General Counsel Corner

By Peter H. Gunst, Esquire

A Bird Comes Home To Roost

When BP/Amoco negotiated a proposed consent decree with the Federal Trade Commission in order to gain approval of that mammoth merger, one provision required termination of all of either BP's or Amoco's lessee dealers in eight metropolitan markets, and the sale of their stations to a new market entrant. This provision was included because the FTC was concerned that the merger would create too much market concentration in those eight markets, and wanted to encourage a new supplier to enter those markets. Thereafter, BP/Amoco agreed to sell all the affected stations to Tosco.

As we pointed out shortly after the proposed consent decree was released, however, no one gave any consideration to the impacted dealer's PMPA rights. Now that bird has come home to roost.

Impacted Amoco dealers in Pittsburgh cried foul. They sued BP/Mapco under the PMPA and asserted that negotiating a consent decree with the FTC simply was not a permitted ground for termination under the PMPA. One June 14, 1999, Chief Judge Ziegler of he United States District Court for the Western District of Pennsylvania agreed.

After hearing testimony from some of the dealers and BP/Amoco and Tosco representatives, Judge Ziegler read an extensive opinion into the record. He emphasized:

There is nothing in the PMPA that permits a franchisor to terminate the franchisee due to the threat of civil litigation a third party including a governmental agency. Such a rule would permit a franchisor to undermine a statute that was enacted by Congress in part to foster long-term commitments between the oil companies and the retail gas station operators.

Chief Judge Ziegler further recognized that the dealers would not be made whole if they accepted the new franchise agreements offered by Tosco. The Tosco witness had admitted at the hearing that the nearest Tosco branded station was in Florida so that Pittsburgh would be an isolated island. The court recognized, therefor, if the dealers were forced to abandon the Amoco credit card business, they will be forced to sell a product with no credit card use in this or the adjoining states.

Loss of credit card sales would have made it virtually impossible for the Pittsburgh dealers to satisfy the requirement in the Tosco franchise agreement that they sell at least 80% of their average full sales over the past two years under the Amoco brand.

In addition, the Court was troubled by the fact that the proposed Tosco leases increased the dealer's monthly rent by 20%, and imposed a requirement that the dealers turn over to Kosko of the sales price if they sold their stations during the first four years after their leases were executed.

Based on his findings, Chief Judge Ziegler enjoined BP/Amoco from terminating or not renewing its existing agreements with the Pittsburgh dealers pending a final trial on the merits. Given the nature of the court's findings, however, it is very unlikely that result at trial would be any different.

The dealers' counsel, Richard DiSalle praised the court's "courageous decision" in upholding the rights of the dealers in the face of the consent decree negotiated by BP/Amoco and the FTC. Chief Judge Ziegler's opinion may cause reverberations impacting the even larger Exxon/Mobil merger. Far more local markets will be impacted by that combination, and now both the FTC and the suppliers are on notice that at least one federal judge believes that they simply can not ignore dealer rights under the PMPA.

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