

Collusion and cartel and competition commission commerce essay



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The Competition Commission was instituted to combat obstacles to the expansion of markets and the barriers to entry that prevent new firms from entering the market (Sorell and Hendry, date). Competing manufacturers are not allowed to set prices amongst themselves ' it is illegal (Sorell and Hendry, date). Price fixing is illegal because firms project a public image of independent operations and therefore clandestine collusion and formation of cartels leads to dishonesty and disregards the social contract that exists between firms and society (Sorell and Hendry, date). Firms artificially inflate their prices, but consumers believe that the price they are paying is the competitive price (Sorell and Hendry, date). Not only is price fixing detrimental to consumers, but it also puts other firms at a disadvantage (Sorell and Hendry, date).

' People of the same trade seldom meet together...even for merriment and diversion, but the conversation ends in a conspiracy against the public or in some contrivance to raise prices.' ' Adam Smith

Some argue that the responsibility of regulating firms in a market falls on the government because firms cannot act as ' players and umpires at the same time.' (Ryrie in Sorrel and Hendry, date). This however does not always ring true as in life we are constantly acting as umpires and players at the same time. For example, we abide by basic moral principles such as not to lie, cheat or steal and at the same time hold others accountable to actions of the same nature. Arguments such as the one proposed by Ryrie, often lead people to believe that we should not criticise actions that firms take when pursuing their self-interest, however, it is perfectly intelligible to

acknowledge that people do act in their self-interest and that they can be criticised for it (Sorell and Hendry, date).

The milling companies? in South Africa represent an oligopoly. The definition of an oligopoly is, ' barriers to entry, few sellers, firms recognise their interdependence and may act independently or collude' (Perloff, date: page). Collusion takes place when oligopolistic firms agree to limit output and operate like a monopoly. Cartels are illegal and affect consumer welfare negatively. The incentive for firms to collude is an increase in profits due to the higher price that they charge. Cartels are very delicately balanced, because if one firm breaks the agreement, they may undercut other firms and expose the cartel to the public (Perloff, date).

Create 2 graphs comparing competition and oligopoly

Introduction:

As we all know Tiger Brands fixed the price of bread and were having collusive meetings with competitors. Not only is this illegal, " price-fixing cartels represented the most serious of the contraventions of the Competition Act.' (iol, 2007), and also unethical but it also has other major implications in terms of the effects it has on the people, especially the poor.

Ethical thought:

' The biggest corporation, like the humblest citizen, must be held to strict compliance with the will of the people.' (Theodore Roosevelt). Tiger Brands as one of ' South Africa's largest, oldest and ' up till now- respected

companies.’, has gone against the will of the people. (National Consumer Forum, 2007)

Breach of ethical behavior:

Tiger Brands committed the following unethical behavior in terms of the Fairness Principle.

1. ‘ Stakeholders who have a vested interest in the firm should be treated fairly.’ (Stanwick & Stanwick, 2009)
2. ‘ Fair competition focuses on the fair treatment given by the firm as it interacts with its existing and potential competitors. This would include ensuring that collusion does not occur between the firm and its competitors pertaining to factors such as price.’ (Stanwick & Stanwick, 2009)

Tiger Brands also disobeyed the following of their own ethical principles as stated in their own code of ethics:

1. ‘ 3. 2 Obligations of managers to customers: A manager shall: 3. 2. 2 disclose all relevant information regarding the products which customers cannot reasonably learn for themselves.’
2. ‘ 3. 2. 3 Charge the agreed price or, where no price was agreed, a fair price.’
3. ‘ 3. 2. 7 A manager shall manage the company with a view to achieving the greatest possible savings and other benefits for customers and consumers’

4. ' 3. 2. 7. 1 Shall also strive to reduce inefficiencies in the company, and establish standards of efficiency in consultation with other employees of the company.' (Tiger Brands, 2006)

Consequences:

Because of this, ' Tiger Brands has been ordered to pay a R98. 7 million penalty by the Competition Commission after admitting to participating in bread and milling cartels.' (Mail&Guardianonline, 2007: 1)

Another fine was imposed on Tiger Brands a few months later as yet again it was found to have acted unethically. ' Adcock Ingram Critical Care(AICC)- owned by Tiger Brands- was penalized with a R53million fine for collusive tendering. At the time this penalty was the highest, percentage wise, ever levied for collusion.' (Leader, 2011: 1)

Discussion:

It is clear from the above that corrective justice has been imposed on Tiger Brands in the form of fines. But unfortunately the full extent to which their unethical behavior negatively affected the people of our country cannot be reversed that easily.

