

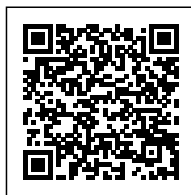
THE HEAVIER HAND OF THE REGULATORY AUTHORITIES - GARRIGUES

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Competition law has changed dramatically in the last few years both at the EU and domestic level, says Marcos Araujo, Head of EU and Competition at Garrigues. “It is now far more sophisticated, more economics-based, better structured and the authorities have evolved significantly. Tools such as leniency, increased investigative powers, criminalisation and international cooperation have changed the name of the game.”

Significant he says will be the implementation in Spain of new rules that will permit leniency applications, a development that clearly helps bridge an enforcement gap between Spain and Brussels. “In a matter of days the new rules will become applicable in Spain. We are all eager to see what happens. The experience of other countries suggests that companies will sooner than later adapt to the new possibilities, although some say that this is so distant to our traditional values that it

will take more time in Spain"

With or without leniency applications, there is little doubt that competition law is now more important because of a heavier hand by the regulatory authorities. Sanctions are stronger, mergers are more scrutinised, and the authorities are better equipped, he says.

"It appears that the agencies feel that unless they act aggressively by imposing fines and dictating prohibitions they will not be taken seriously. That's fair in the cartel area but it would be wise to keep it there – it does not make sense to impose heavy fines on arguable behaviour in retail cases or prohibit aggressive competition from dominant companies based on weak theories of harm to competitors rather than damage to consumers."

As for the new procedures, he regards selfassessment in some commercial relationships, including the abandonment of exemption procedures as welcome. There is a cost however, and that is legal certainty. "That is a real issue. Companies frequently just do not know whether their actions are questionable. A heavy hand in the fight against cartels is OK, but what should we do with all the remaining intervention from antitrust laws?"

While there is indeed room for improvement in terms of legal certainty, and no less so because of the recent emphasis in enforcement by ordinary Courts, "The overall judgment of the situation is very positive," says Araujo. "A healthy public debate often spearheaded by the authorities themselves has led to major improvements, the benefits of which we will enjoy in the years to come."