

Kluwer Competition Law Blog

The end of an era

Max Findlay (Max Findlay Associates, United Kingdom) · Saturday, March 31st, 2012

There have been two big pieces of news in the UK recently: the resignation of John Fingleton, the chief executive of the Office of Fair Trading, and the heavily-trailed announcement of the newly merged OFT and Competition Commission, now called the Competition and Markets Authority (CMA).

The link between the two events is probably only one of timing. In his resignation letter to the business secretary Vince Cable in late February, Mr Fingleton said that a major reason for his going was that the proposals to merge the OFT and the Competition Commission into the SMA “have now reached a suitable juncture to enable arrangements for succession to be taken forward”. Three weeks later, the government announced the regime change.

Even so, the news has a faint fin-de siècle feel to it, even if it is only 2012. It’s as if a broadly popular system that has stood the test of time has now been dumped unceremoniously just because it’s old rather than because it doesn’t work. Nor is this the only casualty of the new change for change’s sake attitude of our political masters.

Take the Royal Mail, for instance. For all the moaning about the system itself, postmen and women are a much loved institution, with British cities and countryside invisibly linked by a universal postal service. Now Royal Mail is on the way to privatisation and the slide into a dull, impersonal business.

For years, ministers have tried to push the Royal Mail into the private sector. In a bid to woo investors, the government has now said that it will take over the Royal Mail’s pension fund, which will see £28bn of assets and £38bn in liabilities transferred to the state. Brussels has ok’d the deal, on condition that the UK postal operator is only relieved of costs that are greater than the level of pension payments made by its competitors in the UK.

In a further move to sex up the Royal Mail for the market, the UK communications regulator Ofcom has recently announced that the UK postal operator can now decide how much it will charge consumers for postage. As from the end of April, first and second class stamp prices for standard letters, for example, will increase by 14p each (up from 46p and 36p to 60p and 50p respectively). Royal Mail says – in a statement that has impressed no-one in the UK – that, even after the increases, second class stamps will still be the cheapest in Europe, while first class will be around average.

At the same time, albeit in a totally different sphere, another big chunk has been taken out of the

notion of universal service by the British government's recent plan to hand over the responsibility for running motorways and main roads to private companies. Up until now, motorists have foolishly taken it for granted that – apart from a few exceptions like the Dartford Tunnel across the Thames – they can use most roads for free. Now, there is a risk that private operators will be allowed to levy tolls on new – or, even more controversially, on “substantially improved” – national routes and carriageways. Given the massive failure of many past public / private finance initiatives in the UK, there is widespread public scepticism about the new plans.

The government envisages investors bidding for long leases to run motorways and the major trunk roads, which carry almost all the freight traffic in Britain. Successful bidders would pay upfront and then be guaranteed a yearly payment from the state for maintaining the roads. In return, they'd have to demonstrate to an independent regulator that they are maintaining high standards and reducing traffic jams. Under the current plans, the leaseholders could charge tolls on new but not existing roads. However, they may be allowed to levy such charges if they can show they have “substantially improved” the road by, for instance, widening it. You can already see just how much fun lawyers are going to have with the notion of “substantial improvements”.

Naturally, the government refuses to admit that this is the start of privatisation, saying that the roads will ultimately remain in state control. As the leaseholders can hardly uproot motorways and run away with them to a tax haven somewhere, few people ever thought otherwise and are hardly reassured by this platitudinous announcement. What they do sense, however, is the ending of a hitherto universal service, disguised in the language of competition. So you can't help wondering if, by stepping down before the deluge, Mr Fingleton is rather more in touch with the zeitgeist than the British government.

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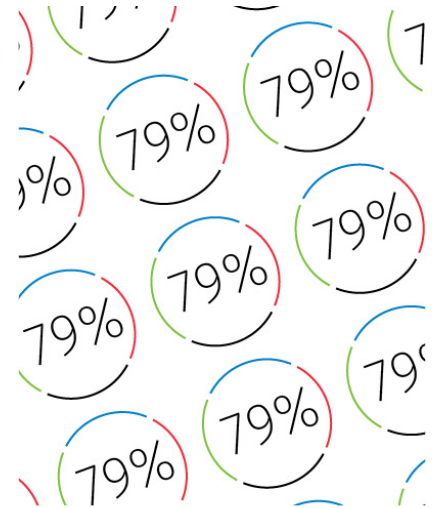
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