CONSUMER PROTECTION COMMITTEE

INTERNATIONAL DEVELOPMENT SUMMARIES

March 2017

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AUSTRALIA AND NEW ZEALAND

A. PROCEEDINGS COMMENCED

i) ACCC takes court action in relation to TripAdvisor reviews

The Australian Competition and Consumer Commission (ACCC) has instituted proceedings in the Federal Court against Meriton Property Services Pty Ltd (Meriton) in connection with the posting of reviews of its serviced apartments on the TripAdvisor website.

TripAdvisor offers a service called 'Review Express' where participating businesses provide TripAdvisor with email addresses of recent customers who have consented to passing on their details. TripAdvisor then emails the customers, prompting them to submit a review of their recent experience with that business.

The ACCC alleges that from November 2014 to October 2015, Meriton took steps to prevent guests it suspected would give a negative review from receiving TripAdvisor's 'Review Express' email to avoid them posting potentially negative reviews.

The ACCC is seeking pecuniary penalties, declarations, injunctions, corrective publication orders, orders for the implementation of a consumer law compliance program and costs.

ACCC media release

ii) ACCC takes court action over online review websites

The ACCC has instituted proceedings in the Federal Court against Aveling Homes Pty Ltd (Aveling Homes), a Perth-based home building company, for alleged misleading conduct and false or misleading representations. The alleged conduct is in relation to review websites Aveling Homes created for its businesses, Aveling Homes and the First Home Owner's Centre.

The ACCC alleges that Aveling Homes created review websites that represented they were independent of Aveling Homes, and that the appearance, layout and features gave consumers the overall impression that they were affiliated with an independent third party consumer review website, Product Review, when this was not the case.

The ACCC also alleges that the review websites were deliberately managed by Aveling Homes to ensure a favourable overall impression, by obscuring or removing unfavourable reviews.

ACCC media release

iii) ACCC takes court action against Kimberly-Clark on "flushable" wipes

The ACCC has instituted proceedings in the Federal Court against Kimberly-Clark Australia Pty Ltd and separately against Pental Limited and Pental Products Pty Ltd alleging that they each made false or misleading representations in relation to 'flushable' wipes they marketed and supplied in Australia.

The ACCC alleges that, by labelling these products as "flushable", consumers were led to believe that the products were similar to toilet paper and were suitable to be flushed down the toilet, when this was not the case. Flushable wipes cause significant problems for water authorities and contribute to blockages in the sewerage systems.

The ACCC is seeking declarations, pecuniary penalties, injunctions, corrective notices, compliance program orders and costs.

ACCC media release

iv) NZ Commerce Commission files charges over 'made in New Zealand' bee pollen claims

The Commerce Commission has brought charges against Topline International Limited (Topline) and its director for falsely representing that its NatureBee Potentiated Bee Pollen (NatureBee) supplement was a New Zealand made and sourced product, when in fact the bee pollen was from China.

NZ Commerce Commission media release

B. JUDGMENTS

i) Reckitt Benckiser receives highest ever Australian penalty for misleading conduct

The Full Federal Court of Australia increased the penalty imposed on Reckitt Benckiser (Australia) Pty Ltd from AUD$1.7 million to AUD$6 million for making misleading representations about its Nurofen Specific Pain products.

In December 2015, following admissions by Reckitt Benckiser, the Court found that Reckitt Benckiser engaged in misleading or deceptive conduct between 2011 and 2015 by making representations on its website and product packaging that Nurofen Specific Pain products were each formulated to specifically treat a particular type of pain, when this was not the case.

In fact, each Nurofen Specific Pain product contains the same active ingredient which treats a wide variety of pain conditions and is no more effective at treating the type of pain described on its packaging than any of the other Nurofen Specific Pain products.

On 29 April 2016, the trial judge ordered Reckitt Benckiser to pay a penalty of AUD$1.7 million for making misleading representations about its Nurofen Specific Pain products. The ACCC appealed the Federal Court's decision.

The ACCC has been advocating for increased penalties under the current review of the Australian Consumer Law, the final report of which is due by March 2017.

ACCC media release

ii) Reckitt Benckiser fined in NZ for Nurofen Specific Pain products

Reckitt Benckiser (New Zealand) Limited (RBNZ) was fined NZD$1.08 million in the Auckland District Court for misleading representations on its Nurofen Specific Pain products. Similar to the Australian proceedings, the product packaging stated that the products "targeted" a particular type of pain, when this was not the case.

RBNZ admitted that between 2011 and 2015 its packaging of the products and representations on its website were liable to mislead consumers about the nature, characteristics and suitability of the products.

NZ Commerce Commission media release

iii) US corporation Valve fined for misleading consumers about rights to refunds

Australia's Federal Court ordered Valve Corporation ("**Valve**") to pay penalties of AUD$3 million for breaching the Australian Consumer Law by making false or misleading representations to consumers in relation to its online gaming platform, Steam.

The Court held that the terms and conditions in the Steam subscriber agreements and refund policies, included false or misleading representations about consumers' rights to obtain a refund for games if they were not of acceptable quality.

In determining the fine the Court took into account "Valve's culture of compliance [which] was, and is, very poor". Valve's evidence was 'disturbing' to the Court because Valve 'formed a view …that it was not subject to Australian law…and with the view that even if advice had been obtained that Valve was required to comply with the Australian law the advice might have been ignored". The Court also noted that Valve had 'contested liability on almost every imaginable point'.

ACCC media release

C. OTHER ACTIVITY

i) IVF clinics make changes to 'success rate' claims

Several major Australian IVF clinics have made changes to claims published on their websites about success rates following an ACCC investigation into potentially false or misleading representations about success rates.

ACCC media release

ii) Court enforceable undertakings given to test oregano products

The ACCC has accepted a court enforceable undertakings from Anchor Foods Pty Ltd trading as Spencers Gourmet Trading (Spencers), following an investigation into alleged misrepresentations made as to the composition of Spencers' 'oregano' product, which was found to include a substantial percentage of olive leaves.

Spencers has undertaken to obtain annual testing of its oregano product by an internationally accredited testing laboratory, as well as testing of random samples of its other herbs and spices products for three years.

ACCC media release

BULGARIA

A. RECENT LEGISLATIVE DEVELOPMENTS

i) Arbitration Related Amendments

By virtue of an amendment of the Law on International Commercial Arbitration (the "**LICA**") and the Civil Procedure Code (the "**CPC**"), effective as from January 28, 2017, consumer disputes were included in the list of non-arbitrable disputes. Importantly, the amendment introduced by the LICA provides that the arbitral awards rendered with respect to non-arbitrable disputes are null and void. Thus, while arbitral awards rendered on non-arbitrable disputes used to be valid, but could be challenged by the interested party before the Supreme Court of Cassation, currently, by virtue of the 2017 amendment of the LICA, the interested party may rely directly on the nullity of the arbitral award delivered with respect to a consumer dispute without undergoing the process of challenging the award. In order to further protect the rights of the consumer, the CPC amendment provides that courts shall not issue a writ of execution requested on the basis of an arbitral award rendered with respect to a non-arbitrable dispute.

The amendment was introduced with a view to combating existing malpractices in arbitrations against consumers based on an arbitration clause contained in general terms. The Transitional Provisions of the law that introduced the said amendment to the CPC provided that all arbitration proceedings with respect to non-arbitrable disputes pending at the time the discussed amendment entered into force shall be terminated.

