



COMPETITION & PROCUREMENT BULLETIN



THE €38 MILLION SEAL

In January 2008 the European Commission imposed a fine of €38 million (approximately £28.6 million) on the German energy company E.ON for removing a seal put in place during a dawn raid in May 2006. This is the first time that a fine has been imposed by the Commission for removing a seal. This provides a timely reminder of the importance of having a well prepared dawn raid programme in place and ensuring that employees are properly trained.

It appears that the seal had been affixed by the Commission during a dawn raid at E.ON's premises to protect a room containing documents collected by the Commission until they could return to the premises the next day. When the Commission did return it was clear that the seal had been broken. As the Commission had not listed the documents in the room it was not possible for the Commission to determine whether any of the documents had been removed.

According to the Commission's press release (IP/08/108) E.ON denied breaking the seal and put forward a number of alternative explanations such as the use of a certain cleaning product, the level

of humidity and the age of the seal. However, having consulted the manufacturer of the seal and an independent expert the Commission concluded that the seal was not at fault.

The Commission is empowered to impose a fine of up to 1% of a company's annual world-wide turnover for certain procedural matters relating to its investigations including the intentional or negligent breaking of a seal. The fine of €38 million while very high was therefore significantly below 1% of E.ON's turnover. The Commission has stated that this fine is intended as a signal to companies under investigation for breaches of EC competition law that any attempts to obstruct or interfere with the process will be treated very seriously.

In addition to receiving a fine E.ON may now also find it harder to refute any allegations put forward by the Commission as, if a seal is broken and documents may have been removed, there will at the very least be a suspicion that such documents were prejudicial to the company's position.

It is not often that one simple action by one employee can create such a

large liability for a company. This fine underlines the importance of having a competition law compliance programme in place and one that deals in detail with dawn raids and the myriad pitfalls that may arise in what is often a highly pressured and disorientating process for a business.

It is important to note that while a procedural fine, such as the one imposed on E.ON, cannot exceed 1% of a firm's annual world-wide turnover fines for infringements of Articles 81 and 82 EC may be very much higher as they are capped at 10% of annual world-wide turnover. It should also be noted that in some jurisdictions, of which the UK is one, participation in cartel activities may also result in criminal prosecution of individuals and the imposition of fines and/or imprisonment. Breaches of competition law may also result in damages actions.

**This Bulletin contains summaries of complicated issues and should not be relied upon in relation to specific matters. If you have any questions about the information in this Bulletin, please contact James Dilley on:
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