
Kluwer Competition Law Blog

Little, large and not proven

Max Findlay (Max Findlay Associates, United Kingdom) · Friday, November 4th, 2011

The big story for British sports fans has been the recent ruling by the Court of Justice of the European Union (ECJ) in the FA Premier League / Karen Murphy case. Effectively, the ECJ has said that British viewers can buy live English Premier League football matches from any pay-TV provider in the EU and yah boo sucks to expensive broadcasting giants like Sky and ESPN.

Mrs Murphy is the landlady of the Red, White and Blue pub in Southsea, Hampshire in southern England. She showed live Premier League football – including 3pm games on a Saturday, which are subject to a media blackout in the UK in a bid to protect attendances at matches – through a Greek satellite system. This broke domestic legal rules as it bypassed a licence granted to Sky and ESPN, allowing only those broadcasters to screen live football matches domestically.

She was ordered to pay almost £8,000 in fines and costs and was sued by the Premier League. She appealed all the way up to the ECJ, arguing that she should be free to buy a subscription package from anywhere in the European Economic Area. The ECJ has now agreed with her, albeit largely for the benefit of domestic households.

This is a story that has everything for the British. Mrs Murphy is a gutsy underdog running an old-fashioned pub with an old-fashioned patriotic name. No-one imagines for a moment that Sky and ESPN are going to lie down under this temporary reverse for very long. In any case, pubs will still have to get the rights holder's permission to show games since they are being screened in a place of "a profit-making nature" (ie a pub).

However, this rule apparently only covers things like the opening programme sequence or the Premier League anthem rather than the matches themselves. This naturally lends itself to lots of very English legal jokes about not turning the TV on until the game starts or keeping the volume turned down. But the jokes are being told as a bitter defence against dwindling attendances at football matches and an accompanying fear that we're inexorably moving towards a tiny number of Mancelona United size teams and the death of all the others. For many people, this (or something like it) is where competition law often ends up.

So much for the big. The small comes from Australia, where the Australian Competition and Consumer Commission (ACCC) recently launched its Recalls Australia iPhone app to give consumers readily accessible information on recalled consumer goods. According to the ACCC's deputy chairman Peter Kell, the app also allows people to report products they consider are unsafe directly to the ACCC.

The beauty of this product is its potential application to competition law. Imagine how easy it would make life – how much time, effort and money would be saved in terms of investigations and court appearances – if one could just click on an app, report a breach and go straight to the answer. It would certainly have saved Mrs Murphy, Sky and the others a lot of bother, that's for sure. It's not as if you'd have to do anything old-fashioned like prove something. You just click and go.

Talking of which, Professor Allyson Pollock of Queen Mary, University of London has been so antediluvian as to expect accurate research from the UK government over its controversial health and social care bill. She has challenged government claims that competition has actually improved quality in the NHS and saved lives, telling the press that the government-sponsored study underpinning the claims is “littered with errors”.

The study concluded that mortality rates for heart-attack patients were lower in cases where more hospitals were within travelling distance of the patient's GP surgery. It also examined the results of certain types of routine surgery and came to the view that a greater choice of hospital led to better results for heart attacks.

But this did not explain, said Professor Pollock, why the availability of choice over routine surgery should have any effect on whether heart-attack patients live or die. Since heart attacks are by definition an emergency, most patients do not get to choose where they're treated. The study “simply doesn't prove either cause or effect between patient choice and death rates,” she added.

However, just as the jokes about Sky and Mrs Murphy are a way of warding off one kind of fear, Professor Pollock's criticisms are seen as a potential weapon in another battle that also frightens the British public. They're worried that the health and social care bill is, in reality, the first step towards the private sector finally defeating a much-loved free universal service. And that too, sadly, is what lots of people think competition law is really all about.

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Source: [OECD](#) Consumer welfare, [European Union](#)

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