B. RECENT DECISIONS

i) Judgement on Unfair Commercial Practice by an Insurance Company

An insurance company advertised a promotional insurance policy with a 20% discount off the regular insurance premium. A clause in the insurance company's general terms and conditions on the said promotion, however, contained the clarification that the insured sum includes a 'preliminary bonus' which becomes due and payable immediately after the consumer (as the insured person) submits their request for receiving compensation under the insurance policy. This 'preliminary bonus' is an additional sum which the consumer pays to the insurance company in the form of the deduction from the stipulated insured sum. The Supreme Administrative Court ruled that this constitutes unfair and misleading commercial practice. In addition, the usage of the phrase 'preliminary bonus' leads to further confusion on part of the consumer, as usually the word 'bonus' is related to discounts and awards rather than additional obligations (*Supreme Administrative Court's Decision No. 364/12th January 2017, administrative case No.3293/2016*).

ii) Judgement on the "Lowest Prices" Advertisement

A mobile network operator advertised the prices contained in an offer for outgoing calls made from all over the world as the lowest available on the market. The Commission for Consumer Protection (the "**CCP**") found that this was not true since the said prices were higher than the prices contained in other tariffs offered even by the same mobile network operator. The CCP ruled that this qualifies as unfair commercial practice. Upon appeal of the CCP's ruling before

the Supreme Administrative Court, the mobile operator submitted that the CCP did not consider all circumstances of the case, and in particular, the fact that detailed information on the advertised roaming prices was made available to consumers on the operator's website. The court dismissed the appeal and confirmed CCP's ruling holding that it is unrealistic to suggest that consumers may compare all offers made by a mobile network operator in order to check whether the proposition that this operator offers the lowest prices on the market is true (*Supreme Administrative Court's Decision No. 837/20th January 2017, administrative case No.397/2016*).

iii) Judgement on the Unfair Practice of a Company Passing Itself Off as a University

The website of a limited liability company named Soft Uni presented the company as a university admitting students with an entrance exam testing the candidate's programming skills. Students having passed the three educational levels offered by the company received a certificate for being 'software engineers'. An investigation performed by the CCP revealed that the company in question was not registered and authorized to act as a university. On the basis of these facts, the CCP ordered the company to refrain from using the misleading commercial practice of passing itself off as a university. The Supreme Administrative Court dismissed the appeal of the CCP's order on the grounds that the information presented on the company's website is capable of misleading the average, reasonably informed and observant consumer that the company is a university. In such a case, the consumer would be motivated to enroll in the company's courses – a decision they would not have taken if they did not believe that the company was in fact a university (*Supreme Administrative Courts' Decision No. 621/17th January 2017, administrative case No.2042/2016*).

iv) Judgement on CCP's Competence to Initiate Collective Actions for Annulment of Unfair Clauses Contained in Consumer Contracts

The CCP submitted before the courts a collective claim for declaring the invalidity of an unfair clause contained in contracts of a consumer credit company. Since the claim was collective, honoring the claim would have the result of precluding the company from applying the unfair clause in all of its relations with consumers. The second instance court ruled that the CCP's claim was inadmissible since the Consumer Protection Act (the "**CPA**") allows for the CCP to file a collective claim for declaring the invalidity of unfair clauses which are contained only in a trader's general terms and conditions, while in the case at hand the clause challenged by the CCP was not contained in general terms and conditions, prepared in advance by the company, but rather formed part of the standard model contracts offered by the company. The Supreme Court of Cassation entered a judgement for setting aside the lower court's decision on the grounds that in so far as the CCP is entitled to protect the collective interests of the consumers, it is immaterial whether the unfair clauses, affecting those collective interests, are contained in general terms and conditions or in other documents unilaterally prepared by the trader without negotiations with the consumer. The Supreme Court of Cassation supported its view by interpreting the CPA in light of Article 7 of Council Directive 93/13/EEC on unfair terms in consumer contracts. Article 7 implies that EU Member States shall take adequate and effective measures to prevent the continued use of unfair terms in consumer contracts, including by designating organizations entitled to take action before the courts for a decision as to whether contractual terms drawn up for general use are unfair. The Supreme Court of Cassation found the CCP is such an organization and thus its competence to protect consumers against unfair terms

cannot be limited to the unfair terms contained in documents which, only on a strict interpretation, may be defined as general terms and conditions. CCP's competence to challenge unfair clause covers all clauses contained in documents drafted for general use by the trader (*Supreme Court of Cassation's Decision No. 235/15th December 2016, commercial case No.1510/2016*).

CANADA

A. COMPETITION BUREAU PROCEEDINGS/SETTLEMENTS

i) Competition Bureau resolves concerns about clothing manufacturer's "Made in Canada" claims

On December 7, 2016, the Competition Bureau ("**Bureau**") announced that it had reached an agreement with the manufacturers of Moose Brand premium outerwear clothing to resolve allegations that Moose Knuckles was misleading consumers by labelling its clothing products "Made in Canada". The settlement, which was reached via mediation, brings to an end legal proceedings brought by the Bureau against Moose Knuckles earlier this year. Pursuant to the settlement, Moose Knuckles has agreed to (a) make it clearer that certain of its parkas are made with imported components as well as Canadian materials, (b) add operations at its Canadian factories, (c) implement an internal compliance program addressing labelling issues, and (d) donate C$750,000 over five years to Canadian charities, including charities that provide winter jackets to children in need.

Link

ii) Competition Bureau "inspection blitz" strikes gold

On December 15, 2016, the Bureau announced that a jewellery distributor had taken corrective actions to ensure that consumers at its retail stores were not misled into believing that its gold-covered plastic earrings were actually made of solid gold. The Bureau disclosed the problem as part of a Canada-wide effort commenced in April 2016 to ensure compliance with the *Precious Metals Marketing Act*, which governs the advertising of precious metal articles (gold, palladium, platinum, and silver).

Link

iii) Volkswagen and Audi agree to pay fines and restitution for misleading environmental marketing claims

On December 19, 2016, the Bureau announced that it had reached a consent agreement with Volkswagen Group Canada Inc. and Audi Canada Inc. in respect of allegedly false and misleading environmental marketing claims that had been used to promote certain vehicles with 2.0 litre diesel engines. The consent agreement requires the parties to pay an administrative monetary penalty of C$15 million. The Bureau's investigation led it to conclude that Volkswagen Canada and Audi Canada had misled consumers by promoting vehicles sold or leased in Canada as having clean diesel engines with reduced emissions, when it turned out that the vehicles had only passed emissions tests because software was installed that altered the operation of the vehicles during testing. A key determining factor in the Bureau agreeing to this resolution was the fact that Volkswagen Canada and Audi Canada also agreed at the same time to settle a class action settlement by offering to provide buyback and restitution payments to consumers totalling up to C$2.1 billion.

Link

iv) Amazon settles allegations of misleading price claims by changing practices and paying fine

On January 11, 2017, Amazon.com.ca Inc. agreed to pay a C$1 million administrative monetary penalty and C$100,000 towards the Bureau's costs as part of an agreement resolving the Bureau's concerns with the pricing practices on its Canadian website. Specifically, the Bureau alleged that Amazon had not sufficiently verified the accuracy of the "list prices" it was using as a comparison point for its own pricing, thereby creating the erroneous impression that prices offered for sale on amazon.ca were lower than prevailing market prices.

Link
Competition Bureau Statement

v) Montreal-based company fined for deceptive telemarketing

On February 6, 2017, Mega Byte Information pleaded guilty before the Superior Court of Quebec to operating a deceptive telemarketing scheme that sold subscriptions to online directories using misleading sales techniques that targeted thousands of businesses in Canada, the United States and Europe. As part of the guilty plea, the company will pay a fine of C$450,000. In addition, the company's president is prohibited from engaging in telemarketing activities for 10 years. Charges in this matter were originally issued in September 2011. Mega Byte is the first company to plead guilty to charges; three individuals have also pleaded guilty in this matter.

