part initiative launched to fight deceptive spam and Internet scams. The centerpiece of the initiative is a group of more than 30 law enforcement actions, including three FTC complaints and four settlements with spammers caught in an FTC sting. In addition, 10 of the law enforcers signed letters to about 100 spammers warning them that their spam appeared to be illegal and that law enforcers could take action against them if they continued their fraudulent scams.

FTC cases

The FTC charged that one defendant used deceptive spam, including unauthorised use of logos of well-known financial institutions including Radian Bank, Prudential, and Fannie Mae, to induce victims to disclose sensitive financial information such as income, mortgage balances and home values. The spammers purported to offer consumers competitive financing and refinancing loans. The defendants also allegedly forged email headers—a technique known as 'spoofing,'—so that any undeliverable messages went to email addresses unaffiliated with the defendants. One unaffiliated third party was swamped with more than 30 000 bounce-back and angry 'do not spam me' emails intended for the defendants.

Spam harvest

To determine what online activities place consumers at risk for receiving spam, Northeast Netforce investigators 'seeded' 175 different locations on the Internet with 250 new, undercover email addresses and monitored the addresses for six weeks. The sites included chat rooms, newsgroups, web pages, free personal web-page services, message boards and email service directories. One hundred per cent

of the email addresses posted in chat rooms received spam; the first received spam only eight minutes after the address was posted. Eighty-six per cent of the email addresses posted at newsgroups and web pages received spam; as did 50 per cent of addresses at free personal web-page services; 27 per cent from message board postings; and nine per cent of email service directories.

Help for consumers

Results of the harvest indicated that spammers use different methods, as well as different sources, to seize consumers' email addresses. Consumers who receive large amounts of objectionable spam may want to change their email address and follow some safer surfing tips suggested in the FTC's publication, *Email address harvesting: how spammers reap what you sow*, available online at <<http://www.ftc.gov/bcp/online/pubs/alerts/spamalrt.htm>>.

Suggestions include:

- considering 'masking' your email address (<johndoe@myisp.com> could be masked as <johndoe@spamaway.myisp.com>) [In this type of masking the extraneous word or phrase in your email address makes it unrecognisable to an email-address harvesting program, but not to a person.]
- using a separate screen name for online chatting
- setting up disposable email addresses for discrete projects
- using two email accounts—one for public posting, one for personal messages
- using a unique email address, containing both letters and numbers.

More spam

Operators who used spam, deceptive earnings claims and fictitious testimonials to sell spam email lists as business opportunities have agreed to settle FTC charges that their operations violated federal laws.

The FTC alleged that Richard Jon Scott, doing business as Cyber Data, and Sonya Lockery, doing business as Internet Specialists, sent spam to consumers claiming that by purchasing their bulk email lists, consumers could make easy money selling products and services on the Internet. Internet Specialists also promoted the spam list on a website. Cyber Data's email claimed that purchasers reasonably could expect to earn 'over US\$10 000 000' by selling a US\$5 product via bulk email.

The FTC charged that both Scott and Lockery made false earnings claims and falsely characterised the quality of their bulk email lists. For example, Cyber Data claimed that its email address lists contained 'no duplications', and included 'almost every person on the Internet today'.

FTC and FDA improving access to lower-cost generic drugs

The Food and Drug Administration (FDA) recently proposed ways to clear away unnecessary roadblocks to the approval of generic drug products.

This followed a recently released FTC report, *Generic drug entry prior to patent expiration*, which described a new industry practice that delays FDA approval of generic drug products. This practice entails brand-name pharmaceutical companies using questionable methods to obtain multiple 30-month stays of FDA approval of generic drugs. The report documented that since 1998 brand-name companies obtained multiple 30-month stays of generic applications for six brand-name drug products. The FDA's proposal, if promulgated and upheld, will be an effective and faster way to bring economic benefits of generic drugs to consumers.

From Canada

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

Further fines for bulk vitamin conspirators

The Federal Court of Canada recently imposed fines of more than Can\$4 million for a conspiracy to fix prices and allocate market shares for vitamin B3 sold in bulk in Canada.

