



Processes and procedures in inspections / dawn raids

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The threshold for dawn raiding a company

Reasonable grounds for infringement

All information available to COMP does not need to be disclosed in inspection decision, BUT

Subject-matter needs to be sufficiently precisely indicated to ensure that parties have an idea of the limit of their obligation: indications on sector, practices, time period

Court can check these grounds ex-post (appeal against inspection decision)

Inspection powers

(Not automatic: Undertaking has to **submit** to inspection!)

Enter premises, land and means of transport

Examine books and other records related to the business, irrespective of the medium

Take or obtain **copies** of or extracts from such books or records

To **seal** business premises and books or records for the period and the extent necessary for the inspection

Inspection powers: issues

Identification of premises

- At address named in decision, but in general all premises of undertaking (in EEA)
- Private home search possible, but more stringent legal check

Inspection powers: issues

Examine books and records irrespective of medium

- Within scope of decision
- LPP
- Includes electronic documents
- Obligation of active cooperation of company
- Location of server vs Access in normal course of business: COMP goes for 'access'
- Bring your own device: issue and problems

Inspection powers: issues - 3

Copy

- Entire document: chain of evidence

Sealing

- Company's responsibility to preserve integrity
- Fines decisions have passed on the message!



Practical organisation: participants

Legal requirement:

- Commission officials: from other Directorate-Generals and from all parts of DG COMP
- Other accompanying persons authorised by the Commission: rarely used, but for instance Japanese/Korean/Hindi translators

Practical organisation: Team roles

Team leader

- Experienced inspector
- Contact point for company – takes decisions on the sport
- Prioritisation, task allocation

Search coordinator

- Ensures that all 'areas' are investigated
- Knows best the sector and the alleged infringements

Practical organisation: Team roles

Inspectors / Nuix Reviewers

- First day(s): searching paper documents in offices
- Other days: searching electronic documents on Commission Nuix system

IT Inspector

- Focuses on electronic data on servers

Practical organisation: Team roles

F(orensic) IT Inspector

- Focuses on electronic data on portable data carriers on site

Nuix Operator

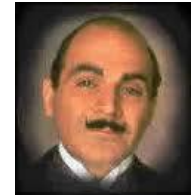
- Runs the Commission network set-up on site

Inspection: electronic evidence workflow

IT Inspector



Nuix Operator



FIT Inspector



Nuix Reviewers

Chronology of an inspection – Day 1

Entry:

Notification of decision

- Handing over of decision, mandate (names of officials authorised to inspect) and [explanatory note](#) (setting out rights and obligations of company – regularly updated);
- Right to speak to external lawyer and lawyers allowed to 'follow every step we take'

Chronology of an inspection – Day 1

Search office of 'custodians'

- Review paper and take copy (that is scanned)
- Collect electronic data carriers: laptop, mobile phone, USB sticks, DVDs, and so on

Sealing of offices overnight

- Typically 'our' IT room
- Occasionally cupboards



Chronology of an inspection – Overnight

Electronic process continues:

- (Forensic) copying-out of company data carriers
- Copying data on Commission Nuix server
- Indexing data on Commission Nuix server

Chronology of an inspection – Day 2

Unsealing office

Centralised review of (indexed) electronic data

- Lawyers shadow our actions
- Tagging
- Provisional export provided to company: provide feed-back on 'out of scope' and 'LPP'
- Final export agreed and list signed

Chronology of an inspection – Last day

Review of last tags

Preparation of CD/DVD with all export lists

Wiping of all Commission IT hardware used

Sealing data

- Disputed LPP claims
- Data not reviewed on spot – ‘Continued inspection’

Procedural fairness

Explanatory note

Scope of cooperation is in decision: product, geography, duration, description of practice

Presence of external lawyers from beginning to end

Possible appeal against inspection decision

'Implementing decisions' can be appealed as part of appeal against final decision (on substance)



Thank you

Questions?

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