Link

vi) Competition Bureau sues major Canadian retailer over alleged deceptive pricing claims

On February 22, 2017, the Bureau announced that it had filed an application with the Competition Tribunal alleging that the Hudson's Bay Company ("**HBC**") had engaged in deceptive "ordinary price" claims and deceptive clearance promotions for mattresses and foundations sold together as sleep sets. Specifically, the Bureau alleges that HBC "grossly inflated" its regular prices and then advertised deep discounts on these prices suggesting significant savings to consumers. The Bureau also alleges that HBC misled consumers into thinking that it was selling its remaining on-hand inventory during "clearance" and "end of line" promotions when HBC was actually ordering new factory sleep sets to fulfill each new purchase. The Bureau is seeking an order prohibiting HBC from engaging in this conduct as well as unspecified administrative monetary penalties.

Link
Application

B. COMPETITION BUREAU ADVOCACY

i) March is Fraud Prevention Month in Canada!

March of every year now marks Fraud Prevention Month in Canada. The Bureau takes a leading role in this effort, along with other enforcement agencies such as the Royal Canadian Mounted Police ("**RCMP**"). This year, as part of its fraud prevention measures, the Bureau (a) issued its *Fraud Facts 2017* publication, which provides a snapshot of the different types of scams that are being used to mislead Canadian consumers; (b) warned consumers about fake online reviews on "2 Good 2 B True Day"; and (c) cautioned business owners about fake "reminder notices" demanding hefty fees to renew IP rights.

Government of Canada Link

Fraud Facts

News Release

News Release

C. CLASS ACTION LITIGATION

i) Harrison v. Afexa Life Sciences Inc. et al. (BCSC, November 16, 2016)

The Plaintiffs sought certification of a class action on behalf of purchasers of "Cold-Fx" alleging that labeling and advertising claims that the product provided immediate relief of cold and flu symptoms constituted a breach of section 52 of the *Competition Act,* which makes it a criminal offence to knowingly or recklessly engage in misleading representations about a product. The motion for class certification was dismissed because the Plaintiffs could not demonstrate a sufficient commonality among the putative class, which included all persons in British Colombia who had purchased Cold-Fx. Among other problems identified by the Court were that (a) some of the Cold-Fx products sold during the relevant time did not contain any of the alleged misrepresentations, (b) not all of the purchasers would have purchased the product for short term relief, (c) not all of the persons would have purchased the product because of the alleged misrepresentations and (d) not all the purchasers were dissatisfied with the product.

Link

ii) N & C Transportation v. Navistar (BCSC, November 26, 2016)

The Plaintiffs sought certification of a class action alleging that the heavy-duty trucks manufactured by the Defendants were equipped with a particular emissions reduction technology to meet regulatory standards which the Plaintiffs alleged were defective and resulted in extensive repairs and down time resulting in loss and damages. The Plaintiffs included a claim based on alleged misrepresentations contrary to section 52 of the *Competition Act*. The Court declined to certify the claim based on a failure to establish common issues across the class. In particular, the Court held that it could not be established that all of the members of the class had seen, let alone relied on, the same alleged misrepresentations.

Link

COLOMBIA

A. The Superintendence of Industry and Commerce sanctioned Cruz Verde

The Superintendent of Industry and Commerce issued a USD$330,000 sanction to Cruz Verde, a drug supplier, for selling 56 drugs above the controlled price fixed by the National Commission of Prices in medicine and medical equipment. The drug supplier chain can appeal the decision on a second instance.

Link

B. Supreme Court of Colombia - Financial Consumer Protection

The Supreme Court of Colombia recently decided an appeal over an illegal payout made by one of the biggest banks of Colombia (AV Villas Banco Comercial) using electronic devices. The Supreme Court analyzed the evolution in tort law regarding the responsibility of the banks and the bank system with consumers of banking services. The Court considered that bankers must have the most advanced and extreme security under the transactions made by electronic devices. Should the bank fail, any payout is presumed to be the responsibility of the bank. Therefore, under a tort law proceeding in this regard, banks have the burden of proof of showing that they have implemented the most secure proceedings under transfers that are made on the Internet.

COSTA RICA

A. March 2017: Fraud Prevention Month in Costa Rica

Under the coordination of the International Consumer Protection and Enforcement Network, the Ministry of Economy, Industry, and Commerce ("**MEIC**") declared March 2017 as Fraud Prevention Month. The chosen theme is "Internet Scam Prevention". MEIC is posting daily in social media about the most common social engineering and phishing tricks that could compromise the public's privacy and finances. This effort coincides with the International Day for Consumer Rights on March 15.

Press Release (Spanish)

DOMINICAN REPUBLIC

A. Consumer protection agency launches electronic online-shopping dispute resolution system

In March 2017, the National Institute for the Protection of Consumer Rights ("**NIPCR**") in the Dominican Republic, launched Pro Concilia, a web-based conciliation mechanism to resolve online-shopping disputes between consumers and the providers of goods and services. Consumers may now file their complaints 24/7 without business-hours restrictions. This launch coincides with the International Day for Consumer Rights on March 15.

According to NIPCR's Director, Anina del Castillo, 65% of complaints filed in her office are solved through conciliation. The number of complaints against online scams has been increasing in the last several years. Therefore, NIPCR wants to extend the opportunity for online shoppers to file and resolve their complaints online without the need of appearing in person at the institute.

NIPCR Press Release (Spanish)

EUROPEAN UNION

A. Judgment of the European Court of Justice on a request for a preliminary ruling made by the Landgericht Stuttgart (Stuttgart Regional Court, Germany) regarding the interpretation of Article 21 of Directive 2011/83/EU on consumer rights (Case C-568/15)

On March 2, 2017, the European Court of Justice ("**ECJ**") handed down a judgment on a reference for a preliminary ruling regarding the interpretation of Article 21 of Directive 2011/83/EU of the European Parliament and of the Council of October 25, 2011, on consumer rights (the "**Directive**"). The request was made by the Landgericht Stuttgart (Stuttgart Regional Court, Germany) in a dispute for combatting unfair commercial practices of Comtech GmbH, a German company selling electronic and electrical equipment. The dispute concerned the telephone call rate applied by Comtech GmbH for its after-sales service.

The Regional Court asked the ECJ to evaluate whether, for a call relating to a contract concluded with a trader, charges to a telephone helpline operated by the trader may exceed call charges to a standard geographic landline or mobile telephone line and whether or not the trader may make a profit through that telephone helpline.

The ECJ noted that under Article 21 of the Directive, where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader, is not to be bound to pay more than the basic rate. The ECJ further explained that the trader must inform the consumer if the cost of the means of distance communication for the conclusion of the contract is calculated other than at the basic rate. Furthermore, from several Articles in the Directive, it follows that it is not for the consumer to bear charges other than ordinary charges, if he exercises rights provided for by that Directive, and that potential additional costs are therefore to be borne by the trader.

Therefore, according to the ECJ, the concept of "basic rate" must be interpreted as meaning that call charges relating to a contract concluded with a trader to a telephone helpline operated by the trader, may not exceed the cost of a call to a standard geographic landline or mobile telephone line. Provided that such limit is respected, the fact that the relevant trader makes or does not make a profit through that telephone helpline is irrelevant.