Degussa AG of Germany, Lonza AG of Switzerland, Nepera Inc. and Reilly Industries Inc. of the United States pleaded guilty to participating in the international conspiracy.

The total amount of fines imposed by Canadian courts since September 1999 against the bulk vitamins conspiracies is about Can\$95.5 million. During this time, sales in Canada of the bulk vitamins by the producers convicted to date were Can\$705–750 million.

From New Zealand

The following item is from the NZ Commerce Commission's media releases on its website at <<http://www.comcom.govt.nz>>.

Misleading MasterCard offer costs ANZ Bank

The ANZ Bank recently had to write off NZ\$2.3 million as a result of an advertising campaign that was ruled by the Wellington District Court to be misleading. The bank was fined NZ\$7500 plus NZ\$1130 costs for breaching the Fair Trading Act in relation to the promotion which offered nearly 10 000 of its existing customers an ANZ MasterCard with a pre-approved \$5000 limit.

Promotional material addressing each customer by name promised:

All you have to do is take up an ANZ MasterCard. We've already pre-approved you for a \$5000 limit, just complete the enclosed form ...

The Commerce Commission initiated the investigation after learning that a customer who received this offer and sent away an enclosed application form for the card subsequently had her application declined. This was because her income level did not meet minimum credit criteria.

The investigation revealed that ANZ's method for identifying eligible customers was erroneous and that 850 of the original 9998 customers targeted did not meet minimum criteria based on their income level.

From Europe

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

Food without fear: amended food labelling

The Council of the European Union has accepted a European Commission proposal to amend food labelling. This is to ensure that consumers are informed of the complete contents of foodstuffs and can identify allergenic ingredients that may be present. It abolishes the '25% rule' which currently means that it is not obligatory to label components of compound ingredients that make up less than 25 per cent of the final food product. A list of ingredients liable to cause allergies or intolerance is being established as part of the draft law. The new rules will also extend to alcoholic beverages if they contain an ingredient on the allergen list, for example, sulphite in wines.

David Byrne, Commissioner for Health and Consumer Protection, welcomed the Council's common position, commenting that:

The complete labelling of ingredients is a direct response to repeated requests from consumers for better information about the composition of foods they purchase. This is a very clear example of the European Union working concretely in favour of citizens' day-to-day needs. I am particularly committed to a revised labelling regime that gives consumers much more information about potential allergens. This regime will extend from foodstuffs to include alcoholic beverages.

Under the new rules, it will be mandatory to list all sub-ingredients of compound ingredients, which means that allergens cannot be 'hidden'. One example of this is sauces that might contain allergenic ingredients like eggs, milk or mustard. Previously such sub-ingredients did not have to be listed if they were part of a compound ingredient that made up less than 25 per cent of the product, whereas now all such allergenic ingredients will have to be declared.

In addition, some labelling exceptions will no longer be accepted for allergens. Previously it was possible to declare ingredients only as a category (e.g. 'vegetable oil'), whereas the new rules will require the source to be indicated for all allergenic ingredients so that for example 'peanut oil' must be specified. Similarly, the source of a natural flavour such as a nut will have to be indicated, while it is currently labelled only as 'natural flavour'.

Commission clears one-stop agreements for Internet TV and radio music licensing

An antitrust exemption granted by the European Commission will introduce more competition for European television and radio companies that simultaneously broadcast music shows on the Internet. Under the new rules, broadcasters can get a single 'one-stop shop' licence from royalty collecting agencies to cover Internet broadcasts across most of the 18-nation European Economic Area replacing the old system under which they need to secure a license from each national copyright administration and collecting societies. The new system will also boost competition among the societies that collect the royalties on behalf of the music industry notably in terms of the fees they charge.

Commenting on the decision, Competition Commissioner Mario Monti said:

The creation of a legitimate marketplace for so-called simulcasting will benefit both consumers and rights-holders. Consumers will be able to access their favourite radio and/or TV music programmes from virtually anywhere in the world. At the same time, the framework put in place ensures that the rights-holders will be properly paid.