



Issue: 1-09 April 1, 2009

**FTCNewsLine** is an online quarterly newsletter of the **FAIR TRADING COMMISSION** that contains information on competition matters dealt with by other competition agencies from around the world. The aim is to provide insights into some of the matters that are prosecuted in other jurisdictions; and to assist persons in better identifying issues that may pose competition concerns.

Competition legislation is specific to each jurisdiction and activities that are prohibited in one jurisdiction are not necessarily prohibited in other jurisdictions. For information on the prohibitions under the Jamaica's competition legislation, the **FAIR COMPETITION ACT**, you may click on this link, [www.jftc.com/new/index.php?option=com\\_content&task=view&id=18&Itemid=76](http://www.jftc.com/new/index.php?option=com_content&task=view&id=18&Itemid=76)

## **AUSTRALIA**

### **Retailer corrects misleading beer and wine promotions**

The Australian Competition and Consumer Commission (ACCC) has taken steps to ensure that Moving Juice Party Ltd. (Moving Juice), a wine retailer in South Australia corrects misleading beer and wine promotions. Moving Juice advertised that it was having a special where consumers would be given a free portion of Coopers beer with every purchase of one dozen bottles of Dog Leg wine. However, checks by the ACCC revealed that the price of the Dog Leg wine package was hiked to cover a portion of the cost of the “free beer”.

In addition, the “was \$X vs. now \$Y” price comparisons that was advertised on Moving Juice's website was found to be misleading. Investigations by the ACCC revealed that the advertisement would have been misleading as Moving Juice had not offered for sale or actually sold the wine for the higher “was” price after November 2007.

Since ACCC investigations into the matter, Moving Juice has undertaken to correct the misleading advertisements in all of its advertising outlets; donate the profits from its conduct to a charity; and implement a Trade Practices compliance program.

*Source: Australian Competition and Consumer Commission News Release, 06/01/09*

### **When “unlimited” isn't: Mobile phone service provider undertakes to stop misleading advertising**

Investigations by the ACCC into the conduct of TPG Internet Pty Ltd (TPG), has revealed that the company has engaged in misleading advertising. In late 2008, TPG advertised that it was offering a mobile phone plan of “Unlimited Cap

Server.” TPG further represented that this plan would give consumers access to unlimited calls and texts for \$59.99 per month. However, investigations by the ACCC revealed that there were multiple exclusions to the plan and that there was an additional hidden cost of \$20 for the plan.

ACCC has warned that mobile phone companies should be careful when using terms like “unlimited”, when in actuality there are limits to the plan as this is misleading to consumers. ACCC further states that any qualification to the term “unlimited” should be notably highlighted and should not be so significant that it would contradict the headline message.

Following ACCC investigation, TPG has given a court-enforceable undertaking that it will, for a period of three years, desist from advertising mobile plans of unlimited calls and texts for a specific price without highlighting that terms and conditions apply; publish a corrective note on its website; and implement a Trade Practices compliance program.

*Source: Australian Competition and Consumer Commission News Release, 11/02/09*

### **Court orders airlines to pay a total of \$ 16 million in penalties for price fixing**

Investigations carried out by the ACCC revealed that, between 2003 and 2006, Societe Air France, Koninklijke Luchtvaart Holland NV, Martinair Holland NV and Cargolux International Airlines S.A. had price fixing agreements with other international airlines with regard to the fuel surcharges applied to international carriage of air cargo.

The Federal Court in Sydney ordered payments totaling \$16 million from the four airlines. In addition to this penalty, the Court made orders restraining the companies from engaging in a similar conduct for five years and also required each party to pay a portion of ACCC’s costs.

*Source: Australian Competition and Consumer Commission News Release, 16/02/09*

### **Oceanic Diving admits engaging in resale price maintenance**

Following investigations into the practice of resale price maintenance by Oceanic Diving Australia Party Limited (Oceanic), the company has undertaken that it will correct this practice. The ACCC alleged that in August 2008, Oceanic advised 60 dealers that they could not advertise certain Oceanic goods below a particular price.