Judgment (English)

B. Judgment of the European Court of Justice on a request for a preliminary ruling made by the Court of Appeal of Paris regarding the interpretation of Directive 2006/114/EC concerning misleading and comparative advertising (Case C-562/15)

On February 8, 2017, the ECJ handed down a judgment on a reference for a preliminary ruling regarding the interpretation of Article 4(a) and (c) of Directive 2006/114/EC of the European Parliament and of the Council of December 12, 2006, concerning misleading and comparative advertising, and Article 7(1) to (3) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005, on unfair business-to-consumer commercial practices in the internal market. The request was made by the Court of Appeal of Paris during a proceeding between

Carrefour Hypermarchès SAS ("**Carrefour**") and ITM Alimentaire International SASU ("**ITM**"), concerning a television advertising campaign launched by Carrefour in which the prices of leading brand products in Carrefour shops and in the shops of competitors were compared. In response to the referring court questions, the ECJ stated that in price comparative advertisements, consumers shall be "*informed clearly and in the advertisement itself that the comparison was made between the prices charged in shops in the advertiser's retail chain having larger sizes or formats and those indicated in the shops of competing retail chains having smaller sizes or formats*".

Judgment (English)

C. Judgment of the European Court of Justice on a request for a preliminary ruling made by the Oberster Gerichtshof (Supreme Court of Austria) regarding the interpretation of Directive 2007/64/EC concerning payment services in the internal market (Case C-375/15)

On January 25, 2017, the ECJ handed down a judgment on a reference for a preliminary ruling regarding the interpretation of Articles 36(1) and 41(1) of Directive 2007/64/EC of the European Parliament and of the Council of November 13, 2007, on payment services in the internal market (the "**Directive**"). The request was made by the Austrian Supreme Court during a proceeding between BAWAG PSK Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG ("**BAWAG**") and the Verein für Konsumenteninformation ("**Consumer Information Association**"), concerning a clause included in the contracts that BAWAG enters into with consumers.

The ECJ stated that Article 41(1) and Article 44(1) of Directive 2007/64, read in conjunction with Article 4(25) of the Directive, must be interpreted as meaning that changes to the information and conditions, as well as changes to the framework contract, which are transmitted by the payment service provider to the user through an electronic mailbox, may not be considered to have been provided on a durable medium within the meaning of those provisions, unless two conditions are met: (i) the website allows the user to store information addressed to him personally in such a way that he may access it and reproduce it unchanged for an adequate period of time; (ii) the transmission of that information is accompanied by active behavior on the part of the provider aimed at drawing the user's attention to the existence and availability of that information on that website.

Judgment (English)

FINLAND

A. Advertising

Finland's Consumer Ombudsman issued an injunction against furniture companies, Asko and Sotka, for violations of discount price advertising. The Consumer Ombudsman stated that the companies offered the same prices continuously for more than two months or for more than three months in a calendar year and advertised the prices as discounts, thereby violating Finnish law on misleading advertising. According to the Consumer Ombudsman, the Finnish Competition and Consumer Authority found violations of the same regulation by the companies in 2014 and 2015, and the Consumer Ombudsman instructed them on the issue multiple times. In addition to the injunction, the Consumer Ombudsman also imposed a conditional fine of EUR 100,000 on Asko and Sotka.

Link

B. Negative options

Finland's Consumer Ombudsman administratively banned electricity company, Werel Oy, from mandating that consumers expressly reject new fixed-term electricity contract rates before entering the new fixed-term rates into force, and now plans to take Werel Oy to Finland's Market Court on the issue. According to the Consumer Ombudsman, Werel Oy notified customers that ongoing electricity supply contracts would be converted into two-year, fixed-term contracts unless the customer cancelled the change within 14 days of receiving the notice. The Consumer Ombudsman alleges that Werel Oy's practices violate the Finnish *Consumer Protection Act*, which prohibits delivering goods or services to consumers without specific orders, then requiring a payment to keep or return the product. In addition, the Consumer Ombudsman claims that Werel Oy's practices violate the *Electricity Market Act*, which prohibits unilateral changes of consumer contract terms by electricity suppliers.

Link

FRANCE

A. RECENT DEVELOPMENTS

i) Misleading commercial practices

On November 22nd, 2016, applying article L. 121-1 of the French Consumer Code, the French Supreme Court ruled that oral allegations prevail over contractual omission for the determination of the existence, or non-existence, of misleading commercial practices. The written provisions in an agreement have no impact on the existence of intentionally misleading allegations which lead the consumer to enter into the contract.

Judgment

ii) Group Action

The Law on the modernization of the justice of the 21st Century ("*Loi de modernisation de la justice du XXIe siècle*") was promulgated on November 18th, 2016.

The Law introduces group actions in various new areas such as fighting against discrimination, data-protection, environmental protection and health.

Previously, a group action could only be initiated by authorized consumer associations for damages suffered by consumers for certain actions. Such actions included infringements by a professional of its legal or contractual obligations in connection with the sale of products or the provision of services and anti-competitive practices.

For these new types of group actions, not only do authorized consumer associations have the right to bring a group action, but also any duly-registered association whose purpose is the defense of the interests have the right as well.

The Law

iii) Unfair terms in consumer contracts

On November 28, 2016, the French Supreme Court issued an opinion on request of a lower court about three types of contractual terms, commonly used in loans granted to consumers for the purchase of vehicles, relating to the transfer to the lender of the benefit of the retention of title.

The relevant clauses concern: (i) the subrogation of the lender in right of retention of title of the seller; (ii) the option for the lender to waive the right of retention of title and to substitute a lien over the asset being financed without notifying the borrower; and (iii) the limitation of the right of the borrower to propose a buyer if the lender decides to resell the asset subject to a retention of title to obtain the repayment of the loan.

The Supreme Court considered that these clauses are abusive since they unduly restrict the ownership rights of the borrower over the asset.

Supreme Court's Opinion

iv) Flight delay

In a judgment of November 30, 2016, the French Supreme Court made a strict application of the EU Regulation no. 261/2004, which establishes common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long flight delays, as interpreted by the EUCJ in the *Folkerts* case law (Judgment of February 26, 2013 C-11/11).

According to this case law, passengers flying from the territory of a Member State with a connecting flight in a third country are entitled to obtain compensation if they have suffered more than three hours delay at their arrival at the end destination, even if the delay was due to a connecting flight taking off and landing outside of the European Union.

Judgment

PDF

v) Residential lease

According the judgment of the French Supreme Court of January 26, 2017, residential leases are not subject to Consumer Law, since they are governed by Law No 89-462 of July 6, 1989, even if residential leases are entered into with social housing companies or organizations which are considered as professionals under Consumer Law.

Therefore, only the three years limitation period under Law No 89-462 is applicable to residential leases for social housing and not the two-year limitation period generally applicable under Consumer Law for legal actions brought by professionals against consumers (Art. L 218-2 formerly L. 137-2 of the French Consumer Code).

Judgment

GERMANY

A. International coordination

Germany jointly hosted a consumer summit in March with the Federal Ministry of Consumer Protection, the state-supported non-profit Federation of German Organizations ("**VZBV**") and Consumers International. The summit generated broad policy recommendations for G20 nations, including protecting consumers against fraud and providing for effective redress in the digital economy. The nations aim to support the process through international organizations including the Organization for Economic Cooperation and Development, which is currently formulating a digital consumer protection toolkit with best practices and transnational standards.

Link

B. Marketing

In January, in the case of LG Hildesheim, a panel of German judges in Hildesheim stated that Volkswagen ("**VW**") intentionally committed fraud by using software to allow vehicles to circumvent emissions tests. The panel ordered VW to reimburse a consumer for the full price of his VW car for the conduct. A separate complaint against VW in the Braunschweig district court about the emissions was filed on behalf of another consumer seeking compensation for tort damages weeks before the Hildesheim decision.

Link (has relevant links in German)

Link

HUNGARY

A. Updated Position Statements of the Hungarian Competition Authority

The Hungarian Competition Authority ("**HCA**") has recently updated its position statements. By publishing the statements, the HCA intends to provide guidelines for market players on the application of legal norms in order to promote their lawful conduct. The sources of such position statements are the HCA's decisions. The position statements reflect the HCA's interpretation of individual provisions of the legal norms applied by them (e.g. the provisions of the *Unfair Commercial Practices Act*). The HCA revises or amends the statements from time to time to reflect the changes in legal thinking and its practice.

