

More dawn raids by competition authorities on the horizon

The number of dawn raids carried out by national competition authorities (NCAs) in the EU may soon increase. The European Commission wants to provide NCAs with a bigger enforcement toolbox, including powers to conduct dawn raids at company premises and staff members' homes and to examine evidence in physical and digital form. The European Court of Human Rights is unlikely to stand in the way of this objective, having recently confirmed that NCAs are free to conduct dawn raids, as long as they: have a basis in domestic law, are pursuing a legitimate aim, and there is effective court review after the fact. Companies are therefore advised to sharpen up their dawn raid instructions.

The European Commission recently published a [draft directive](#) to grant greater enforcement powers to NCAs when applying the EU competition rules within their jurisdictions. The draft directive aims to address the problem that not all NCAs currently have the same enforcement powers. Companies should therefore be prepared for an increase in competition enforcement by NCAs, including a more extensive enforcement toolbox, a uniform maximum fine level for EU competition law infringements, and a common set of leniency conditions (see our earlier [In Context](#) for more).

A recent European Court of Human Rights (ECtHR) [ruling](#) seems to back this initiative by concluding that a dawn raid by the French competition authority at the premises of pharmaceutical company Janssen-Cilag did not breach the European Convention of Human Rights. Janssen-Cilag had complained that the principle of legal privilege had been infringed, that the number of lawyers allowed to accompany the dawn raid inspectors had been restricted during the dawn raid, and that there was no effective post-review of the dawn raid procedure available. According to earlier ECtHR case law (see our earlier [In Context](#) for more), a dawn raid can be justified if:

- it has a basis in domestic law;
- pursues a legitimate aim; and
- can be regarded as necessary for achieving that aim – in this case, that includes mandatory judicial authorisation before carrying out a dawn raid or adequate court review after the fact.

In contrast to earlier rulings regarding dawn raids in [France](#) and the [Czech Republic](#), the ECtHR considered that the dawn raid conducted at Janssen-Cilag had been in accordance with the European Convention on Human Rights, since the dawn raid had complied with domestic law and pursued a legitimate aim, namely the gathering of evidence of abuse of a dominant position and anti-competitive practices. In this case, the national court noted that Janssen-Cilag had not claimed that any specifically identified, protected documents were wrongly seized. In addition, the

national court had also informed the administrative authorities of its consent to the returning of those documents. As a result, the ECtHR found that the national court had conducted an effective review of the dawn raid and no breach of the Convention had occurred.

Companies are therefore well-advised to sharpen up their dawn raid instructions and should always check whether sufficient procedural guarantees are available in respect of dawn raids carried out by competition authorities.