

An Uptick DOJ Antitrust Dawn Raids: Is The US Dipping Into The EU Antitrust Enforcement Toolkit And Is Your Company Prepared?

Investigatory raids of corporate offices are a common tool in many parts of the world. The European Commission frequently employs dawn raids to gather evidence of collusive activity among competitors and often raids multiple competitors simultaneously. However, at least in the antitrust context, the practice has been far less frequent in the US. Until recently, the Antitrust Division of the US Department of Justice ("DOJ") has turned to civil processes (civil investigatory demands and subpoenas) to gather evidence. However, two recent dawn raids by the DOJ may signal a tactical change.

On May 2, 2017, the DOJ raided the Michigan corporate offices of Perrigo Company Plc ("Perrigo"). The Ireland-headquartered generic drug manufacturer stated that the inspection was associated with an ongoing investigation regarding drug pricing in the pharmaceutical industry. Just two months earlier, in March 2017, the DOJ raided a meeting in San Francisco of the world's largest container shipping operators as part of an ongoing investigation into the shipping industry. These mark a decided uptick in the number of antitrust-related dawn raids by the DOJ, which traditionally conducted only a handful every few years.

What to expect with a US dawn raid

- A dawn raid is generally conducted by Federal Bureau of Investigation agents, although it is possible it will also be conducted by prosecutors or other law enforcement officials.
- The authorities will ask to see the highest ranking manager on the premises as well as other employees and may conduct interviews with employees.
- They will ask to enter the premises and begin the inspection as soon as possible. The search will include computers, mobile devices, filing cabinets, work rooms, trash cans, and shred boxes.
- If the inspection takes longer than one day, authorities will seal the premises at the end of the day.

What to do if a US dawn raid occurs

- A company should have a designated policy in place that outlines what steps to take in case a dawn raid occurs. This includes nominating a designated employee to be contacted immediately (typically someone in the legal department),

informing the firm's attorneys of the scope and purpose of the dawn raid, and training employees in first contact with the authorities how to respond.

- Employees should not obstruct officials carrying out the inspection, but they also should not get involved in the inspection unless requested to do so. Employees should have legal counsel present during any interviews. It is the right of the company and employees for an attorney to be present during any interview, so employees should not be pressured into an interview before an attorney is on-site.
- The designated employee should request the service cards/business cards of each of the officials and the document authorising the inspection, and take photocopies of such documents.
- A company should be aware of any limitations on the authorities' inspection, including what material is covered by the subpoena and which individuals are named in the subpoena.
- A company should consult its legal department regarding any press releases related to a dawn raid and advise employees to refrain from discussing with the media.

We recommend that companies consider consulting counsel to add dawn raid training to their regular compliance training and update their compliance policies.

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