The issue at hand of unethical behavior by Tiger Brands is made worse by the following factors:

1. The contravention is all the more serious when it involves a product such as bread, which is a food staple of the poor, and it affects ' the poorest of the poor' (iol, 2007)

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2. The amount of big businesses involved in this case: " the competition tribunal heard that the competition commission was investigating a total of 14 millers whose businesses extend across the length and breadth of the country.' (iol, 2007)

3. The extent to which consumers have overpaid for goods and the time period of overpaying is unclear. ' A major problem is that we don't know how much we have been overpaying.' (Consumerfair, 2010)

Another big impact that this anti-competitive behavior could have had is that smaller businesses might not have been able to compete fairly in the open market. This can be achieved through, ' The power of corporations to intimidate and undermine small businesses through bullying tactics and unfair business practices.' (National consumer forum, 2007) This would mean that the small businesses wouldn't be able to survive in the market.

This causes even more poverty, unemployment and could likely lead to an even greater crime rate.

Another big issue is whether the fines imposed will somehow be fed through to the people that were negatively affected? The competition commission will have to create schemes to either develop sustainable growth opportunities for the people. It could also distribute money directly to those that truly need it and have been negatively affected by the price fixing and collusion. The bottom line is that the consumers still haven't felt a great deal of improvement in terms of benefits received.

' Commodity prices including wheat, have decreased by about forty percent in the past six months however the price of bread and many other basic food stuffs has not changed.' (SABC, 2009) This is a clear indication that the poor still suffers because of a complex web of lies created over an unknown time period where big businesses have dominated the market over many years. The question now is what can be done to correct the damage caused and how to avoid it in the future

Treatment of Whistle-blower

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It can be said that a firms has responsibilities towards their employees, in the same way, employees have a responsibility towards the firms they work for (Sorell and Hendry, date). The question that often plays on the minds of employees is of how much involvement is acceptable (Sorell and Hendry, date). What forms of behaviour are acceptable, for example encroaching on another employees' privacy or lying to cover up something that could bring the firms into disrepute (Sorell and Hendry, date). Theoretically, the morals that one applies in everyday situations should not differ to the ones applied in the business world (Sorell and Hendry, date). However people tend to loosen their morals in business based on the belief that ' all is fair in love, war and business.' (Sorell and Hendry, date: pp). Those who abide by this principle can run into trouble in the workplace.

Undermining the public

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Tiger Brands acted against the effective corporate government norms in the way that they did not protect those that were vulnerable to their unethical actions. Under the Dignity principle, which falls under the set of codes that every corporation should uphold, it states that every employee in the firm should respect each person's dignity-this includes factors such as ensuring each individual's human rights are protected, the prevention of any type of humiliation and coercion and encourage human development in the firm as well as society (Stanwick and Stanwick, 2009).

Tiger Brands was first in the news for the bread price fixing scandal that took place in 2007. In November 2007, Tiger Brands was fined a total of R98. 8 million by the Competition Commission of South Africa for collusion. Tiger Brands had agreed with other bread companies to up the price of bread by 30c to 35c per loaf. This fine was a totalled to 5. 7 percent of their annual bread sales (Wikipedia, 2011).

Although our constitution protects consumer rights in South Africa, it is extremely difficult to make sure that the rights of each individual are actually respected in reality. With the case of Tiger Brands and their alleged price fixing scandal it just proves how vulnerable consumers are and just how easily their rights can be abused by corporate power (Bolani, 2007).

Unfortunately those who suffer the most from this abuse is the poorest households in South Africa who spend over half their monthly income on food, and on staple food items such as bread and maize meal. This highlights the fact that Tiger Brands consumers were being treated unfairly and in fact undermined and bullied (Consumer Fair , 2010). Corporations such as Tiger Brands need to realise that their actions have severe consequences and <https://assignbuster.com/collusion-and-cartel-and-competition-commission-commerce-essay/>

even though Tiger Brands paid a hefty fine as punishment for their unethical behaviour, one tends to wonder how the real victims of these actions will be compensated.

Tiger Brands failed to face up to their moral obligations and stay true to the words in their mission statement in a country where thousands of its people live in poverty. Their actions caused many of our citizens to go home with less bread every night than they deserved and were entitled to. It is argued that although Tiger Brands faced the legal consequences of their actions, they have failed to act with 'good manners' and dignity as they did not apologise to the public for their illegal and unethical actions.

Consumers' views, opinions and attitudes are critical to collusive policy. The degree to how badly the public view a firm's behaviour to be will influence their willingness to participate in price fixing and collusion. The damage caused by collusion amongst firms is not obvious towards people with poor knowledge concerning the effects of such infringements and the need of enforcement. Greater knowledge of these topics is needed to cause a strong deterrent effect. The views of the individual will also determine how willing one is to report and bring attention to this bad behaviour especially when they feel that they may be victims or if they feel their employers are involved (Stephan, 2008).

