Case Work: Exclusive Dealing in the Kenyan Tobacco Industry

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The Complaint

This case was reported in the local media in the first quarter of 1997. R J Reynolds complained that distributors and stockists of the British American Tobacco Company (BAT) were not allowed to stock its products.

The Commission contacted RJ Reynolds and found out its complaints were:

- Its marketing materials including billboards and posters had been uprooted by BAT representatives and sales agents.
- Stockists were being threatened by BAT sales agents.

The commission also contacted BAT representatives in the field and their response was as follows:

- BAT denied influencing distributors and stockists against selling competing brands.
- BAT had a "gentleman agreement" with its distributors to exclusively stock its products.
- Problems experienced by firms entering the Kenyan cigarette market were attributable to distributor satisfaction with BAT products.
- BAT had exclusivity over stands where its products were displayed and sold.
- Kiosk owners and other retailers were free to stock products from any company.

Relevant Section of the Law

- Section 4 of the Restrictive Trade Practices, Monopolies and Price Control, Cap 504, Laws of Kenya, which defines what a restrictive trade practice is.

- The 'gentleman agreement' between BAT and its distributors is captured under section 6(1)(a)(i) of the Act that lists agreement hindering or preventing the sale or purchase of goods or services between persons engaged in the selling or buying of goods and services as a restrictive trade practice.
- Uprooting of billboards, destruction of marketing materials and threatening of distributors falls under section 10(1)(a) which declares acts meant to drive a competitor out of business or deter a person from establishing business in Kenya as predatory trade practices.

The Tobacco Industry

In 1997 there were three main firms dealing in tobacco products in Kenya viz. BAT, Mastermind Tobacco (K) Ltd (Mastermind) and RJ Reynolds.

BAT is a multinational firm which started operations in Kenya in 1907. The company commands over 80% of the local cigarette market and has over 50 distributors, over 1000 wholesalers and over 40,000 retailers spread over the whole country

Mastermind is an indigenously owned company and started its manufacturing operations in 1989. It was the first major company to compete with BAT in the tobacco leaf and cigarette market. The company encounters stiff competition from BAT.

RJ Reynolds is an international company that entered the Kenyan market in 1996. It was dealing with one brand of cigarettes – Aspen since it did not have a manufacturing plant in Kenya. The company operated in Kenya for a short while and left.

The two remaining companies (BAT & Mastermind) are vertically integrated i.e. operate at three levels viz. tobacco growing, processing, manufacture of cigarettes and distribution. Any company wishing to successfully enter the Kenyan tobacco industry would have to do so at these levels.

Investigations

Investigations carried out by the Commission established that 1) Sales people of BAT had removed posters and billboards of R J Reynolds; 2) they had threatened and cautioned distributors stocking competitor products, 3) BAT has exclusive dealing arrangements with its distributors, 4) BAT had actually stopped supplying its cigarette products to those who stocked Aspen brand of Cigarette.

Assignment

Analyse the case and make recommendations on how you would have dealt with it.