Updated position statements (in Hungarian)

B. Substantiating claims made regarding cosmetics

One of the HCA's position statements clarifies the requirements for substantiating claims made regarding cosmetics, based on EU legislation. They generally prohibit advertising cosmetic products as having characteristics or functions which they do not have, while they also lay down common criteria for the justification of claims used in relation to cosmetic products (e.g. legal compliance, truthfulness, evidential support, etc.).

The HCA sets forth that there are two main elements applicable to assessing the truthfulness of claims made regarding cosmetic products: first, it must be examined whether the evidential support is proper (i.e. that it complies with the relevant professional, statistical, mathematical, etc. standards) and secondly, if it is proper, whether the claims, as understood by consumers, comply with the contents and results of such evidential support.

With regards to the first part of the assessment, the HCA emphasized that there must be a clear and explicit link between the product claims and the document substantiating such claims. In order to accept a study as evidential support in connection with a product, the relationship between the product and the claim must be clear, explicit and direct. It is the responsibility of the undertaking to present this link and also the relevance of the evidential support to the authority. Also, since market players must already have the documentation supporting the claims made in relation to a product when publishing such claims, they must be able to easily and quickly provide those to the competent authorities if requested.

Decision (in Hungarian)

INDONESIA

A. RECENT DEVELOPMENTS

i) FSA and Ombudsman In Cooperation For Consumer Protection

On January 27, 2017, the chairman of the board of commissioners of the Financial Services Authority ("**FSA**") or formally known as Otoritas Jasa Keuangan ("**OJK**"), Muliaman D Hadad and the chairman of the Ombudsman of Republic of Indonesia, Amzulian Rifai, signed a Memorandum of Understanding (**"MoU"**) on coordination in the delivery of public services. This MoU is intended to strengthen cooperation and coordination in order to expedite the task, function, and authorities of both OJK and the Ombudsman, particularly those relating to improvement of public service and consumer protection in the financial sector. Between 2014 and 2017, there were 54 reports to the Ombudsman, some of which are still in the review process.

News Release

ii) Indonesian Parliament (DPR) Wishes to Strengthen the Role of Indonesian Consumer Protection Agency (BPKN)

In February 2017, a number of members of Commission VI of DPR had raised some concerns and wishes to the Minister of Trade during a meeting. Some of the members expressed a desire to strengthen the role of BPKN. Parliament member, Lili Asdjudiredja, said that BPKN needs to be more proactive. In addition, other parliament members also raised queries on the candidates for new members of BPKN for 2016 – 2019 nominated by the Minister.

News Release

ITALY

A. Higher Mitigation of Fines Due to Prompt Implementation of Measures Addressing Authority's Concerns in Unfair Commercial Practices Investigations

In a decision published on February 10, 2017, the Italian Competition Authority ("**ICA**") imposed on Samsung Electronics Italia S.p.A. ("**Samsung**") fines totaling € 3.1 million for alleged aggressive unfair commercial practices. The ICA confirmed that the prompt implementation of measures aimed at addressing its concerns regarding alleged unfair commercial practices led to a higher mitigation of the fine.

According to the ICA, Samsung would have: (i) provided consumers with incomplete and misleading information on the terms and conditions of the promotions; and (ii) forced consumers to provide their consent to the processing of their personal data for marketing purposes as a condition to obtain the premiums related to the purchase of the product. In setting the amount of the fine, the ICA took into account the measures implemented by Samsung before and after the beginning of the proceeding. Indeed, in relation to the second allegation, the ICA considered the importance of the measures implemented before the opening of the proceeding and granted a significant reduction of the fine (25%). In relation to the first conduct, the ICA granted a lower reduction of the fine (15%), given that the measures aimed at addressing its concerns were adopted only after the opening of the investigation.

Samsung Decision (Italian)

B. Unfair Commercial Practices – The Italian Competition Authority and The Italian Communication Authority Sign a Memorandum of Understanding

On January 13, 2017, the Italian Competition Authority ("**AGCM**") and the Italian Communication Authority ("**AGCOM**") published on their websites a memorandum of understanding signed on December 23, 2016, concerning several aspects of their cooperation in the application of consumers' protection rules. Under the memorandum of understanding, in the case of consumers' protection matters, there will be coordinated actions between the two groups, even during the preliminary investigation phase. The authorities also agreed to set-up a standing working group in order to promote the debate on consumer protection issues. Finally, the agreement provides rules on the exchange of information between the authorities on investigations.

According to Article 27(1-bis) of the *Italian Consumer Code* (Legislative Decree no. 21 of 21 February 2014, implementing Directive 2011/83/EU of 25 October 2011 on consumer rights) "*the authorities can stipulate memoranda of understanding in order to regulate procedural aspects of their cooperation within their respective competences*". The authorities had signed other preceding memoranda of understanding regarding general aspects of their cooperation. In particular, under such memoranda, the Authorities stated that in cases of conflict or overlap, the latter shall prevail and apply to those specific aspects of the commercial practice regarding the electronic communications sector. However, the application of the *Italian Consumer Code* provisions will not be automatically excluded; in fact, it will apply with regard to the other aspects that are not covered by sector specific rules. Concerning the allocation of powers

between the authorities on this matter, the Council of State handed down a judgment in February 2016 clarifying that even if AGCOM has the exclusive competence on information obligations regulated by the *Italian Electronic Communications Code*, AGCM has the sole competence on unfair commercial practices. Therefore, in cases of violations of the above mentioned information obligations also involving aggressive commercial practices, AGCM has exclusive competence.

Memorandum of Understanding (Italian)

C. Wind fined by the Italian Competition Authority for unfair commercial practices (PS10026)

On December 21, 2016, the ICA imposed fines on Wind Telecomunicazioni S.p.A. ("**Wind**") totaling €450,000 for two alleged unfair commercial practices, namely: (i) distant contracts concluded via telephone, and (ii) a surcharge applied to customers in case of payment via postal deposit slip.

According to the ICA, the teleselling out-bound and in-bound procedures conducted by Wind would be in breach of the *Italian Consumer Code* in so far that contracts were concluded via one only registered call during which the consumer was not provided with information related to the conclusion of the contract on a durable medium (allowing consumers to store them for a reasonable period of time in order to protect the interests related to their relationship with the professional). In relation to the surcharge for payment via postal deposit slip, the ICA found that it would be in breach of the *Italian Consumer Code*, which prohibits the seller from applying charges for specific means of payment. According to the ICA, the surcharge would not be justified by the need to recover costs related to the use of such particular means of payment.

Wind Decision (Italian)

D. GS S.p.A. and its subsidiaries (Carrefour Group) fined by the Italian Competition Authority for unfair commercial practices (PS10500)

On December 15, 2016, the ICA imposed fines on GS S.p.A. ("**GS**"), totaling €500,000, for alleged misleading advertising concerning certain sale promotions. In particular, GS provided consumers purchasing promotional products with deferred rebates, by issuing coupons viable for following purchases. According to the ICA, GS failed to inform consumers of certain relevant limitations applicable to the use of the coupons (i.e., that consumers were required to be in possession of GS's loyalty card and needed to purchase certain minimum quantities of products).

According to the ICA, the omission of such relevant information would be in breach of the principle of professional diligence and would be capable of altering the economic behavior of consumers to purchase increasing amounts of promotional products in order to obtain more coupons.

