



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 legislations are 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**, please visit our website at www.jftc.gov.jm.

AUSTRALIA

Furniture retailer apologizes for confusing consumers

Super A-Mart, a furniture and bedding retailer was forced to apologize to consumers after the Australian Competition and Consumer Commission (ACCC) raised concerns that their conduct may be misleading or likely to mislead. The ACCC was concerned that two separate advertisements by Super A-Mart on different occasions may have been misleading. In one instance, Super A- Mart advertised that it would be clearing all floor stock, however some stock on the floor were not included. In another instance, Super A-Mart advertised discounts on certain goods, available only in its *Thursday Thumper Sale*, however, some items were discounted before and after that sale, and another item was more expensive. Also, the ACCC was concerned with the representations made by Super A- Mart about its *No Deposit Interest Free* payment option.

In addition to apologizing for potentially misleading consumers, Super A- Mart was required, by a court enforceable-order to review wording used in disclaimers; display public notices in store and on website; improve internal advertisement review process; and implement a trade practices compliance law program.

Source: Australian Competition and Consumer Commission News Release, 09-06-30

ACCC alleges price fixing by Queensland construction companies

Legal proceedings were initiated by the ACCC in the Brisbane Federal Court against three construction companies engaged in price fixing and misleading conduct in tendering for Government construction projects in Queensland. The ACCC alleged that between 2004 and 2007, T.F. Woollam & Son Pty Ltd, J.M. Kelly Pty Limited and Carmicheal Builders Pty Ltd were engaged in 'cover pricing'. Cover pricing occurs when two or more companies collude with each other and come up with a price that is intended to be too high to win the contract for the

project on price alone. One company then submits this price as the genuine price. The ACCC further alleged that the companies involved in the conduct assured their client that they had not discussed their tender with another company tendering for the project when this was not true.

The ACCC is seeking declarations, injunctions, pecuniary penalties and orders requiring corrective notices, implementation of trade compliance program, trade practice training and costs.

Source: Australian Competition and Consumer Commission News Release, 09-09-21

Misleading Mitre 10 ‘storewide’ sale

Mitre 10 Australia Ltd, a hardware store, admitted that it engaged in misleading and deceptive conduct. This was after concerns were raised by the ACCC that the television and website advertisement of Mitre’s ‘20% off storewide sale’ failed to adequately disclose products that were excluded from the sale. The television advertisement included small print text that there were ‘terms and conditions instore’ but did not state them, while the advertisement on Mitre’s 10 website failed to refer to any terms and conditions. The ACCC chairman pointed out it was important that companies adequately disclose terms and conditions and clearly define any exclusions when promoting a sale.

As part of court enforceable undertakings, Mitre must implement a trade compliance program designed to minimize future breaches of the consumer protection provisions of the Trade Practices Act

Source: Australian Competition and Consumer Commission News Release, 09-08-13

UNITED STATES

FTC Sues Prepaid Calling Card Distributor for Deceiving Consumers

Legal proceedings were initiated by the Federal Trade Commission (FTC) against Diamond Phone Card Inc, a distributor of prepaid calling cards and its principals on the basis that it deceived consumers. Specifically, the FTC alleged that the defendants misrepresented the number of minutes available on the cards. Investigations by the FTC revealed that consumers did not receive the number of minutes that were advertised on cards. In addition, the FTC has also alleged that the defendants failed to adequately disclose maintenance and other fees that would reduce the value of the card. The defendants used large and colourful text to advertise the minutes, while the note on fees was nearly illegible at the very bottom of the advertisement.

The FTC is asking the U.S. District Court to permanently halt the illegal practices of Diamond Phone Card Inc and its principals and also force them to give up the money they made through their deceptive tactics.

Source: Federal Trade Commission Press Release, 09-08-05

CVS to Pay Nearly \$ 2.8 Million in Consumer Refunds to Settle the FTC Charges of Unsubstantiated Advertising of AirShield ‘Immune Boosting’ Supplement

As part of its settlement with the FTC, CVS Pharmacy Inc will stop making misleading claims that its “AirShield” dietary supplement can prevent colds, fight germs and boost immune system. Additionally, CVS will have to pay nearly \$2.8 million to settle the FTC charges.

The FTC alleged that CVS Pharmacy made false and deceptive claims that using its products would reduce the risk of colds and protect against catching colds in public places. The FTC further alleged that the company had no evidence that the products could boost the immune system or prevent colds.

The FTC pointed out that any claim made about food, drug or dietary supplements reducing the risk of colds, protecting against cold viruses in crowded places, fighting germs or boosting the immune system should be true and backed by scientific evidence.

Source: Federal Trade Commission Press Release, 09-08-09

UNITED KINGDOM

Airline improves website pricing transparency

Having received consumer complaints regarding Jet2.com airline, the Office of Fair Trading (OFT) conducted a review of Jet2.com’s booking practice for compliance with the Consumer Protection from Unfair Trading Regulations.

Following negotiations with the OFT, Jet2.com has taken a number of steps to improve the clarity and transparency of its website including providing consumers with information early in the booking process regarding any fixed non-optional costs and optional charges passengers may incur and clearly display in the website’s running total price, including costs which are not taxes.

Source: Office of Fair Trading Press release, 09-08-14

ITALY

MasterCard and Eight Banks and Finance Companies to be Investigated

The Italian Competition Authority initiated an investigation to determine if MasterCard and eight Italian banks were engaging in anticompetitive arrangements in the credit card sector. Inspections were carried out in collaboration with the Special Units of the Guardia di Finanza with the aim of establishing how competition was affected by MasterCard’s fixing of national interbank fee for transactions using its credit cards and the application of those fees by the participating banks. It is the view of the Competition Authority that the fixing of a high interchange fee benefits not only MasterCard but also the banks and finance companies involved.

The investigation must therefore determine whether the fixing of national interbank fees limits competition so that high costs are passed on to consumers and merchants.

Source: Italian Competition Authority Press Release, 09-07-17

IRELAND

Competition Authority Publishes Guidance on Pay-TV in Apartments

Having received a large number of complaints from apartment residents regarding the inability to switch to alternative pay-TV providers due to exclusivity agreements, the Competition Authority launched an investigation. The investigation was carried out under Section 4 and 5 of the Competition Act 2002, which prohibit anti-competitive agreements and the abuse of a dominant position respectively.

Legal and economic analyses of pay-TV exclusive agreements were conducted and the Competition Authority concluded that, where the period of exclusivity does not exceed two years, it was unlikely to breach the Competition Act 2002. The reasoning behind this is that, pay-TV providers want to ensure that they have sufficient incentive to install infrastructure. Hence, short term exclusive agreements are warranted. However, long term (exceeding two years) exclusive agreements may raise competition concerns.

Source: The Competition Authority Press Release, 09-08-14.