

Michael Fridjhon in Business Day - 19 June 2015

An article by Paul Hoffman dealing with the SAFA/FIFA bribery scandal (Business Day 9 June) draws attention to the definitions in the Prevention and Combating of Corrupt Activities Act. Hoffman points out that the legislation criminalises the transfer of money if a reasonable person “ought to foresee that the money transferred would be used as the proceeds of crime.”

There has been some concern in wine industry circles about the listing fees demanded by various on-consumption outlets. Licensees take the view that they are entitled to charge wineries for a slot on their wine-lists. This is a little like supermarkets which for years have billed suppliers for special positions. Given how extensive this practice has become I assume its legality has been tested. Nevertheless, as competition law becomes more sophisticated, it's probable that an arrangement which worked very nicely for many years could suddenly become a whole lot less attractive to the big retailers.

Restaurants, on the other hand, may not have put their listing proposals to the legal fraternity before sharing them with their potential suppliers. Certainly there are wineries which believe that the conditions attached to these transactions are anti-competitive. The Madame Zingara Group (Cafe Paradiso, Manhattan, Cafe Mozart etc) issues a document showing that a 12 month listing in all six of the group's outlets will cost R8k per wine - unless the wine is sold by the glass or carafe, in which case the producer will have to fork out R14k. The City Grill Group in Cape Town (which includes Meloncino and The Greek Fisherman) wants producers to part with over R13k for the privilege of retaining their 2014 listings.

There's a two-way trade in this: the big wine companies called on the restaurant groups (especially those with many branches, or a compulsory listing arrangement for franchisees) with an open cheque book. They know that steakhouse chains - which generally don't enjoy a reputation for the quality of their wine lists - are only too happy to tie up deals which give them revenue from the suppliers and income from the punters. If you've ever wondered why outlets of this kind have such unimaginative offerings, why dead-safe middle-of-the-road wines made in industrial quantities monopolise the wine-lists of family diners, you need look no further for an explanation. Baksheesh tendered or baksheesh demanded is what drives the trade.

But are they bribes? Surely they are the same as the vast amounts expended by the food giants to ensure their domination of the gondola ends in the superstores and hyperstores which drive our grocery trade - and surely these must be legal? I suspect that if the Competition Commission weren't occupied with investigating collusion in the building industry (where the amounts which inflated the stadium tenders dwarfs anything that tilts the playing fields of the wine trade) they might take a different view. If the practice doesn't add up to conditional selling, there's still something overtly anti-competitive about it.

This is where Paul Hoffman's observations suddenly acquire a peculiar sting. If these listing payments that are demanded and offered with impunity are in fact a breach of our competition law (even if they are not actually a bribe, in the narrow sense of the word), it's clear that a reasonable person “ought to foresee that the money transferred would be used as the proceeds of crime.” In such an event both those who are soliciting as well as those ready to do the greasing will have to be a little careful. Since the major culprits are either folk with deep pockets or hungry shareholders there could be

reputational issues which cannot easily be made to vanish like a ghost - to use Fikile Mbalula's happy metaphor. In fact, the only connection with the spirit world (other than the fact that this listings lark extends to whisky, gin, cane and cognac) is the underworld itself. Not the one of classical mythology, but the smoke-filled rooms ruled by an oath of silence.