GS S.p.A. Decision (Italian)

JAPAN

A. Regulatory Agencies

i) The Consumer Affairs Agency ("CAA")

The CAA was established on September 1st, 2009 in order to protect and enhance consumer benefits. It covers a wide range of issues related to consumer problems including the advertising, soliciting, labeling and safety of products and services. The CAA has been increasing its number of staff and expanding its influence over businesses by aggressively conducting investigations regarding consumer protection regulations.

ii) Consumer Organisation Action ("COA")

The COA was implemented in 2007 by an amendment to the *Consumer Contract Act*. The Qualified Consumer Organization is appointed by the Minister of the CAA. There are currently 14 such organisations throughout Japan. They have the right to demand an injunction to cease misleading and confusing promotions by businesses and have been very aggressive in going after businesses for inadequate promotions (even in cases where the promotion is not necessarily illegal).

B. Recent Developments in Consumer Protection Laws

i) Expansion of Regulators

The *Act against Unjustifiable Premiums and Misleading Representations* ("**UPMR**") allows for the imposition of cease and desist orders and administrative monetary penalties on businesses for unjustifiable premiums and misleading representations. The authority to impose a cease and desist order for unjustifiable premiums and misleading representations under the UPMR was formerly held by only the Minister of the CAA. In 2014, the governors of each of Japan's 47 prefectures (including Tokyo's governor) were granted the authority to exercise cease and desist orders which drastically increased the number of regulators.

Act

ii) Administrative Monetary Penalty

The Administrative Monetary Penalty was implemented on April 1st, 2016, by an amendment of the UPMR. It imposes a monetary penalty on businesses that amounts to 3% of the value of three years' worth sales of the product in respect of which the business displayed egregiously misleading representations.

C. Judgements

i) The first case of the Administrative Monetary Penalty

The CAA imposed a 485 million JPY monetary penalty on an international car maker for its egregiously misleading representation about the gas efficiency of its vehicles. This was the first

case in which the monetary penalty under the UPMR was imposed upon a party since the implementation of the system last year.

News Release

ii) Supreme Court ruled certain advertisements fall under the definition of "solicitation"

On January 24th, 2017, the Supreme Court overruled the administrative construction of the CAA as well as legal precedents set by lower courts regarding the definition of "solicitation" in the *Consumer Contract Act*. This Act (i) prohibits businesses from providing misleading representations through their "solicitation", (ii) grants consumers the right to cancel contracts they have entered into based on their misunderstanding caused by the misleading solicitation, and (iii) gives the Qualified Consumer Organisation the right to intervene in cases of such solicitation. The CAA had construed "solicitation" to mean those promotions intended for specific consumers. Promotions open to the general public did not fall under the definition of "solicitation". Therefore, the CAA's position was that advertisements could not be construed as "solicitation". However, the Supreme Court ruled that in light of the purpose of the Act, certain types of advertisements, such as ones containing specific transaction terms, could be construed to be a "solicitation". The ruling did not state the detail of the requirement, but the CAA is obliged to amend the Act accordingly. Regardless of the details of the amendment, this is likely to have a large impact on advertising and marketing in Japan.

Link

MALAYSIA

A. RECENT DEVELOPMENTS

i) Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2016

The Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2016 ("**PCAP Regulations**") came into force on January 1, 2017. The PCAP Regulations are regulated by the Ministry of Domestic Trade, Cooperatives and Consumerism ("**MDTCC**"), which works to curb profiteering in Malaysia. The PCAP Regulations effectively replace the Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit for Goods) (Net Profit Margin) Regulations 2014 ("**Repealed PCAP Regulations**") which expired on 31 December 2016. One of the key differences between the PCAP Regulations and the Repealed PCAP Regulations is that the PCAP Regulations will only apply to two classes of goods, namely food and beverages as well as household goods (i.e. non-durable goods and personal care products). Profit is deemed as unreasonably high if the mark-up percentage or margin percentage of any goods sold on any date in a particular financial year or calendar year exceeds the mark-up percentage or margin percentage of the goods sold on the first day of that particular year or calendar year, as calculated in accordance with the prescribed mark-up percentage formula or margin percentage formula.

Press Release

Legislation

B. RECENT UPDATES

i) Consumer Forum of Malaysia to introduce the Critical Information Summary

The Consumer Forum of Malaysia, an independent organisation set up by the Malaysian Communications and Multimedia Commission, will introduce the Critical Information Summary by mid-2017 for telecommunications and multimedia companies so that consumers can understand terms and conditions before purchasing any goods or products on offer. The Critical Information Summary will set out key information about the services being offered, including a clear description of the service, the minimum term for the contract, any exclusions or important conditions, limitation or restrictions.

Press Release

Press Release

ii) RM3.9 Billion Allocated to Improve Mobile Broadband Coverage

The Ministry of Communications and Multimedia Malaysia has allocated RM3.6 billion for the High Speed Broadband project, Sub-Urban Broadband project and Broadband to the General Population nationwide to improve mobile broadband coverage. The provision entails the

construction of 1,800 new communication towers and upgrading of 3G services in existing towers across the country.

Press Release

iii) MDTCC, Ministry of Health and Ministry of Science, Technology and Innovation to Regulate Use of Electronic Cigarette and Vape

MDTCC is one of the three ministries which has been tasked by the government to regulate the use of electronic cigarettes and vape. MDTCC has indicated that it will draft a new law relating to the control of e-cigarettes and vape without nicotine within the next two years.

Meanwhile, during this transition period, MDTCC is responsible for regulating and enforcing the safety standards for electronic cigarette devices and batteries, including vaping devices, under the *Consumer Protection Act 1999*. MDTCC also regulates and enforces the marketing and labelling of electronic cigarette devices and nicotine-free liquid and vapes through the *Trade Description Act 2011*, *Price Control and Anti-Profiteering Act 2011* and the *Weights and Measures Act 1972*.

Press Release

Press Release

iv) MDTCC to gather Feedback from Suppliers on Liquefied Petroleum Gas ("LPG") Subsidy Leakage

On January 23, 2017, MDTCC had given two weeks for industry players involved in supplying LPG to review their business model and to create proposals on how to minimise leakage in the supply chain. It was reported that the government had lost hundreds of millions of ringgit a year due to uncontrolled usage of subsidised LPG among industrial users and traders.

Upon receipt of the proposals from suppliers of LPG, MDTCC will finalise the enforcement procedure to avoid leakage in LPG subsidy meant for domestic consumers. There is also ongoing enforcement by MDTCC to tackle syndicates that misuse subsidized domestic gas for commercial use. The modus operandi of these syndicates involve transferring gas from smaller 12kg and 14kg cylinders which are subsidised by the government for domestic use into industrial 50kg cylinders which are unsubsidised.

Press Release

Press Release

MEXICO

A. Inaccurate gas pumps lead to hefty PROFECO fines

In February 2017, the Federal Attorney General's Office for Consumers ("**PROFECO**") inspected 17,500 gas pumps throughout Mexico; 934 pumps were shut down due to inaccurate gas dispensing. This amounts to 486 gas stations reporting inaccuracies at their gas pumps. The aggregate amount of fines was 45 million Mexican Pesos (US$ 2.3 million). PROFECO notified the Energy Regulation Commission about the results of their inspections. The Commission may proceed to fine gas stations that are in violation of the law. At least seven of the gas stations found to not be in compliance were criminally charged due to repeated violations or for denying to be inspected by PROFECO officials.

Press Release by PROFECO (Spanish)

NORWAY

A. Marketing

Car company Tesla Motors settled its case raised by Norwegian buyers of Tesla's Model S P85D. The car owners claimed that their cars had a lower horsepower force than advertised by Tesla. The case proceeded in Oslo District Court, and the parties settled outside of court.

