

Client Bulletin

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Price Fixing Probe Results In Raids On Airline Offices

The European Commission has launched an inquiry into alleged improper activity in the air cargo business. Several carriers in Europe have confirmed that they have been asked for information related to alleged cartel activity in violation of a European Union treaty which prohibits price fixing practices in the air cargo industry. United States regulatory authorities have joined the probe, conducting recent raids on airline premises in New York concerning an investigation of alleged cargo price fixing and agreements between air carriers and freight forwarders. Asian regulators also have joined the fray, with several Asian carriers confirming they have received visits this week from the authorities.

The sight of a federal agent on the doorstep of your premises, armed with a search warrant to seize your business records and computers, is undoubtedly a very unsettling prospect for an airline.

What should you do if a federal investigator appears on your doorstep? There are several practical first steps to take in the event of such an unwelcome visit. First, ask to see a copy of the warrant pursuant to which the search is being undertaken. Since it is difficult for a lay person to gauge whether the warrant is properly issued, the next step certainly should be to call counsel for the airline. Frequently an attorney will be able to speak with the agent in charge of the investigation and make prompt arrangements to have the investigation either postponed for a few days or at least until the close of business that day so that the business operations of the airline are not disrupted. Second, the airline should designate one person to speak to the authorities on behalf of the company and all communications

should be routed through that spokesman. This avoids inconsistent statements made and positions taken by airline employees. Third, the airline should assign one person the task of coordinating all documents that are to be handed over to the authorities and to maintain a log of the documents produced. Fourth, the airline should request a copy of all of documents that are being seized by the federal agents so that the airline knows what documents have been removed from its files. Fifth, the airline should arrange to have someone accompany the agents on their rounds to make sure that nothing other than the documents specified in the warrant are being obtained.

Once a government investigator has requested documents, the company immediately should halt all destruction programs for records or electronic files which may relate in any way to the subject matter of the warrant. The company should instruct its employees to cooperate with the investigators, to preserve all documents, to create a factual chronology from key documents and also should attempt at an early stage to identify any missing documents.

When dealing with government investigators, the airline should ask to have its counsel present at any interviews of its employees, although there is no guarantee that the government will permit the company attorney to be present during the investigation.

The airline also should undertake to do its own internal investigation to determine what documents it has within the scope of the requested warrant and to determine which of its employees may have knowledge or information pertinent to the investigation. Frequently government investigators will look favorably upon a proffer by the airline, through its counsel, to make certain witnesses available for interviews. It is important at this stage to distinguish whether or not the company is being investigated as a potential wrongdoer or merely

as an alleged victim of wrongful conduct. A prompt and thorough internal investigation by the company to evaluate its potential civil and criminal liability may minimize the criminal and civil exposure of the company. However, any internal investigation that is done by the company will likely be discoverable in either civil or criminal litigation.

Additional issues may arise with respect to the attorney/client privilege and whether any individual employee of the company needs to maintain separate counsel. These are issues which all should be reviewed with counsel for the airline.

Companies should be aware that in federal prosecutions of corporate and business organizations, there are a number of factors set forth in determining whether to charge a company with wrongdoing. While all of the factors are considered, perhaps the most important is the company's timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of company employees, including, if necessary, the waiver of attorney-client and work-product privileges.

The best advice for a company confronted with the presence of federal agents on its doorstep is to immediately call its counsel, to preserve whatever documents that may exist, and to cooperate with the investigatory authorities.



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