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# International developments

## From New Zealand

*New Zealand's 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.*

*The following items were extracted from the February/March 1997 issue of the Commerce Commission's newsletter Fair's Fair.*

### **Court of Appeal upholds acquisition decision**

On 3 March 1997 the Court of Appeal upheld the Commerce Commission's decision to clear the acquisition by Mercury Energy Ltd of up to 100 per cent of the shares of Power New Zealand Ltd.

Mercury applied to the Commission for clearance in 1994, which was granted. Power New Zealand appealed to the High Court which rejected the appeal. Power New Zealand then appealed to the Court of Appeal which also rejected it.

Before deregulation of the electricity industry the Commission did considerable work to ensure that it and the industry were as well informed as possible. For example, it visited every power company and published policy and discussion papers. The Commission has maintained contact with the industry after deregulation to ensure it keeps up to date with the changes brought about by competition.

The Commission viewed the Court of Appeal's decision as an endorsement of its views and approach to business acquisitions in this industry.

### **\$50 000 fine on Edge computer company**

On 20 February 1997 the Wellington District Court imposed a \$50 000 fine on Edge Computer Ltd for selling computer components which did not have the memory claimed for them. This is the single highest fine yet under the Fair Trading Act.

The Commission alleged that Edge falsely represented that its motherboards had 256K of cache memory, when in fact the motherboards had no cache memory. Documents seized by the Commission during the execution of search warrants included specific reference to 'dummy' motherboards. Tests showed that the motherboards had been installed with chips that looked identical to functioning cache memory chips but were only plastic mouldings with no working parts.

Edge was prosecuted by the Commerce Commission and had pleaded guilty. This is believed to be the first successful prosecution of its type in the world. It is understood that similar cases are under way in the United States, Germany and Britain, but have not yet been resolved.

### **Misleading impressions created by food labelling**

On 17 March 1997 Pacific Dunlop Holdings (NZ) Limited was convicted of making misleading claims about Plumrose Light Deli Ham. The canned ham was labelled '90% fat free', 'light deli ham' and 'healthier eating with Plumrose'.

The Commission did not dispute that the ham was 10 per cent fat. It argued that the overall

impression created was that Plumrose deli ham was a lower fat product, when that was not the case. Tests showed that the canned ham contained between twice as much as and almost four times more than vacuum packaged ham.

Judge Abbott said:

When read as a whole (including the slogan 'healthier eating with Plumrose'), the overall impression which the labelling of the Plumrose deli ham could have conveyed to a prospective purchaser was that the product was comparable in flavour terms to fresh or packaged deli ham but contained less fat than those products.

As in my view the labelling of the Plumrose Deli Ham conveyed the overall impression that, in a comparative sense, it was a low fat product, that claim was both unjustified and misleading.

The Commission said that the conviction showed that a factually correct statement could still be misleading and breach the Fair Trading Act. The promotion of food products is an area on which the Commission is focusing, particularly on claims that a product is healthier than competitors' products.

### **Qantas fined for misleading advertising**

On 19 December 1996 in the Auckland District Court, Qantas was fined \$8000 for misleading advertising.

In March 1996 Qantas had advertised cheap airfares and accommodation. However, the advertisements did not mention that these were available for twin shares only. The price for one adult was higher than that advertised.

Judge Rushton said that although there appeared to be no deliberate attempt to mislead, the advertisements had breached the Fair Trading Act and a fine at the lower end of the scale was appropriate.

### **Study of direct marketing and selling**

A Commission study has found that around 12 per cent of the 15 000 inquiries made to the Commission's Fair Trading Division concern goods or services sold or marketed using direct methods.

The most common problems identified in relation to direct selling or marketing were misleading claims about prices of goods and returns on investments.

For example, the study found that in some cases consumers had been billed in Australian dollars for goods advertised in New Zealand, or that the price had been subject to change in the exchange rate, and that the extra charge had been passed on to the consumer. In other cases the full cost of the product was not disclosed as postage and packaging were not included.

In the area of direct selling of investment opportunities, the study found that often claims greatly exaggerate the likely returns from a scheme, and many appear to be pyramid selling or chain letters.

The study found that in most cases consumers had good access to inexpensive redress. However, redress was difficult when consumers were dealing with companies based overseas.

The Commission will continue to monitor direct selling and marketing, particularly claims about prices and investments, and will take enforcement action if problems continue.

