

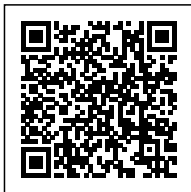
THE NEED FOR COMPREHENSIVE ADVICE - LINKLATERS

Posted on 24/02/2008



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The rapid development of competition law and regulation in Spain over the past few years has been such that international interest in developments has remained consistently high as corporations have sought to keep up with regulatory requirements, says Jaime Pérez-Bustamante, partner and Head of Competition at Linklaters in Madrid.

Spain is now comparable in terms of legislative development and enforcement procedures with any of the most modern competition regimes in Europe, he suggests.

A recent competition forum organised by Linklaters in Madrid saw participation from general counsel from both national and international companies, but also attracted Luis Berenguer, President of the Spanish Competition Authority (Comisión Nacional de la Competencia – CNC), and Nadia Calviño, Deputy Director General of Competition at the European Commission.

Among the most significant topics discussed was clearly the enactment of legislation encompassing

anti-cartel behaviour and "whistle-blowing", he says – and which is soon to be followed by detailed guidance on the application of a full leniency regime.

"The recent changes will clearly make a significant impact on companies of all sizes, but it remains the case that it is predominantly larger companies that are the most aware and interested in the significance of these developments," he notes.

Of particular importance, and concern, is the ability of parties to seek private enforcement of damages claims, he says. "The number of claims arising from anti-competitive practices is expected to increase significantly. Damages actions can now be brought directly before the Commercial Courts alongside a declaratory civil action."

But many such proceedings will however face significant difficulties, he suggests. "Claimants may well have difficulty obtaining the necessary evidence to prove restrictive practices. Clearly most organisations do not enjoy the level of resources employed in the investigations pursued by the competition authorities – but which are themselves becoming increasingly adept in enforcement proceedings."

If clients are therefore to keep-up with the pace of competition developments, and enforcement, they need to consider competition issues not merely from a regulatory standpoint but in the round, emphasises Pérez- Bustamante.