In 2008, Adcock Ingram, the parent company of Tiger Brands, once again put Tiger Brands in the public eye for their collusive behaviour this time concerning pharmaceutical products. Adcock Ingram teamed up with three other pharmaceutical companies and manipulated the outcome of the

tendering process by agreeing among each other which companies would tender for which products so that they would not have to compete against each other. Evidence shows that Adcock Ingram teamed up with their greatest competitor Fresenius Kabi in tendering to supply intravenous drip solutions to South Africa's public hospitals (Saturday Star, 2008). Evidence supplied by the Competition Commission shows that the collusive behaviour seen by these firms added an additional R4 a unit to the price that public hospitals had to pay for these solutions and that these firms would at the very least supply public hospitals with 17 million units per annum. This totals to a minimum profit of R68 million additional to the profit that they were already making (Star, 2008). This figure is alarming considering that these solutions are a necessity in the healthcare industry as they are used to feed critically injured patients who cannot feed themselves. Adcock Ingram was fined a total of R53, 502, 800. 00 thus being the highest fine yet in history for collusion, as it totalled a massive 8 percent of their annual turnover. This brings us to the argument of unethical practices.

Ethics is a philosophical term derived from the Greek word 'ethos' which means character or custom. A Code of Ethics or Standard of Conduct is a commitment made by firms to a philosophy. Ethical behaviour will be regarded as morally acceptable if it is 'good' or 'right' and not 'bad' or 'wrong' in certain settings. One wonders why people participate in unethical behaviour even if they know it is wrong or illegal- the reason being is that many firms often reward these behaviours in the form of financial gain. The individual's greed for money overrides concerns about human welfare.

Competition in itself is not unethical, it is when companies work together

and form cartels to manipulate the market to intentionally raise prices to achieve higher profits at the expense of the consumer when it becomes unethical (Helsom, 2008).

When competition is managed properly it makes sure that customers receive the best products for the best price therefore the act of price-fixing is illegal and unethical and leads to pricing practices that is unfair to the consumer. Artificially high prices rob the ordinary individual of what is rightfully theirs and can be seen as the height of heartlessness as consumers are being ripped off (Natal Witness, 2010). Unfortunately cartels are extremely difficult to identify because they involve secret meetings between competitors. These competitors all have an interest in keeping these meetings secret because collusion is a damaging form of anti-competitive behaviours and can give businesses a bad name and a bad reputation. Usually the only way that one finds out about the unethical and shady deals that are going on is through whistle blowers.

If these firms that don't change their ways willingly, and say no to participating in these unethical practices- the law must force them to. Acting unethically doesn't always mean acting illegally, but some form of punishment must be put in place to rectify the wrong done to society and put a stop to this form of bullying and selfish act.

Perjury

CSR

' Business ethics now seems to be imposing positive moral duties on commercial enterprises.' (Barry, 1998: 68) Tiger brands has implemented many corporate social responsibility programmes to help the community. One wonders however if these are mere smokescreens. Considering the previous issues of collusion and cartel, Tiger Brands markets an image of a good corporate citizen, however neglects core legal and ethical responsibilities. Firstly we need to discuss whether CSR is a necessary practise, then the components of CSR and how tiger brands fulfils or contravenes each.

The need for Corporate Social Responsibility

In modern times, the application of ethics in the corporate world has moved beyond enforcing rules and laws to the expectation of altruistic moral actions from corporations. (Barry, 1998) The question that is pivotal to the issue of Corporate Social Responsibility (CSR) is the one of whether the corporation is a moral agent or not (Singer, 1997: 68). Relating to this is the question of whether a corporation can have a conscience (Singer, 1997: 68). This leads to a two-way argument from very opposing sides.

On the one hand, the question of whether a corporation is a moral agent or not, is a ' non-starter' (Solomon in Singer, 1997: 69). One already takes for granted that the corporation is an autonomous entity in the community and society at large and it needs to identify the responsibilities that it possesses toward society (Solomon in Singer, 1997). Seeing as the community produces the corporations, corporations should be identified as components of the community and therefore they have responsibilities and duties toward

the community (Solomon in Singer, 1997). These duties and responsibilities that the corporations possess are not implied agreements, but agreements that are pivotal to the existence of the entity in society (Solomon in Singer, 1997: 69). The reason why society is asking corporations to be socially responsible is due to the fact that corporations exist because the government helps them financially. Therefore it can be surmised that the corporations are indebted to society for this and need to provide a return to society ' other than the provision of goods and employment. (Barry, 1998). On the other hand, the ' Business is an economic agent with a single-minded pursuit of excellence in economic performance.' (Sherwin in Singer, 1997: 69) and whose main goal should be ' Making profits within legal constraints.' (Friedman in Singer, 1997: 69). These viewpoints argue that the business is in fact not a moral agent. What also must be considered however, is that in order for businesses to succeed in their respective markets, they need to pay close attention to the needs of employees, customers and shareholders (Singer, 1997). This concern is not the ultimate goal of the corporation, but rather a way of going about achieving the best economic performance possible (Singer, 1997). CSR may hinder the performance of a corporation in a market and weaken their effectiveness (Sorell and Hendry, 1994). This viewpoint is expressed mostly in papers published in the decades of the 1950s and 1960s (Sorell and Hendry, 1994).

