

Kluwer Competition Law Blog

Losing one's dignity

Max Findlay (Max Findlay Associates, United Kingdom) · Sunday, September 18th, 2011

We all lose our temper sometimes. The trick, of course, is to get something out of it rather than drop ourselves in it. But this is sometimes easier said than done.

Take the UK supermarket giant Tesco. In August, it lost its rag after it'd been fined almost £10.5m by the Office of Fair Trading for colluding with others to fix cheese prices. Expressing "surprise and dismay" at the decision, Tesco said it was time the regulator was dismantled. "We surely have now reached the stage," thundered Lucy Neville-Rolfe, the supermarket's corporate affairs director, "where the absurdity of the OFT operating as investigator, prosecutor and judge cannot be allowed to continue." The government's plans for the new competition and markets authority "must address this anomaly, in the interests of the consumer and the business community". Tesco now has to decide whether it'll appeal against the fine but is quoted as saying that "our expectation is that we will". It will be interesting to see how long this show of corporate temper – which has done nothing for Tesco's dignity – is kept up.

This is modest, though, compared to the recent headline row involving the now former governor of the Tower of London, Major General Keith Cima. He was sacked for gross misconduct after describing the yeoman warders (famously known as Beefeaters) as "thick" and "the lowest of the low", earning the widely quoted rebuke from his boss that he'd acted "like a petulant child". Set against a background of allegations of cannabis growing at the Tower, unauthorised access to the crown jewels, drinks parties in the Chapel Royal and bullying of the first female Beefeater, Moira Cameron, the story was newspaper heaven. But it was probably less delightful for General Cima who emerged looking distinctly foolish.

As did Tesco in its second PR disaster of the holiday season, although this time it was its customers rather than the supermarket that had reason to be cross. Last month, Tesco was reported as having broken its promise to maintain a national UK pricing policy by slashing prices in Scotland but not elsewhere. On a range of 800 items, Scottish shoppers had apparently been paying roughly 5% less for a period of three weeks. One national newspaper even said that, on one range of goods, the difference was nearer 18%.

To explain the background, eleven years ago Tesco and the other major supermarket chains promised the Competition Commission that they would maintain a national pricing policy. The idea was to ensure that the supermarkets wouldn't increase prices in towns where there was no competition. Tesco's August pricing gaffe came at a particularly sensitive time when many people in the rest of the UK (especially in England) are already fed up with the preferential treatment

given to Scottish citizens: witness the screams over Edinburgh University's recent announcement that it would charge non-Scottish UK students £36,000 for a standard four-year degree, when undergraduates who are resident in Scotland don't pay any tuition fees at Scottish universities.

Not surprisingly, therefore, people south of the border got rather peeved at yet more special treatment for Caledonians. This time, Tesco adopted a lofty tone. It hadn't abandoned its national pricing policy, it said, and blamed "a technical error" for the cost differences. As a result, "a small number of products have been incorrectly priced by a small amount". Unlucky English shoppers wouldn't be getting a refund, though, as the price in England was the "correct" one. So while the Sassenachs may have been left fuming, it was the supermarket that ended up with egg on its face – yet again – because its excuse was publicly discredited by the three-week duration of the alleged "technical error".

Governments too can get in on the act. Witness the fury of the Obama administration when Standard & Poor's recently stripped the US of its AAA credit rating. The White House slammed the credit rating agency over an admitted \$2trn mathematical error in its initial calculations, adding that S&P had "shaped any arguments" to fit a conclusion it had decided on from the start. Sympathetic commentators also emphasised S&P's disastrous role in the credit crisis and the mistaken AAA ratings it had put on billions of dollars of toxic mortgage derivatives. This time, though, the deliberate loss of temper may actually have achieved something positive, shielding President Obama from the worst of US public anger over the downgrade and indirectly turning up the heat on the European debate about the need for greater competition to the existing big three credit agencies. So sometimes getting angry – at least, if you sound reasonable as well as cross – pays dividends. Tesco and General Cima, take note.

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