

EU-China Workshop on Anti-Competitive Agreement Cases

Investigation Techniques on Cartel-Cases – Dawn Raid

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I. Why Dawn Raids?

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1. Illegal cartels are usually secret and the evidence is hidden
2. Cartel participants know about illegality and high fines to be expected – no incentive to cooperate (exception: leniency) – no voluntary disclosure of evidence probable

I. Why Dawn Raids?

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3. Once suspicion becomes known to cartel members evidence will be destroyed/hidden
4. Strategic advantage on the Authorities` side
 - ⇒ „Surprise Effect“
 - ⇒ No prior strategic behaviour on the firm`s side
 - ⇒ Deterring effects of dawn raids

II. How to Build a Suspicion?

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Sources:

- Market Research
- Administrative Procedures (eg. Merger Control)
- Informants/complaints of competitors or other participants (third companies, customers)
- Information from within the company (best source but most problematic)
- Leniency Applications

III. Preparation of a Dawn Raid

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Meticulous Preparation is a necessary condition for a successful operation!

- Who organized the cartel? (which company played which part?)
- How do the cartel members communicate? (IT, in writing, under code names)
- Meetings – past and upcoming?

III. Preparation of a Dawn Raid

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Meticulous Preparation is a necessary condition for a successful operation!

- Which companies are involved? (e.g. competitors as well as daughter companies, have they moved)
- Which persons are involved? (are they still in the office/do they have the same function?)

III. Preparation of a Dawn Raid

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Check:

⇒ Sufficient evidence to obtain a court warrant?

Decide:

- companies, offices, locations, private homes
- relevant persons
- which evidence to be searched for (including any time limits for evidence)

III. Preparation of a Dawn Raid

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Check:

⇒ Plausibility of the case (particular important if information comes from within the company or competitors)

III. Preparation of a Dawn Raid

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Organize:

- Other Authorities involved – courts, local police, public prosecutors
- Internal staff – qualified teams
- Internal and external IT-resources
- Short term information
- Booking of transport/hotels
- communication within the teams

Secrecy has to be preserved – keep it as small as possible!

IV. On the Premises

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- Ensure simultaneous access of all teams (consider time zones)
- Directly proceed to target persons and offices
- Stop all communication (electronic and other) immediately
- Information about leniency program
- Find out about organisational structure (including IT network, further company sites)

IV. On the Premises

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- Search for evidence – priority:
 - personal belongings of target persons
 - Desks and cars
 - IT
 - Surrounding office of target persons
 - Offices of other people in charge of sales/ procurement, personal assistants etc.
- Inform other teams of interesting evidence
- If necessary: seizure of documents and IT

V. Traps and Pitfalls

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- Wrong address/target persons
- Access denied/difficult
- „Stuck in the elevator“
- Destruction of evidence
 - while you are searching – follow them everywhere
 - „stealing“ from your evidence bundle
 - messing around with IT – use yesterday’s backup
- Obstructive behaviour by target persons, lawyers

VI. Summary

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1. Prepare with ultimate precision while keeping it small and secret
2. Carefully train and select staff deployed in dawn raids (legal and practical issues)
3. Be prepared to improvise at every stage
4. Take all necessary provisions to secure evidence (IT!!!) and to bring it back!