

European Commission Warns: Antitrust Dawn Raids Are Coming

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In a [speech](#) last week, EU competition commissioner Margaret Vestager announced that the European Commission is planning to conduct a series of dawn raids in the near future. Three days later, the Commission made good on that promise, raiding the Belgian offices of an animal pharmaceutical manufacturer over suspicions that it abused its dominance in the animal health market. Companies operating in the EU and elsewhere should take heed that, after a pandemic-related slowdown, dawn raids are back.

Background

Dawn raids are unannounced inspections of offices or residences by competition or other regulatory authorities to look for evidence of antitrust violations. Typically, dawn raids result in the seizure of documents, equipment, records, and data, and they may involve the questioning of personnel or individuals regarding the alleged infringement. Raids can span from a few hours to more than a week depending on the nature of the allegations, scope of investigation, and site. Dawn raids have become a popular tool for competition authorities around the globe. Although differences in methodology exist, agency officials generally have extensive powers to conduct raids. Often, officials are free to make copies of documents and data, and are also permitted to extend their search beyond the physical premises and investigate companies' information technology networks – including hard drives and cloud data storage. You can learn more about dawn raids in our [Competition Corner podcast episode](#) exploring the subject.

In comments during the October 22 Italian Antitrust Association's annual conference, Vestager highlighted the Commission's recent raids of various wood pulp companies across member states, which were the first such raids conducted in two years. "And that's just the start of a series of raids that we're planning for the months to come – you'll understand if I don't say exactly when or where they're going to happen," she warned. The Commission's recent dawn raids are notable after a steep decline in their use in the wake of the COVID-19 pandemic. While Vestager explained that the Commission "has never wavered" in its commitment to tackling cartels, she acknowledged that the pandemic made it difficult for enforcers to carry out some of their work, particularly work that could not be done remotely, such as coordinated inspections of company premises across multiple states.

Preparing for Increased Enforcement

These latest raids, and the announcement of more to come, serve as an obvious signal that competition authorities are stepping up their general enforcement efforts after the “hiatus” caused by pandemic disruptions. Indeed, the pace of raids is likely to increase as the Commission works through a backlog of matters to investigate. Competition agencies around the globe may coordinate and raid international offices simultaneously. With authorities becoming more active in investigating cartels and other competition infringements, companies should consider steps they can take now to prepare for the coming enforcement wave.

In [guidance](#) published in association with the UK’s Serious Fraud Office, Winston Partner Peter Crowther offers advice to companies about preparing for a raid and dealing with the aftermath. He notes that “the best preparation for a dawn raid is to ensure that compliance procedures are sufficiently robust to avoid regulatory reaches in the first instance.” However, even if a company has no reason to suspect it is guilty of wrongdoing, it could still take steps to prepare for a potential raid in this era of heightened enforcement.

For example, companies should consider: (1) circulating guidelines to employees that outline the powers available to the various authorities, provide information on the way in which raids are carried out, and set out a checklist of procedures that should be followed in the event of a raid; and (2) briefing staff directly involved in dealing with a dawn raid—for example, receptionists, security staff, and senior executives—on their individual responsibilities. Depending on the size and nature of the company, it may be worth extending training to other employees, such as the IT department and in-house lawyers. Companies should also consider assembling a dedicated dawn raid response team. During a raid, companies are encouraged to shadow investigators at all times. These “shadowers” should make an additional copy of each document either retained or copied by the investigators, and also request a complete list of those documents from the investigators. Any questions asked by the investigator, as well as answers given, should be noted. A “shadows” should also ensure that no attempt is made to read or copy either “privileged” documents or information that is not relevant to the scope of the inquiry.

For companies operating in the United States, Winston Partner Jeffrey Amato’s [Dawn Raid Preparation and Response Checklist](#) outlines a protocol companies should have in place and implement in the event of a dawn raid in connection with a federal antitrust investigation.

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