

UK Issues First Fine For Concealing Evidence During a Dawn Raid

Kluwer Competition Law Blog
April 12, 2019

Matt Evans (Jones Day)

Please refer to this post as: Matt Evans, 'UK Issues First Fine For Concealing Evidence During a Dawn Raid', *Kluwer Competition Law Blog*, April 12, 2019, <http://competitionlawblog.kluwercompetitionlaw.com/2019/04/12/uk-issues-first-fine-for-concealing-evidence-during-a-dawn-raid/>

In March 2019, the UK Competition and Markets Authority ("CMA") issued its first fine on a company for concealing relevant evidence during a dawn raid, fining Fender Musical Instruments Europe Limited ("Fender") £25,000. This is the latest example of a trend among competition authorities to hold companies accountable for dawn raid procedural violations, (see, for example, the European Commission's finding last year that ZSSK, Slovakia's state-owned railway, obstructed a dawn raid). The CMA conducted a dawn raid on Fender's premises in April 2018 for a suspected breach of competition law. During the dawn raid, the CMA asked Fender to provide all hard copy documents, including notebooks. A senior Fender employee provided recent notebooks, but explained that earlier notebooks did not contain relevant entries and had been discarded.

Three weeks later, Fender's lawyers informed the CMA that the employee in question still had ten earlier notebooks. They explained that these documents had not been disclosed at the time because the employee did not consider them to be relevant to the CMA's investigation. Fender provided the notebooks to the CMA, which determined that they contained relevant material.

Almost four months after the inspection, in a submission to the CMA, Fender, which believed the notebooks had been destroyed, explained that its employee removed the notebooks without its knowledge and stored them at another employee's home during the inspection. Fender emphasized that when it became aware of the notebooks, it promptly rectified the mistake and immediately notified and submitted them to the CMA.

Nevertheless, the CMA held Fender accountable for the action of its employee, although it reduced Fender's fine from the statutory maximum of £30,000 to £25,000 because (i) Fender immediately investigated the issue and took remedial action, and (ii) the concealment had a limited adverse effect on the investigation.

Conclusion

The CMA's focus on compliance with procedural rules has led to a series of fines for procedural infringements of its competition investigations. One can expect to see more in the coming months. This case also is a reminder that companies should prepare employees to handle a surprise inspection because procedural violations can lead to additional penalties for the company.

The views and opinions set forth herein are the personal views or opinions of the author; they do not necessarily reflect views or opinions of the law firm with which he is associated.