Is Your Marketing Manager Breaking Competition Law?

Marketing personnel may cause most of the UK’s competition law offences. Recent research has discovered that in the majority of anti-competitive markets investigated by the UK Competition Commissions, anti-competitive behaviours are closely linked to the firm’s marketing decisions.

The research, undertaken by Drs John Ashton and Andrew Pressey at the ESRC Centre for Competition Policy and Norwich Business School, University of East Anglia, analysed UK Competition Commission investigations of anti-competitive markets undertaken during the last fifty years. The study reports that within 57% of the anti-competitive markets investigated by the competition authorities, the anti-competitive behaviours identified are closely associated with the firm’s marketing function or decisions commonly undertaken by marketing personnel.

To discover these startling findings the study assessed the characteristics of the different anti-competitive acts on which the UK Competition Commissions have reported within 161 reports issued between 1950-2005. Within this analysis, reference made to marketing and other central marketing activities within the different competition reports, such as branding and pricing, was recorded. Linking these forms of assessment, cases where marketing or marketing activities have been identified as central to the competition problem are defined. It is reported that some anti-competitive acts, such as discounting, excessive pricing and vertical restraints appear to be persistently linked with marketing decisions and actions.
For example, the ‘excessive pricing’ undertaken by a dominant firm has been repeatedly linked with cases of excessive marketing spending, brand building and encouraging customers to compare products on terms other than price. Similarly, vertical restraints or the set of business relationships imposing restrictions on the parties involved, are linked with the exclusive distribution of goods and services, discounting, branding and promotions. All of these marketing practices have been recorded in markets as diverse as Ice cream, Petrol, Tampons and Cornflakes.

In light of these findings the study strongly recommends marketing managers develop a greater familiarity with competition law. Equally, firms should ensure their marketing objectives are created in a manner cognisant with the rules of competitive behaviour. On this issue, Dr Andrew Pressey states “compliance with competition law needs to be tackled by the marketing profession. Marketers may often not realise the growing likelihood of violating competition laws”. Dr John Ashton further indicates “the frequency and severity of punishment for competition law violations have increased in recent times. It is important that the implications of firms’ marketing actions are fully grasped by firms.”

The study also reports that it is not just the responsibility of marketers to brush up on competition law. A lack of consistency in the Competition Commission judgements studied is reported, indicating that that a stronger comprehension of marketing concerns may be required by this authority. Equally in the future, competition authorities should also consider developing greater dialogue with marketing managers and academic with the aim of disseminating good practice amongst the marketing profession.

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Notes to Editors
1. For further details, please contact John Ashton on telephone 01603 591618 or email j.ashton@uea.ac.uk, and Andrew Pressey, on telephone 01603 591181 or email a.pressey@uea.ac.uk. See the CCP website at www.ccp.uea.ac.uk
2. The study, entitled The Regulatory Perception of the Marketing Function: An Interpretation of UK Competition Authority Investigations 1950-2005 by Dr John Ashton and Dr Andrew Pressey (lecturers from the Norwich Business School and the ESRC Centre for Competition Policy at the University of East Anglia), explores and quantifies the link between marketing and rulings on competition or antitrust law made by UK competition or antitrust authorities. Through a comprehensive examination of past UK competition rulings from 1950 to 2005, the frequency and
content of the principal forms of anti-competitive behaviour during the last half century are recorded. A high proportion of competition law violations are associated with the marketing function. UK competition authorities have viewed specific marketing practices and more generally the direction, scope and scale of marketing activity to be causes for concern.

3. The full text of the research study is available on the CCP website (http://www ccp.uea.ac.uk/publicfiles/workingpapers/CCP07-1.pdf).

4. The Centre for Competition Policy (CCP) at the University of East Anglia is the leading UK centre for research into the economics and law of Competition Policy. Funded by the Economic and Social Research Council, its members undertake high quality, independent, academic research into competition and regulation and its impact on companies and society. CCP’s output is in the public domain.

5. The ESRC is the UK’s largest funding agency for research and postgraduate training relating to social and economic issues. It provides independent, high quality, relevant research to business, the public sector and Government. The ESRC invests more than £123million every year in social science and at any time is supporting some 2,000 researchers in academic institutions and research policy institutes. It also funds postgraduate training within the social sciences to nurture the researchers of tomorrow. More at http://www.esrcsocietytoday.ac.uk.