## **From the United States**

*The following was extracted from a media release from the Federal Trade Commission, dated 8 April 1997.*

### **Revised merger guidelines on efficiencies**

On 8 April 1997 the Federal Trade Commission and the Department of Justice announced revisions to their joint merger guidelines. The revisions clarify how the agencies analyse efficiency claims in mergers under review by the Federal Government. The FTC said the revisions will provide the public, the agencies and merging firms with a clearer roadmap for determining whether efficiencies will lead merging firms to lower prices, create new products, or otherwise enhance competition. They also set out what merging

firms must do to demonstrate claimed efficiencies.

The revised guidelines amend the 1992 Horizontal Merger Guidelines and were drafted by an interagency task force set up in June 1996, following the release of the FTC hearings report on 'Competition policy in the new high-tech, global environment'.

The revised guidelines are available on the FTC's Internet site at <http://www.ftc.gov>

## From Sri Lanka

Last year the Minister of Trade, Commerce and Food appointed a task force to report on the amalgamation of the Department of Internal Trade and the Fair Trading Commission. The task force submitted to the Minister a report and a draft Bill, the title of which is:

An Act to provide for the establishment of a Commission of Consumer Affairs and Fair Trading; for the promotion of effective competition and protection of the consumers; for the regulation of internal trade; for the establishment of a Competition Tribunal; for the repeal of the Consumer Protection Act No. 1 of 1979 and the Fair Trading Commission Act No. 1 of 1987; and for all matters connected therewith or incidental thereto.

The draft Bill is now being scrutinised by an Inter-Ministerial Committee of the Ministry of Finance and the Ministry of Commerce, Trade and Food before it is submitted to the Cabinet of Ministers.

## Australia/US mutual help in competition law enforcement

Australia and the United States of America have drafted a treaty to exchange evidence and assist each other's investigation of possible contraventions of competition law. On 18 April 1997 the Prime Minister, the Hon. John Howard MP, wrote to State Premiers and Territory Chief Ministers seeking their comment on the proposed agreement.

If finalised, the agreement would be the first signed under the United States' International Antitrust Enforcement Assistance Act 1994.

Australia's assistance will be subject to the requirements of the *Mutual Assistance in Criminal Matters Act 1987* and the *Mutual Assistance in Business Regulations Act 1992*.

Under the agreement, Australia and the US would exchange evidence on a reciprocal basis for use in competition law enforcement and assist each other in obtaining evidence located in the other's country while assuring that confidential information was protected.

Commenting on the proposal, ACCC Chairman Professor Allan Fels said that the enforcement of competition laws in an increasingly global economy involved more and more frequently competition law agencies in more than one country. Accordingly it was essential that competition law agencies develop means of assisting each other to investigate contraventions that extend into other countries.

## Visit from Chinese delegation

On 30 April 1997 a delegation from the Ministry of Internal Trade, People's Republic of China, visited the Commission's Canberra office, as part of a visit to Australia and New Zealand.

The seven-person delegation was headed by Vice Minister Yang Shude. Other delegates were:

Mr Wang Minghong (General Director, Department of Science, Technology and Quality Control)

Ms Wang Qing (General Director, Department of Science, Technology and Quality Control)

Mr Huang Hai (General Director, Department of Law, Systems and Regulations)

Mr Chen Lianzhen (General Manager, China National Commercial Foreign Trade Corp)

Mr Long Wenyuan (Division Director, General Affairs Office)

Mr Xue Chuanbin (Deputy Division Director, Department of International Cooperation)

At the Ministry of Internal Trade, the delegation is accountable to the Premier and the National Council for:

- the strategy for the distribution industry market development in China;
- the profit and loss of all government and State-owned retail enterprises; and
- the laws and policies governing retail industry business practices and standards.

The Ministry of Trade is responsible for the allocation of retail chain store licences to international companies wishing to operate in China.

The purpose of the visit was to meet government and business executives to discuss policies and directions in relation to the retail industry, including:

- recommended government policy and support infrastructure;
- education and training services for critical business and technology skills;
- supply, distribution and retailing of merchandise in Australia and New Zealand with an emphasis on supermarket and retail chain operations; and
- retail technological solutions, standards and business processes used in Australia and New Zealand.

Commission staff gave presentations on competition policy and the structure of the Commission; implications of the Trade Practices Act for the retail sector; a case study on acquisitions in the supermarket industry; and the pricing role of the Commission.