

EU Commission Dawn Raids Companies for Alleged Gun-Jumping Violations

December 17, 2007

On December 13, 2007, the European Commission announced that it had carried out “dawn raids” at the premises of two unidentified PVC manufacturers in the UK on December 12 and 13. The Commission officials were accompanied by their counterparts at the UK’s Office of Fair Trading. These dawn raids were carried out on the suspicion that the PVC manufacturers may have violated Article 7(1) of the European Merger Regulation, which prohibits merging parties from implementing their proposed merger before they have received regulatory clearance (“gun-jumping”).

The Commission’s powers of inspection were enhanced following the reform of the European Merger Regulation in 2004. The Commission has the power to enter any premises, land or means of transport, to examine all records relating to the business, to take or obtain copies of these records, to seal any business premises or records, and to demand explanations in relation to any documentation relating to the subject matter of the investigation.

Unlike in its investigations of cartels, the Commission has rarely exercised its powers of inspection in connection with a merger investigation. As the Commission recognizes that integration planning is permissible under the European Merger Regulation (the “Merger Regulation”) even before the parties close a transaction, this suggests that the Commission suspects that there has been a significant potential violation of the hold-separate provisions of the Merger Regulation for the Commission to conduct a dawn raid. Moreover, although Commission enforcement action with respect to gun jumping is extremely rare, this is further evidence that the Commission remains willing to exercise the entire scope of its enforcement authority.

Under the Merger Regulation, the Commission has the power to fine merging parties for a gun-jumping violation. Merging parties may be fined up to 1% of their aggregate worldwide revenues where they, *inter alia*, refuse to submit to an inspection, intentionally or negligently provide incorrect or misleading information, or fail or refuse to provide a complete explanation to Commission questions. In the event that the Commission concludes that a gun-jumping violation has occurred, merging parties may be fined up to 10% of their aggregate worldwide revenues.

For more information, you may contact the following attorneys:

London:

David Vann (44-20-7275-6550, dvann@stblaw.com)

New York City:

Kevin Arquit (212-455-7680, karquit@stblaw.com)

Ken Logan (212-455-2650, klogan@stblaw.com)

Joe Tringali (212-455-3840, jtringali@stblaw.com)

Mark Cunha (212-455-3475, mcunha@stblaw.com)

Joe Wayland (212-455-3203, jwayland@stblaw.com)

Aimee Goldstein (212-455-7681, agoldstein@stblaw.com)

Washington, D.C.:

Peter Thomas (202-220-7735, pthomas@stblaw.com)

Arman Oruc (202-220-7799, aoruc@stblaw.com)

Palo Alto:

James Kreissman (640-251-5080, jkreissman@stblaw.com)

Harrison Frahn (650-251-5065), hfrahn@stblaw.com)