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BMA Brandstätter Rechtsanwälte: Staying Ahead of the EU Antitrust Law



Jürgen Brandstätter of BMA Brandstätter Rechtsanwälte GmbH, a law firm at the **marcus evans European Corporate Counsel Summit 2011**, on preparing for the possibility of an EU antitrust law regulating private enforcement.

Interview with: Jürgen Brandstätter, Managing Partner, BMA Brandstätter Rechtsanwälte GmbH

FOR IMMEDIATE RELEASE

European Corporate Counsel must be aware of the legal risk of violating any **antitrust law**. Theoretically, millions of people could sue a company for damages, says Jürgen Brandstätter, Managing Partner, **BMA Brandstätter Rechtsanwälte GmbH**.

On the positive side, an EU directive on the matter of private enforcement could also strengthen the position of companies that are abiding by competition and antitrust laws, in a sense that they would have Europe wide legal certainty instead of dealing with the different legal systems of the member states, he adds.

From a law firm sponsoring the **marcus evans European Corporate Counsel Summit 2011** in Montreux, Switzerland, 9 - 11 October, Brandstätter talks about the latest developments in the EU antitrust law, the risks and opportunities involved, and what **Corporate Counsel** could learn from their peers in the US.

What are the latest developments in the EU antitrust law?

Jürgen Brandstätter: The EU Commission has drafted a Green Paper and a White Paper on private enforcement. Member states are invited to comment and based on their response, a directive or guideline could be issued. It would be a mistake to think that private enforcement may not happen. It is already happening in individual countries, under national civil laws. National case law regarding private enforcement increases. It is only a matter of time that it will be regulated on a European level.

How will an EU antitrust law impact European companies?

Jürgen Brandstätter: Antitrust issues must be handled with an extraordinary amount of care and a sense of the implications of any neglect i.e. potential Europe wide litigation. Not only that the EU Commission can impose a fine on a company infringing antitrust rules, the company's trading partners and consumers affected by an abuse, be it a dominant market power or a cartel, can also sue. Theoretically, millions of people could sue for damages.

The legal community has not paid enough attention to this possibility until now. Under Austrian and German law, antitrust rules are so-called protective laws and any breach may therefore entail claims for damages. This aspect was not given much attention since antitrust law was and still is very often perceived as a specialised legal field. This is a new field of legal activity with some uncertainty about the outcome. As always, with new legal developments there are risks to the business community because of the lack of established court practices.

What can European Corporate Counsel learn from their peers in the US, who already deal with this issue?

Jürgen Brandstätter: In the US private enforcement exists and is frequently used. There are class action suits where thousands of people sue the infringer for damages. The difference between the US and the European legal system is that the US has established procedural rules on how courts shall deal with thousands of claimants in one case. The challenge for Europe will be to adapt procedural laws of the member states to a common level that is able to deal with private enforcement, in particular with a large amount of claimants.

In terms of business practices, what should change in European organisations to prevent the possibility of class action suits?

Jürgen Brandstätter: An even higher level of awareness of the legal environment and a sense of consulting the in-house counsel or the outside lawyers before engaging in activities that might infringe antitrust rules is essential. This requires accuracy and precision when doing business.

The senior management team must think twice before entering into arrangements with competitors in the market or before engaging in any business practices that may harm vendors, customers and/or consumers.



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The risks of infringing antitrust laws are clear. Are there any opportunities? How can companies use this to enhance their competitive edge?

Jürgen Brandstätter: European regulation regarding private enforcement would create greater legal certainty which would make planning easier. Careful planning and consultation with

legal counsel would also lower costs, since litigation by business partners would be avoided. In general, any company that follows in its business dealings the rules of a free market economy, rather than trying to get an economic advantage by infringing antitrust rules, will always be stronger on the market and better equipped to manage economic challenges than its unlawful competitors.

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