

DAWN RAIDS: PREVENTION BETTER THAN CURE - LINKLATERS

Posted on 28/02/2009



Category: [Uncategorized](#)

Tag: [cat-eu-competition-publiclaw](#)



As far as companies response to the cartel threat goes, prevention is always better than cure, believes Jaime Pérez-Bustamante, partner and head of competition at Linklaters in Madrid.

"Both the European and Spanish regulatory bodies now have the powers, the resources and very clearly the motivation to seek out and prosecute cartel members. They also appreciate that in the current economic climate cartel activity may seem attractive to some businesses as a form of defensive measure and as markets harden," he says.

The regulators have a particular interest in business sectors in which there was once a state monopoly, says Pérez-Bustamante.

"Liberalisation has occurred in many sectors, including the postal service, transport, telecoms, airline and energy markets, but the regulators are keen to investigate whether it has truly happened – whether companies continue to maintain outdated, and illegal, working practices."

A major investigatory tool utilised by competition regulators in search of evidence of cartel activity is the "dawn raid", explains Pérez-Bustamante.

"European Commission or Comisión Nacional de la Competencia (CNC) inspectors with a warrant have the power to enter companies premises unannounced and to search and seize material that

may be of relevance to their investigation."

A dawn raid, despite its name, can however be a long, drawn out and very invasive procedure, but it is important for company employees to avoid any tension and where possible to collaborate with the inspectors, he emphasises.

"In such circumstances, employees need to adopt a collaborative approach, to be aware of their own obligations but also the limits of the powers of the inspectors. An understanding of which must extend to all levels of the company, from the Chief Executive to the cleaning staff if necessary."

Investigatory powers extend though only as far as the regulator's jurisdictional reach – for example, within Spain or across Europe – and inspectors cannot prompt personnel to incriminate themselves, the company, or seize non-relevant items such as personal emails or correspondence which is out of the scope of the investigation.

"There are important distinctions to be made. Inspectors may also not seize anything that relates to professional secrecy or which may be privileged, for example, the correspondence between a client and a lawyer.

But crucially objections must be made at the time the raid occurs in the interest of the client's rights of defence; it is inevitably much harder to seek the return of material once it has been seized. It is much better to try to avoid problems than have to remedy them"