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# Kluwer Competition Law Blog

## Killing a good thing

Max Findlay (Max Findlay Associates, United Kingdom) · Tuesday, January 29th, 2013

In the UK competition world, it's been the season for the god of quirks and small things. This has been a lot of fun. However, sadly we're soon going to have to sober up and look at what lies beneath.

But first let's look at the quirks and small things. Towards the end of last year, the Office of Fair Trading accepted undertakings from a company called Boparan to sell a Christmas pudding manufacturing business to meet competition concerns stemming from its proposed acquisition of a rival. As a result, the deal won't be referred up to the Competition Commission.

The UK Christmas pudding market is worth between £40m to £50m a year and the OFT was worried that the loss of competition resulting from this merger of the largest suppliers of Christmas puddings in the UK would lead to higher prices for consumers. So Boparan agreed to sell one of its Christmas pud-making businesses to Sargents Bakeries, who manufacture tarts, pies and mince pies.

This painted a wonderful picture of a titchy tart maker standing up to the Goliath of Christmas puddings. Would Sargents compete head on with the Boparan empire or instead sneakily produce mini-Christmas puddings to undermine its bigger rival's market position? Perhaps it would extend its range and branch out into making jam rolypolies and Dundee cakes, thus totally outmanoeuvring Boparan in the glutinous dessert sector. Cue much seasonal hilarity and mirth.

At the same time, the UK regulator was busy tackling another favourite – the profiteering of school uniform outfitters. This has been a source of complaint since forever. Now, the OFT has written to almost 30,000 state primary and secondary schools asking them to review their uniform policies, saying that families could save “tens of millions of pounds” if schools allowed them to shop around.

The OFT's letter followed a survey of state schools, which revealed that where uniform items can only be bought from school-selected retailers or the school shop, prices can be £5 to £10 higher than if families were free to buy elsewhere. As 74% of state schools continue to place restrictions on where some uniform items can be bought, this amounts to quite a lot of money all told.

Schools retorted that they want consistent and good quality uniforms for their pupils, and that's why they're keen on having a restricted number of suppliers. The OFT countered by saying that schools could achieve consistency by “setting out colour and style requirements in more detail” while still giving parents the choice of where to buy the clothes.

Once again, lots of laughs from mums and dads, although this time of the hollow variety. Plainly, the OFT knew little about schoolchildren or the sadistic opportunities open to schools when it comes to “setting out the colour and style requirements in more detail”. Hapless parents will now be forced to scour retail outlets for miles around looking for garments matching the strict new criteria, with their children wailing “But I want the same thing as my friends”. It will be interesting to see how many families opt for paying the extra tenner at the school shop just to get a bit of peace. Still, the story showed that the OFT could at least try and talk to ordinary punters.

But all this jolly banter hides a disaster in the making. The new Competition and Markets Authority (CMA) – which combines and replaces the OFT and Competition Commission – is currently due to start operating in April 2014. A new chairman-designate, Lord Currie, was appointed last summer and a new executive designate, Alex Chisholm, has been appointed this month. Unsurprisingly, the British government is making predictable noises about how the new streamlined authority will drive competition policy and deliver substantial economic benefits from a tough regime cracking down on cartels and monopolies. And in public, competition lawyers are supporting the change, partly because they will have to work with the CMA and partly because the new body was a done deal a long time ago and so there is no point in rubbishing it now.

In private, though, it’s a very different story. Many practitioners are in despair at the changes. Well-placed insiders repeatedly say that highly qualified staff are leaving the OFT and that recruitment is a nightmare. Widespread doubts are being expressed by practitioners about the streamlined regulator’s ability to handle the workload. The general perception is that a world-class organisation is being dismantled so that when the new body gets going in 15 months time, it will be (to use a football analogy) San Marino rather than Spain that runs out onto the field of play. That will be a shame.

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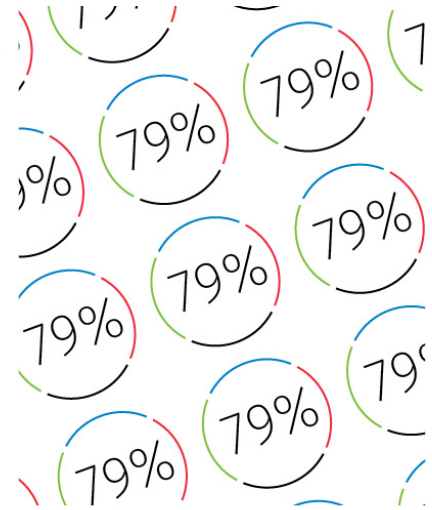
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