

Anti Cartel Enforcement

Investigative Techniques



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Anti Cartel Enforcement

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Investigative Techniques

- gathering of relevant information
- investigation tool kit

gathering relevant information

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- reactive methods
 - Complaints, external information, leniency

- proactive methods
 - use of economics, case analysis, industry monitoring, agency cooperation

gathering relevant information

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reactive methods

- Complaints
 - competitors
 - customers
 - employees

- external information
 - whistle blower
 - informants
 - others (courts)

- leniency

gathering relevant information

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proactive methods

- use of economics
 - collusion factors
- case analysis
 - cartel cases
 - merger cases
- industry monitoring
 - press and internet
 - industry representatives
- agency cooperation
 - competition authorities
 - others

gathering of relevant information

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main sources of information on cartel activities:

- leniency program/whistle blower
- central contact point for information on suspect activities
- market analysis/analysis of public procurement results

gathering of relevant information

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whistle blower:

- e.g. dissatisfied/disgruntled employees
 - often valuable information (insight knowledge, precise accounts)
 - but: false accusations out of revenge?

gathering of relevant information

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whistle blower:

- e.g. dissatisfied customers
 - might provide valuable information
 - but: only symptoms no insight evidence

gathering of relevant information

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central contact point for information:

- via internet (i.e. in writing)
- anonymous /not anonymous
 - in case an electronic letterbox is used: possibility to contact and ask questions
 - a lot of complaints which do not trigger further investigation
 - but some complaints which let to dawn raid actions and fines

gathering of relevant information

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market analysis/empirical screens:

- economic tools designed to analyse economic data to flag markets which are (likely to be) affected by collusion
- needs to be verified by further inquiries to collect direct evidence

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market analysis/empirical screens:

- structural screens:
 - cross industry check for characteristics which facilitate cartelisation

- behavioural screens
 - check on the behaviour of markets/participants

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structural screens, e. g.:

- number of market players
- homogeneous products?
- stable demand and supply conditions?/mature industry?
- market transparency?
- similar cost (structures)?
- barriers to market entry high?
- frequency of interaction between competitors?
- co-operative agreements/contractual relationships between competitors?

gathering of relevant information

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behavioural screens, e. g.:

- reduced variation in prices across customers/discounts are eliminated
- higher prices for local customers than for distant customers?
- high degree of uniformity across competitors in product price and prices for ancillary services
- prices stay identical for long periods of time
- price increases are not supported by increased costs
- market shares are highly stable over time

investigation tool kit

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- dawn raid actions
- questioning of witnesses
- request for information

investigation tool kit

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dawn raid actions :

- preparation
- execution
- aftermath

dawn raid action

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better preparation – better results

dawn raid

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front end analysis:

- subject matter of the cartel
- mode of collusion
- market conditions
- which companies are involved
- which people are involved
- what kind of evidence is likely to exist

dawn raid actions

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resources

- how many people
- what kind of people (IT experts? public prosecutor? police forces? other/foreign competition authorities?)
- who is responsible for handling the case?
- who is responsible for handling the file?

dawn raid actions

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timetable

- best time for dawn raid action (trade fairs, cartel meetings)
- availability of own people/teaming up of people
- time necessary to prepare dawn raid

dawn raid actions

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organization (I)

- which places to go
- exact address (still valid?)
- how to get there
- and how to get in

dawn raid actions

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organization (II)

- company structure (branches in different districts? server in the company compound?)
- room layout/floor plan (management, sales division, accounting department, in-house lawyers? any other companies on the same premise?)

dawn raid actions

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organization (III)

- which offices to go/relevant people to search
- which evidence to look for?
- room layout/floor plan (management, sales division, accounting department, in-house lawyers?)
- will there be any lawyers? (internal/external)

dawn raid actions

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organization (IV)

- private houses
- cars
- mobiles, laptops, computer

dawn raid actions

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evidence to look for

- protocols, list of participants, memos, travel expense reports, calendar, notes
- e-mail, fax protocols
- how many years to go back/specific time frames

dawn raid action

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preparation (I)

internal meeting with internal participants of dawn raid action:

- 3 to 4 calendar days before dawn raid action
- information on facts of the case
- information on execution of dawn raid (copies, transport of evidence)
- information on internal organization (distribution of relevant documents and equipment)

dawn raid action

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preparation (II)

- meeting with external personnel / briefing
- internal role allocation
- preparation of strategy for frequent points of discussion with companies/lawyers

dawn raid action

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execution (I)

- first contact for entry through police
- no calls, e-mails during the first 15 to 30 minutes
- handover of leniency program and search and seizure warrant

dawn raid action

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execution (II)

- floor plan, organisation chart, company chart
- IT - infrastructure
- where to collect seized evidence

dawn raid action

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execution (III)

- search of people
- search of cars
- search of bureaus

dawn raid action

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aftermath

- debriefing
- what was good what went wrong what could be done better next time
- reaction from raided companies ?
- letter of thanks to accompanying police staff

questioning of witnesses

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witnesses

either instead of search and seizure or after a dawn raid action

- has to cooperate
- has to give correct information
- enough and precise knowledge to ask the right questions?
- how to document the answers

request for information

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request for information

either instead of search and seizure in combination with questioning of witnesses or after dawn raid action

- obligation to cooperate depends on status of person/company asked
- enough and precise knowledge to ask the right questions?
- documentation no problem

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Thank you for your attention



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