
Kluwer Competition Law Blog

Fighting fit

Max Findlay (Max Findlay Associates, United Kingdom) · Saturday, June 23rd, 2012

In the run-up to the London Olympics, it seems particularly appropriate that the competition theme of the moment is all about fighting.

Take Spain, for instance. The country's antitrust authority – the Comisión Nacional de la Competencia (CNC) – has recently started legal proceedings against a bunch of matadors and a sports marketing rights consultancy called All Sports Media 66 SL (ASM). The row is over a set of agreements for the joint management of TV broadcasting rights for bullfights.

Earlier this month, the CNC's investigation division started proceedings against ASM and 10 matadors for breach of the Spanish Competition Act. At the heart of the row are contracts between ASM and the bullfighters for the joint management by ASM of television broadcasting rights for bullfights involving the 10 matadors. These contracts could, it is argued, restrict competition over the holding of bullfights and their broadcast by television. The CNC now has 18 months to investigate and resolve the issue.

Now this is a nice straightforward case of a competition authority that has picked a fight with a bunch of people whose livelihood happens to be, well, fighting. There's a certain amount of amusement to be had from the happy symmetry of that struggle, to be sure, but it is all perfectly normal knockabout enforcement stuff.

Step things up a gear, though, and you get to something that is knockabout, amusing but asymmetric. The UK's Office of Fair Trading has recently been downgraded in a global ranking of competition authorities carried out by Global Competition Review because of the regulator's dismal enforcement record against cartels.

The drop from five-star to four-star status follows various court setbacks last year, including the reduction (on appeal) of £225m in price-fixing fines imposed on 10 tobacco companies and retailers following a lengthy investigation.

As a result, the OFT is now simply ranked as "very good", on a par with agencies in Japan, Australia and Spain. In comparison, the EU and US competition authorities are regarded as "elite".

So what is asymmetric about this? Well, the OFT is just about to undergo a two-year period of radical surgery as it is merged with the Competition Commission. Personnel management (translation: managing internal staff's fears of redundancy) is going to be a nightmare. The OFT has also taken a serious bashing in the UK press over the last couple of years and is reputed to be

very low in confidence. And now, to cap it all, along comes a wretched magazine survey saying (in effect) yup, it's official, the OFT isn't much cop. According to lots of lawyers, this guilty verdict will have a seriously adverse effect on the regulator's standing in government and the battle over its budget. So, in the fight between the *OFT v the Rest*, the balance of power is firmly tipped in favour of the Rest.

Then, at the top of the tree, you have government ministers fighting for their lives. Right now, the culture secretary Jeremy Hunt and the prime minister David Cameron are having to work very hard to repair their badly scarred reputations over the BSkyB debacle and their excessive chumminess with the press baron Rupert Murdoch – a PR fiasco that stems directly from a deal that was originally billed by the professionals as a purely competition issue.

Mr Hunt has now had to shelve his controversial communications green paper until after the Olympics. This is because there could easily have been further accusations of bias as the green paper dealt with controversial subjects such as the future of public service broadcasting, the handling of internet piracy and the allocation of broadcasting spectrum. The culture secretary's political future is quite shaky enough, thank you, without risking further furore following on from his handling of News Corp's attempt to take full control of BSkyB.

Nor is the British prime minister doing a whole lot better in front of the Leveson inquiry into the culture, practice and ethics of the press. Lord Justice Leveson queried the desirability of Mr Hunt being given the job of deciding on BSkyB in the light of his known support for the Murdoch bid. Mr Cameron replied that he had appointed Mr Hunt following the advice of a senior government lawyer who hadn't in fact seen all of Mr Hunt's comments on the deal. Nor did Mr Cameron recall a private note sent to him by Mr Hunt shortly before being given the BSkyB job in which the culture secretary argued in favour of the Murdoch bid. Whatever Lord Leveson finally decides on all this, the British public has already made up its mind about the government's integrity or otherwise. Whoever would have thought that competition law could be so dangerous?

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