Link

PERU

INDECOPI sanctioned America Móvil Perú and Telefónica del Perú as both companies allegedly misled consumers as they did not clearly state restrictions and conditions on Iphone promotions. America Móvil Perú (Claro) pretended to claim the unlimited phone service for a lifetime by claiming that consumers could talk free for the rest of their life when it was really only for the last three minutes of the call.

On the other hand, Telefónica del Perú (Movistar) on a TV commercial claimed "give us your Iphone 5S and get a free Iphone6 Plus 16 GB". However, the company did not disclaim clear and visible restrictions for accessing the promotion.

Link

Link

PHILIPPINES

A. RECENT JUDGMENTS

i) Authorized Dealer of BMW Cars Found Liable for "Deceptive Sales Act"

In its June 8, 2016 decision in *Autozentrum Alabang, Inc. ("Autozentrum") vs. Spouses Bernardo* (G.R. No. 214122), the Supreme Court of the Philippines ruled that Autozentrum, a domestic corporation and an authorized dealer of BMW cars, committed a deceptive sales act for failing to reveal the prior registration in its name of a BMW car that it sold to the private respondents, and for representing to them an altered and secondhand car as brand new. Autozentrum was ordered to return to private respondents the value of the car with 6% interest per annum from the finality of the decision, as well as an administrative fine of PhP160,000.00 and an additional administrative fine of not more than PhP1,000.00 for each day of continuing violation.

The *Consumer Act of the Philippines* penalizes the conduct of deceptive sales acts or practices. An act of a seller is deceptive when it represents, among others, that a product is new, original or unused, when in fact it is deteriorated, altered, reconditioned, reclaimed or secondhand.

Link

B. RECENT DEVELOPMENTS

i) The Philippine Competition Act Passed After 24 years

On July 21, 2015, the *Philippine Competition Act* was finally signed into law. The *Philippine Competition Act* is now the primary competition law of the Philippines. The law took effect on August 8, 2015.

The law creates the Philippine Competition Commission and constituted it as the principal competition regulator in the Philippines. The law also prohibits anti-competitive agreements between competitors and other persons, defines and penalizes abuses of dominant position, and provides for notification of certain covered mergers and acquisitions.

Link

ii) Philippine Competition Commission Issues the Rules and Regulations to Implement the Provisions of the Philippine Competition Act

On May 31, 2016, the Philippine Competition Commission approved the rules and regulations to implement the provisions of the *Philippine Competition Act*. The implementing rules and regulations took effect on June 18, 2016. A notable feature of the rules are its provisions setting forth the thresholds, requirements, and procedure for the notification to the Philippine Competition Commission of covered mergers and acquisitions.

Subsequent to the rules, the Philippine Competition Commission has since issued three (3) Clarificatory Notes to further expound on certain provisions of the rules.

Article

iii) Businesses Prohibited from Giving Insufficient or No Change to Consumers

On July 21, 2016, the proposed *No Shortchanging Act* (Republic Act No. 10909), came into force. This law obliges businesses to give customers exact or excess change in respect of their payments, regardless of the availability of loose bills and coins. It also forbids giving candies as change. Establishments are also required to post a sign in their store reminding customers to ask for exact change.

Article

C. CONSUMER NEWS

i) Department of Trade and Industry (DTI) Welcomes Revised UN Guidelines for Consumer Protection

The DTI welcomed the United Nations General Assembly's adoption of the revised United Nations Guidelines for Consumer Protection ("**UNGCP**"), which was made through a resolution on December 22, 2015 in New York City. The UNGCP was first adopted in 1985 and have acted as a blueprint for consumer protection around the world. They are estimated to have guided the development of consumer protection in more than 100 countries.

The highlights of the revised guidelines include:

- The first comprehensive revision of the UNGCP since 1985 which addresses gaps in financial services, privacy, energy, travel and tourism;
- Access to essential goods and services, and the protection of vulnerable and disadvantaged consumers are recognized as new legitimate needs of consumers;
- Updated UNGCP can play an important role in achieving the Sustainable Development Goals by protecting and empowering consumers in developing nations;
- Consumers International, the world federation of consumer organizations, calls for governments to update their consumer protections in line with the new UNGCP and challenges businesses to ensure their practices are compliant; and

Article

ii) DTI Signs Consumer Protection Deal with Japan

The Consumer Protection Group of the DTI signed a Memorandum of Understanding with the National Consumer Affairs Council ("**NCAC**") of Japan, setting in motion the streamlining of the resolution process for consumer complaints against businesses based in either country.

The Philippines thus joins the list of countries partnering with Japan in a program called Cross-Border Consumer Center Japan, which, in essence, acts as mediator on cross-border complaints that involve either Japanese businesses or consumers.

Article

SINGAPORE

A. RECENT DEVELOPMENTS

i) Singnet Fined By IMDA For Pay-Tv Service Disruptions

On 25 November 2016, the Infocomm Media Development Authority ("**IMDA**") imposed a total financial penalty of S$145,000 on SingNet Pte Ltd due to two disruptions in SingTel TV, a digital cable television service, which occurred on 1 October 2015 and 5 January 2016. As a Nationwide Subscription Television Service Licensee, SingNet is required to comply with various Quality of Service-related licence conditions, including an obligation to provide pay-TV services at a reasonable quality deemed satisfactory by the IMDA. However, the two instances of service disruptions, which lasted for a total of four hours, negatively affected approximately 1,500 subscribers, resulting in problems ranging from a complete loss of channels to intermittent pixelation. Following IMDA's investigations, these service disruptions were found to be a breach of SingNet's licence conditions, as SingNet had in each case failed to take the necessary steps to prevent the service disruption from occurring. In addition to the financial penalties imposed by IMDA, SingNet has also agreed to put in place the necessary measures to ensure that similar service disruptions do not occur in the future.

Press Release

SOUTH AFRICA

A. Cybercrimes and Cybersecurity Bill

In December 2016, the Cybercrimes and Cybersecurity Bill was approved by the Cabinet (which is the most senior level of the executive branch of the Government of South Africa). The Bill will now be presented to Parliament, for consideration and approval.

The Bill aims to put measures in place to effectively deal with cybercrime offences (including the unlawful access or interception of protected data) and to address aspects relating to cyber security. It also sets out provisions dealing with international cooperation with foreign countries in respect of the investigation of cybercrime.

Bill

SWEDEN

A. RECENT DEVELOPMENTS

i) The Swedish Consumer Agency discontinues co-operations with NIX

For nearly 18 years, the Swedish Consumer Agency (the "**CA**") and the industry organisation NIX-Telefon ("**NIX**") have co-operated for the purpose of preventing unwanted telemarketers to contact consumers. Through the co-operation, Swedish consumers have been able to opt-out from telemarketing by signing-up for the NIX register. If a company contacted a consumer registered in the NIX register, then the company breached the *Swedish Marketing Practices Act* (the "**MPA**").

Recently, the CA has declared that the NIX register has so many loopholes and exceptions that the service does not provide full protection against unwanted telemarketing. Therefore, the CA has terminated the co-operation with immediate effect. The CA has also written to the Swedish Government proposing legislation which requires that telephone sellers must obtain explicit consent from the consumers prior to telemarking activities directed to the consumer. The Swedish Government has so far not reacted to the proposal.

NIX still proceeds with its services, but now without support from the CA. It is uncertain how the ongoing progress on prevention of unwanted telemarketing will develop, but there have been several cases during the last years where the CA has challenged the telemarketing practices and it appears clear that the CA is trying to establish stricter practice in this area.

Link

ii) Marketing of "vegetarian" food has been considered misleading

In a short period of time, three major brands in the food industry, Lidl, Felix and Max, have been convicted of misleading marketing by the Swedish Advertising Ombudsman ("**RO**"). In all three cases, the companies had promoted different food as "vegetarian", although there had been animal additives and/or flavourings in the food.

