

March 2009

The Regulatory
Challenge to
Branding

CCP Policy Briefing

The Regulatory Challenge to Branding: An Interpretation of UK Competition Authority Investigations 1950-2007

BACKGROUND

- Branding is a central business tool in the development and sale of goods and services. It is a long-standing business practice with the assets developed from branding activity subject to legal recognition and protection.
- Uncertainty in the business-government interface has the potential to create significant transaction costs. Therefore, comprehension of the competition law treatment of widely used business practices, including branding, has an immediate benefit for management wishing to demonstrate legal compliance and for the wider economy.

METHODOLOGY

- The authors ask if, and how, branding constitutes an anticompetitive act. These questions are assessed through the systematic assessment of 423 competition examinations made by the UK competition authorities between 1950 and 2007.
- A testing procedure is then adopted to identify if anticompetitive cases which consider branding issues are different from other non-branding cases.

KEY FINDINGS

- Branding is viewed to be an anticompetitive concern in a range of circumstances. It may facilitate excessive pricing, lead to the creation of vertical restraints, and/or result in consumer confusion.
- Branding cases are different from non-branding cases. They involve relatively large firms operating in concentrated markets and include a high proportion of manufacturing firms.
- There are inconsistencies in how competition authorities interpret the influence of branding over vertical restraints and consumer choice and confusion. This inconsistency occurs over time and between industries and is viewed to lead to greater business uncertainty.

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POLICY ISSUES

- Managers of particularly large and dominant firms must become aware of the potential for anticompetitive actions when managing brands.
- Competition law needs to be disseminated more widely amongst business communities. This will require greater prominence for competition policy within business school syllabi.
- Greater reference to business and management theory on the part of competition law agencies would assist the comprehension of business techniques such as branding.

THE CCP

The ESRC Centre for Competition Policy (CCP), at the University of East Anglia, undertakes competition policy research, incorporating economic, legal, management and political science perspectives, that has real-world policy relevance without compromising academic rigour.

FOR MORE INFORMATION

The full working paper (CCP Working Paper 09-2) and more information about CCP and its research is available from our website: www.ccp.uea.ac.uk

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