After the intervention of the ACCC, Oceanic retracted its pricing policy, thereby allowing dealers to advertise its goods at their choice price. Also, Oceanic has given court-enforceable undertakings that it will not engage in resale price maintenance; and that it will implement a trade practice law compliance program for three years and publicly acknowledge its contravention of the *Trade Practices Act 1974*.

*Source: Australian Competition and Consumer Commission News Release, 04/03/09*

### **Court declares Harris Scarfe misled consumers**

Legal proceedings were instituted by the ACCC against Harris Scarfe Australia Party Ltd. (Harris Scarfe) on the basis that it misled consumers. Harris Scarfe had advertised in a catalogue that it was having a 20-60% off storewide sale on goods including TVs, cameras and kitchen appliances. Investigations by the ACCC revealed that the discount offered on some of the items were less than that which was advertised. For instance, Harris Scarfe advertised that it was offering 20% of all cordless phones when in actuality, the discounts ranged from 7.2%-16.1%.

As a corrective measure the ACCC required that Harris Scarfe maintain a compliance program for three years.

*Source: Australian Competition and Consumer Commission News Release, 09/02/09*

## **EUROPE**

### **Commission has carried out inspections in the French electricity sector**

Having reason to believe that EDF (an electricity company in France) was engaging in abuse of dominant market position, the European Commission and the French competition authority carried out unexpected inspections at the company offices. The Commission identified that the performance of the energy sector was crucial to the general competitiveness of the European economy.

An inspection constituted the groundwork of investigations into suspected anti-competitive practices and did not indicate that the company was guilty nor does it presume the result of the comprehensive investigation.

*Source: Europa Press Release 11/3/09*

## **UNITED STATES**

### **Companies agree to pay \$2.25 million as part of the US FTC crackdown on fraud in the Prepaid Calling Card Industry**

Legal action was taken by the U.S. Federal Trade Commission (FTC) against six major prepaid calling card companies on the basis of deceptive advertising. The FTC asserted that the companies misled consumers about the available minutes of talk time that were on the cards. The FTC also alleged that the companies failed to disclose hidden fees and in the event that they were disclosed, the language was confusing and the font small.

In settling the claim, the U.S. District Court ordered the calling card companies to pay \$2.25 million and barred them from misrepresenting available minutes on prepaid calling cards. In addition, they were also required to disclose all material information such as fees or charges in future advertisements.

*Source: Federal Trade Commission News Release, 10/2/09*

### **National Association of Music Merchants settles US FTC charges of illegally restraining competition**

The FTC issued a consent order regarding charges against the National Association of Music Merchants (NAMM) of illegally restraining competition. The FTC alleged that NAMM (a trade association with over 9,000 members), facilitated the sharing of competitive sensitive information among competing retailers of musical instruments. According to the Commission, between 2005 and 2007 NAMM facilitated meetings and programs where competing retailers were encouraged to discuss strategies for implementing manufacturer's minimum advertised pricing (MAP) policies; restricting retail price competition; securing higher retail prices; and other competitive sensitive issues.

The FTC contended that, the practice enhanced NAMM members' capacity to coordinate price increases for musical instruments. The FTC further alleged that NAMM's conduct could result in collusive practices by competitors, thereby putting consumers at a disadvantage.

The proposed consent order was aimed at averting NAMM's anticompetitive conduct. The consent order bars NAMM from engaging in anticompetitive practices such as facilitating the sharing of price sensitive information and aiding its members in forming anticompetitive agreements. In addition, NAMM is required to implement a compliance program and submit any information written by its members relating to price terms and MAP policies to the Antitrust Council. FTC pointed out that the consent order will not affect NAMM's legitimate trade association activities such as sponsoring trade shows and promoting music education. The consent order will be in effect for 20 years.

*Source: Federal Trade Commission News Release, 4/3/09*



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