Friedman's argument is often taken out of context, with emphasis on the first statement ' that of making profits. However, Friedman goes on to say that the firm should aim ' to make as much money as possible while conforming to the basic rules of society, both those embodied in law and

those embodied in ethical custom.’ (Friedman in Carroll, 1991: 8). In the case of Tiger Brands, we see that both these viewpoints ‘ although contradictory ‘ were contravened by Tiger Brands. This is so in the sense that Tiger Brands broke both legal and social expectations: legal by infringement on the Competition Commission laws in terms of Section 4(1)(B)(i) and 4(1)(B)(ii) of the Competition Act of 1998 (Lewis, D et al, 2007) and socially in that the needs of consumers were undermined (Bolani, 2007).

The need for CSR can thus be identified based on the discussion set out above. Although on the one hand it is argued that CSR interferes with business operations, this is overridden by the fact that corporations need to operate within legal and ethical constraints as part of their communities. The corporation is therefore a moral agent and role model within society that needs to be scrutinised and held accountable by its citizens.

What is left to do is break down the definition of CSR and to link this to the case of Tiger Brands.

Components of Corporate Social Responsibility

In modern times, the social responsibility of the firm has been adjusted to social responsiveness. Social responsiveness includes corporations being active rather than passive in relation to CSR. The question still remains of how to balance the firm’s social and economic responsibilities. Thus, ethical and philanthropic responsibilities are included in the definition of CSR. In order for CSR to be recognised as a genuine concept, CSR has to address all the responsibilities a business has to society. The most fundamental

responsibility is the economic responsibility, followed by the legal, ethical and philanthropic responsibilities.

? Economic Responsibilities

Economic responsibilities include carrying out operations in such a way that profit and earnings per share are maximised. Competitive advantage and operating efficiency must be maintained. In the past, businesses were created to serve the community by providing them with goods and services. Entrepreneurship was driven by the profit motive. Nowadays however, the profit motive is seen as profit maximisation and this misconception has reigned ever since. All responsibilities of the firm fall below the economic responsibility of the corporation (Carroll, 1991: 2-4).

Collusion and cartel ' bread and pharmaceuticals

? Legal Responsibilities

Businesses must carry out operations in a way that complies with the expectations of the government and the law. It is principal for the firm to be law-abiding. A thriving corporation is one that performs its legal commitments. The goods and services that the firm provides must meet the legal requirements of the land. Legal responsibilities are seen as ' codified ethics' in the sense that they represent the fundamental concepts of fair operations (Carroll, 1991: 2-5).

Perjury and mistreatment of employees

? Ethical Responsibilities

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It is appropriate for the corporation to act in a way that is in line with the beliefs of society in terms of their mores and norms. The corporation should not breach ethical norms in attempting to attain corporate goals. Good corporate citizenship must be characterised by doing what is moral and ethical in the society, even though there are no laws set out. Corporate ethics must reach further than simply what the law requires of them.

(Carroll, 1991: 5-6)

Moral philosophy ' justice, rights and utilitarianism (Find out more from Textbook, substantiate with other cases)

Against the interests of society ' bread price fixing

? Philanthropic Responsibilities

It is appropriate for a firm to act in a way that is in line with the philanthropic and charitable expectations of society. Managers and employees of corporations should take part in voluntary events in their communities. The community's ' quality of life' must be uplifted through the corporation's actions. The difference between philanthropic and ethical responsibilities is that philanthropic responsibilities are desired by the community, but they are not a need or demand. Philanthropy can be performed at the corporation's discretion however the corporation must keep in mind the societal expectation of philanthropy.

Link to tiger brands

Do have CSR ' but the lower levels are being neglected and they should be strong

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Conclusions

Recommendations

Possible solutions:

The laws in our country are our main defense against anti-competitive behavior and unethical business practices. ' The Competition Commission says it will monitor all companies involved in the production and distribution of basic foods. It's warned it will take tough measures against price fixing. (SABC, 2009: 1)

Another encouraging sign is that Tiger Brands have been willing to work with the competition commission to try and uproot any other unethical behavior that might be taking place in the market. ' Tiger Brands brought to the commissions attention additional information regarding collusive activities in the milling industry and was granted conditional leniency in respect of this aspect of its business.' (Mail&Guardianonline, 2007: 1)

It is clear that in-order to achieve good governance and ethical practices, private businesses need to work with the government departments involved and must abide by the laws in our country.