In the decisions, the RO argued that if a food package is labelled with "vegetable", "vegetarian" or the like, it would normally be regarded as misleading if an ingredient, like additives and flavourings of animal origin, is included in the food.

However, in some cases it might be considered acceptable to use the concept "vegetarian" even though the food contains such additives or flavourings. An example could be when a pizza with cheese is designated as vegetarian, as it is customary in Sweden that vegetarian pizzas are sold with cheese included.

In other cases, when milk or eggs entering the food which is otherwise free of animal ingredients, the RO suggested that concepts like “lacto-vegetarian” or “ovovegetarian” should be used, instead of “vegetarian”.

Link

Link

Link

TAIWAN

A. TFTC warned telecom service providers not to reach a mutual consensus for concerted actions by releasing announcements in the media

On February 14, 2017, the Taiwan Fair Trade Commission ("**TFTC**") warned telecom service providers not to reach a mutual consensus for concerted actions by releasing announcements in the media. Taiwan Mobile, the second largest telecom service provider in Taiwan, told local media that the company is very likely to phase out its NT$699 unlimited internet plans (4G) by the end of February 2017 and hopes that telecom service providers could compete in a rational manner. After Taiwan Mobile's announcement, Chunghwa Telecom, the largest Taiwanese telecom service provider, also told the media that it plans to discontinue offering its NT$699 unlimited internet plans (4G) at the end of February 2017. The TFTC indicated that if the two companies and/or other telecom service providers use the media as a platform to communicate their consensus on their future 4G service plan and then cease low-priced package plans accordingly, the companies would be deemed to violate the concerted action (cartel regulations) under the *Fair Trade Act*. The TFTC indicated that it will keep monitoring the ensuing action taken by each telecom company to ensure no illegal cartel scheme is adopted in this regard.

Press Release (Traditional Chinese Version ONLY)

B. MOTC amended the Mandatory and Prohibited Provisions of Standard Contract for Hotel Bookings made by Individual Visitors

On January 24, 2017, the Ministry of Transportation & Communications ("**MOTC**") amended the Mandatory and Prohibited Provisions of Standard Contract for Hotel Bookings made by Individual Visitors, which took effect in the same month. The new law increases the deposit limit up to 50% of the room price to reserve a room during consecutive public holidays of no less than three days, and allows hotel operators to collect 100% of the room price as deposit in advance, provided that hotel operators must refund 100% of the deposit if the visitors cancel the reservation within three days before the arrival date. Alternatively, hotel operators may keep the deposit from visitors as a prepaid amount to be offset against a future reservation made within one year.

Press Release (Traditional Chinese Version ONLY)

THAILAND

A. RECENT DEVELOPMENTS

i) Amendments to the Direct Selling and Direct Marketing Act Passed by the National Legislative Assembly

On October 13, 2016, the amendment to the *Direct Selling and Direct Marketing Act* passed the first hearing by the National Legislative Assembly. The amendment aims to protect consumers from being at a disadvantage and to provide a security guarantee if any damages to consumers occurs. The amendment also requires that operators must register as a partnership or company to operate direct sales or direct marketing businesses. In the case of a violation, there will also be an increase in both fine and imprisonment.

ii) The Public Hearing on the Draft Defective Product Liability Act by OCPB

The Office of the Consumer Protection Board held a public hearing for the draft *Defective Product Liability Act* on February 3, 2017. The draft provides for consumer rights with regards to defective products, in addition to those under the current *Civil and Commercial Code* and the *Consumer Protection Act*. It is expected to be enacted within one to two years.

B. ENFORCEMENT/FINANCIAL PRACTICES

On January 13, 2017, the Secretariat of the Office of the Consumer Protection Board (the "**Board**") reported the 2016 enforcement statistics, totaling 5,251 cases involving THB546,803,371. In addition, the Board had the resolution to proceed with legal actions against certain operators in tour businesses, car and second hand car businesses, fitness businesses, tourism businesses and real estate businesses.

VIETNAM

A. RECENT DEVELOPMENTS

i) Decision No. 1997/QD-TTg on Approval for Development Program of Customer Protection Activities in the 2016-2020 period

On October 18, 2016, Decision No. 1997/QD-TTg on Approval for Development Program of Customer Protection Activities in the period of 2016-2020 took effect. The main targets of the program are to: establish and implement mechanisms, policies, and solutions for supporting consumer protection in Vietnam; enhancing qualifications, capacity, and responsibilities of the State authorities, social organizations and enterprises; and raising consumers' awareness with the aim of reaching some achievements in consumer protection and of contributing to social justice and national sustainable development.

One of the specific targets of the program is to ensure that by 2020, at least 80% consumers' complaints and requests will be received, consulted and assisted by the State regulatory authorities and social organizations on consumer protection, traders and service providers, and the percentage of settlement shall exceed 70% of filed complaints.

Besides the content, the program focuses on the following main points:

- To plan and initiate Vietnamese Consumer Rights Day;
- To circulate and popularize policies and laws on consumer protection;
- To train and develop human resources to protect customers' benefits;
- To establish nationwide switchboards for consumer consulting;
- To establish mediation agencies on consumer protection;
- To intensify inspection and assessment of consumer goods and service quality;
- To create a national consumer protection database;
- To implement an "Action of Enterprises for the Benefit of Consumer" program;
- To promote international cooperation in consumer protection; and
- To stipulate other activities for consumer protection according to the reality and regulations of laws.

On January 20, 2017, in Hanoi, the Competition Management Department ("**MOIT**") held a ceremony to launch the program "Enterprises to act in response to Consumer Rights Day in Vietnam", which will be carried out nationally until the end of March 2017.

Link

ii) Ministry of Industry and Trade Issues Plan to Encourage Promotion of Consumer Rights

On October 12, 2016, the Ministry of Industry and Trade issued Plan No. 9701/KH-BCT on the organization of consumers' rights in Vietnam in 2017, which encourages the organisation and carrying-out of activities in favour of consumers throughout 2017. The activities in response to Consumers' Rights Day in Vietnam will be held in March 2017 with a title: "Enterprises for Consumers".

iii) Food Safety Department Issues Project Plan for Food Safety

On November 2, 2016, the Food Safety Department of the Ministry of Health proposed food safety targets to be achieved in 2016, including:

- 80% of facilities of producing, trading and processing food inspected would meet requirements on hygiene and food safety;
- 70% of producers, processors, trader and consumers of food would have proper knowledge and practice on food safety; and
- Over 85% of food service facilities managed by the Province/City and facilities of producing and trading of food managed by Health Sector would be certified for food safety.

iv) National Steering Committee Introduces Plan to Combat Smuggling, Trade Fraud and Counterfeit Goods

On November 17, 2016, the National Steering Committee against smuggling, trade fraud and counterfeit goods addressed the issue of trade fraud and counterfeit goods before, during and after the 2017 Lunar New Year. The Plan will introduce measures to strengthen inspections and control the market to promptly detect, prevent, and handle the illegal transportation and smuggling of goods across borders, and the production and trading of fake and substandard goods.

UNITED KINGDOM

A. Policy proposals

United Kingdom Chancellor of the Exchequer, Philip Hammond, announced in early March that the government would soon issue a green paper on consumer protection and markets. The government intends to adopt certain changes, including enhancing the enforcement authority of the Competition and Markets Authority (the "**CMA**") to allow the body to ask courts to order civil fines against firms that mislead or mistreat consumers. Currently, UK law only allows the CMA to request a fine in limited circumstances. The government also announced that it would take steps to make consumer terms and conditions (such as those in online transactions) clearer, and analyze measures to protect consumers from unexpected costs in recurring payments.

Link