

therefore offered ACM their commitments to no longer make public announcements on future market prices or other commercial conditions until these are finalised internally. ACM has stated that it intends to accept the proposed commitments.

In Brussels, public announcements have also come to the attention of cartel prosecutors. The European Commission is said to have sent a statement of objections to a number of container liner shipping companies concerning their regular public

announcements of price increase intentions through press releases on their websites and in the specialised trade press. The last action by the European Commission against this price signalling dates back to 1993. In that case, the European Court of Justice eventually annulled the Commission's decision that public price announcements breached EU competition rules. It remains to be seen whether the Commission will succeed in this case and find sufficient proof of concerted practice.

Recent competition law developments in New Zealand

Countdown supermarkets in the spotlight after allegations of anti-competitive conduct

The Commission has launched an official investigation into alleged anti-competitive conduct by Countdown supermarkets (owned by Australian group Woolworths) after receiving a written complaint from Shane Jones, senior Labour MP.

Speaking under parliamentary privilege, Mr Jones alleged that Countdown has demanded cash payments from Kiwi suppliers for 'past losses', and made it clear that if they did not make those payments, they faced having their products removed permanently from the shelves. These allegations arose in the wake of recent claims that Woolworths was dropping Kiwi products from its shelves in Australia in favour of local products – prompting calls on social media in New Zealand for a consumer boycott of Countdown.

The Commission is calling for suppliers or anyone else with information relevant to the allegations to come forward.

Countdown has 'categorically rejected' the allegations made against it and has committed to fully cooperate with the Commission's enquiries.

Fair trading laws modernised

The Fair Trading Amendment Act 2013 (the 'Amendment Act') was enacted on

18 December 2013, bringing much anticipated changes to the Fair Trading Act 1986 (FTA). The Amendment Act was one of six bills split off from the Consumer Law Reform Bill, which was introduced in April 2011. While some of these changes are already in effect, the majority will come into effect on 18 June 2014, including:

- *rules on substantiation* – it will be an offence for traders to make unsubstantiated representations without reasonable grounds;
- *online selling* – ensuring traders who sell over the internet make it clear they are traders, and extending consumers rights under the Consumer Guarantees Act to include sales by auction or tender;
- *extended warranties* – where disclosure is required of the consumer's rights under the Consumer Guarantees Act and a comparison of these with the benefits of the extended warranty being offered;
- *increased fines* – penalties for misleading and deceptive conduct, false representations, unfair practices and issues around product safety have increased from NZD60,000 to NZD200,000 for individuals and from NZD200,000 to NZD600,000 for businesses. Individuals who repeatedly break the law will also face banning orders (up to ten years); and
- *no contracting out* – making it clear that a business cannot enforce any agreement (or part of an agreement) that attempts to release it from its obligations under the FTA.

NEW ZEALAND

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New laws prohibiting unfair contract terms in standard form consumer contracts will come into force on 18 March 2015.

Cartel update: Commission ends 2013 by securing a NZD3.6m penalty in trans-Tasman packaging cartel case and issuing proceedings in relation to Auckland timber cartel

Trans-Tasman packaging cartel

In August 2013, the High Court at Auckland imposed a NZD3.6m 'agreed' penalty against Visy Board Pty Limited (Visy), plus NZD50,000 in costs, for its role in a trans-Tasman corrugated fibreboard cartel. The High Court also imposed a NZD25,000 penalty on a former senior Visy executive. The penalties reflected a reduction for mitigating factors such as admission of liability and cooperation with the Commission. The Federal Court of Australia had earlier imposed penalties of AUD36m against Visy (Australia's highest cartel penalty to date) and AUD500,000 against the same senior executive.

The cartel conduct related to arrangements between Visy and Amcor Ltd to divide certain large trans-Tasman customers (Coca-Cola, Goodman Fielder and Fonterra) between them, in breach of the price-fixing prohibition in the Commerce Act. The tenders for these

customers took place between 2001 and 2004.

Visy had entered into a pre-trial settlement with the Commission, whereby it admitted liability for its involvement in the cartel. The judgment notes that no employee at Visy's New Zealand subsidiary, senior or otherwise, was aware of the cartel.

Auckland timber cartel

The Commission has filed proceedings in the High Court at Auckland against Carter Holt Harvey Limited (CHH) for allegedly entering into an understanding with Fletcher Distribution Limited (Fletcher) to fix prices in the Auckland timber market. The Commission has also filed proceedings against a CHH manager for his involvement in the understanding, which operated from late 2012 to early 2013.

Fletcher was granted conditional immunity in accordance with the Commission's Cartel Leniency Policy after it discovered its involvement and was first to blow the whistle on the cartel. The Commission has not filed proceedings against Fletcher.

CHH and the manager have cooperated with the Commission's investigation, and have both now entered settlements with the Commission in which they admit that their conduct breached the Commerce Act.

A penalty hearing is yet to be heard before the High Court.

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Court judgment in the Norwegian 'asphalt cartel' case*

In 2013, a fine of NOK 140m was imposed on NCC Roads AS and its ultimate parent, NCC AB, for collusion with the company Veidekke in the Norwegian asphalt market. This is by far the largest fine ever imposed for violations of the Norwegian Competition Act since the Act entered into force on 1 May 2004. Until the NCC matter, the highest fine imposed was NOK 5m.

The collusion between NCC and Veidekke took place between 2005–2008 and covered governmental tenders in one specific region

in Norway. The affected contracts amounted in total to approximately NOK 100–150m per year, of which NCC won approximately one-third of the tenders.

Thus, both in absolute figures and relative to the size of the affected market, the imposed fine was very high.

The NCA imposed a fine of NOK 220m on Veidekke, but Veidekke was given full immunity due to the company's leniency application.

NCC did not contest the existence of the cartel, nor its participation, but rather