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# Planning a case investigation II: Casehandler perspective

NDRC/SAI01

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# **Agenda**

1	Before initiating an investigation
2	Investigative tools
3	Investigating parties and/or non-parties?
4	Requests for information
5	Dawn raids
6	Interviews
7	The investigation plan



## 1. Before initiating an investigation

### » "Strategy" memorandum

- 1. The parties & the background (i.e. complaint/ ex officio)
- 2. The competitive situation on the relevant market
- 3. Potential infringements
- 4. Theories of harm
- 5. Is the market definition relevant to pursue the case?
- 6. Collection of necessary information (Investigation)
- 7. Plan on how to complete the case
- 8. Check list re priorities and preliminary timeline

### » Resources & effect of investigation



### 2. Investigative tools

- » Requests for information
  - » Documents (books, records, contracts, etc.)
  - » Questionnaires

#### » Dawn raids

- » Business premises
- » Private premises (possible under EU-rules, not under Danish rules)
- » IT-forensics (i.e. mirroring computers etc.)
- » Interviews
- » <u>Limitation:</u> Only request/obtain information which is necessary for the infringement being investigated!



### 3. Investigating parties and/or non-parties?

#### » Parties

- » Interest in answering
- » Time to answer
- » Self-incrimination
- » Confidential information
- » Legal privilege

#### » Non-parties

- » Interest in answering
- » Time to answer
- » Self-incrimination
- » Confidential information



### 4. Requests for information

#### » Purpose?

- » To obtain documents and answers to questionnaires; e.g.:
  - » Business plans concerning products/ customers concerned
  - » Turnover concerning products/ customers concerned

#### » Effect?

- » What information is needed?
- » What kind of resources are necessary to investigate this information?
- » What kind of infringement is being investigated

#### » Timing

- » May be time consuming due to e.g.:
  - » The review of the answers/documents
  - » In-complete answers & follow-up questions/requests



### 5. Dawn raids

- » Authorisation
- » Subject matter of the dawn raid must be specified
- » Purpose
  - » To obtain documents and other information which may not be possible to obtain via a request
- » Effect?
  - » Will the necessary resources be proportionate with the likely result of the investigation?
- » Inspectors' powers to investigate
  - » Examine books & business records
  - » Take copies and extracts of books & business records
  - » Interviewa
  - » Enter any premises of undertakings
  - » Brown envelope-procedure disputes as to legally privileged documents
- » Timing
  - » Faster than request for information
- » Record & result of inspection



### 6. Interviews

- » At a dawn raid?
  - » Oral explanations of documents on the spot
- » At a meeting with the authority
  - » Oral explanations of documents and behaviour
  - » Minutes of meetings signed

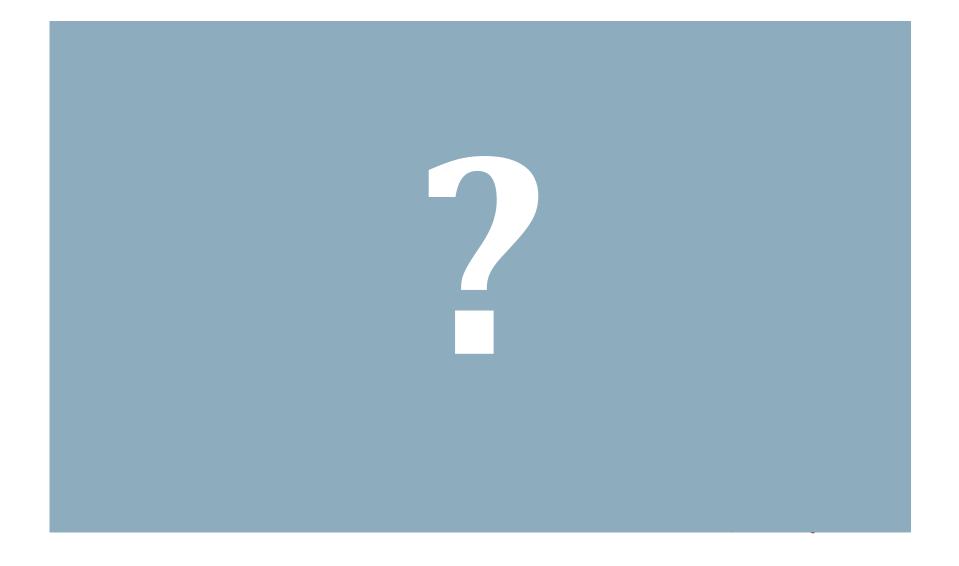
### **» Timing**

- » Faster than request for information
- » Possible to raise follow-up questions immediately



### 7. The investigation plan

- » Dawn raid or request for information?
  - » Identify "respondents"
  - » Hypothesis as to likely infringement?
  - » Effects analysis
    - » likely to find proof of infringement?
    - » Effects of DR? Decision?
    - » Resources necessary
- » Allocate case team
  - » Coordination of places/respondents
  - » Coordination of duties
- » Analyse information received and seized
- » Result of investigation close the probe or initiate infringement procedure?





# Thank you for your attention

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