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Crackdown on IT Obstruction of Dawn Raids

Peter Citron (Editor) (White & Case, Belgium) · Wednesday, April 25th, 2012

At the end of March, the European Commission fined Czech energy companies Energetický a průmyslový and EP Investment Advisors EUR2.5 million for obstructing a dawn raid which European Commission officials carried out as part of an antitrust investigation.

This is the first time that the European Commission has fined a company for the specific violation of obstructing IT searches during a dawn raid.

What happened?

The European Commission raided the companies' premises in Prague in November 2009. On arrival, the inspectors asked that the email account of certain key individuals be blocked until further notice. This is the European Commission's standard dawn raid procedure, and is aimed to ensure that modifications are not made to email accounts. During the course of the inspection, the inspectors discovered firstly that the password for one account had been modified which allowed an employee to access the account, and secondly that one employee had requested the IT department to divert all emails arriving in certain blocked accounts away from these accounts to a server. This enabled incoming emails not to be visible to the inspectors and compromised the overall integrity of the European Commission's search.

Increasingly tough approach

This is the first time that the European Commission has fined a company for the specific violation of obstructing IT searches during a dawn raid. Fines in the past have been for breaching seals that have been imposed overnight during inspections to prevent entry into rooms and other areas where the inspectors have left documents and equipment overnight. For example, the European Commission fined E.ON EUR38 million and Suez Environnement and Lyonnaise des Eaux EUR8 million for breaching seals. The European Commission has also in the past penalised companies where company representatives have refused to answer questions and shredded documents during an inspection. Sony, for instance, had its antitrust fine increased by 30% for this violation.

But this is just the landscape at the European Commission level. National competition authorities have been busy fining for obstruction of their national raids. Last year, Spain's Competition Commission fined ferry operator Trasmediterránea EUR2 million for the obstruction of access to information and senior executives. The Polish competition authority (UOKiK) also fined PoIkomtel EUR32 million for failure to provide access to a hard disc and for delaying the beginning of the investigation.

With the current zero-tolerance policy toward obstruction, there is a clear need for all companies to

ensure that all relevant staff, including IT staff, are properly trained in dawn raid defence procedure.

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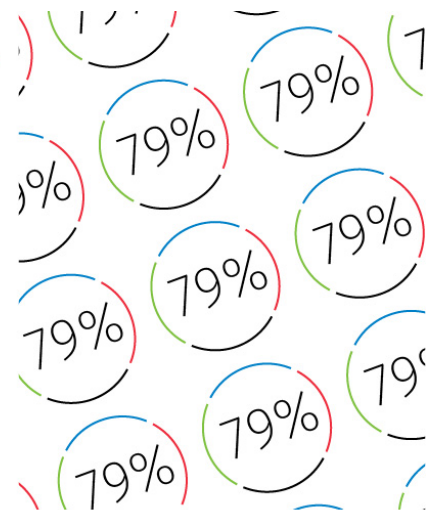
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