



# Dawn Raid Preparation and Response Checklist

A Lexis Practice Advisor® Practice Note by  
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This checklist explains what to expect from a U.S. authority dawn raid in connection with a federal antitrust investigation and outlines a protocol companies should have in place and implement in the event of a dawn raid. You can distribute this to your clients whose business activities subject them to potential dawn raids.

The Antitrust Division of the U.S. Department of Justice (DOJ) has generally relied on civil processes, including civil investigatory demands and subpoenas, seeking evidence of collusive activity among competitors. With increasing frequency, however, the DOJ's Antitrust Division has also used search warrants to investigate criminal antitrust violations. In many instances, these search warrants are executed through "dawn raids," or on-site searches of corporate offices without warning.

A dawn raid poses a significant risk to the subject company. Even if the company is ultimately determined to be innocent of any antitrust violation, it may still face significant problems due to issues with compliance or irregularities occurring during the raid. It is important that a company have a dawn raid response procedure in place to ensure that the company fulfills its legal obligations while safeguarding its own legal rights. An effective response procedure will also minimize the stress to the company's employees and blunt a raid's impact on the company's business operations and reputation.

## WHAT TO EXPECT WITH A U.S. DAWN RAID

As the term suggests, a dawn raid typically begins early in the morning. In the U.S. federal antitrust investigation context, a dawn raid is usually conducted by officers and agents of the DOJ and the Federal Bureau of Investigation (FBI) or other law enforcement agencies. On the day of the raid, these authorities will arrive at the subject company's reception area, announce the purpose of their visit, and ask to enter the premises. They will request to begin their inspection as soon as possible. The agents' search may include corporate file servers, local computer files, electronic storage devices (e.g., USB sticks), mobile devices, file cabinets, work rooms, and document disposal containers, including trash cans and shred boxes. The DOJ and other law enforcement agents will seize and/or make copies of documents and electronic data. They may also seek to conduct employee interviews.

DOJ and other law enforcement agents may simultaneously search multiple company locations within the U.S. In addition, competition authorities outside the U.S. may conduct simultaneous raids at foreign company locations.

## BEFORE A U.S. DAWN RAID

- **Assemble response team.** The company should appoint an internal dawn raid response team that will be responsible for handling any potential on-site inspection. The team should consist of a team leader within the company's legal department, a member of senior management, a senior member of IT staff, staff member(s) who can respond to media inquiries, and staff members who can assist with note-taking and photocopying, including at least one staff member devoted to creating a written record of the investigation process (e.g., areas visited, employees interviewed, and documents reviewed or copied) and at least one staff member who can assist with authorities' requests (e.g., to return documentation after copying).
- **Identify outside counsel.** The company should designate outside counsel with criminal investigative experience to assist company personnel with a possible antitrust-related dawn raid. Contact information for outside counsel should be distributed to the appropriate company employees, including the dawn raid response team and receptionists. To the extent possible, the outside counsel contact information should include the company's main attorney, as well as one or two additional attorneys within the same firm who can assist in the event that the main attorney cannot be immediately reached. For companies with international operations, outside counsel in foreign jurisdictions with active competition enforcement should be selected as well.
- **Train employees.** The company's antitrust compliance training should inform employees that investigatory dawn raids are possible and provide information about what to expect in the event of such a raid. The company's legal counsel should train relevant personnel to respond properly if a raid occurs, which should include instructions to help avoid obstruction of justice issues (e.g., avoiding destroying, concealing or falsifying documents). Relevant personnel include: (1) the dawn raid response team; (2) in-house legal staff; (3) receptionists; (4) security staff; (5) IT department members; and (6) senior management.
- **Distribute checklists.** Company employees who receive dawn raid training should receive checklists with reminders of what to do in the event of a dawn raid.
- **Draft directory of responsible employees.** Receptionists should receive a directory of personnel who should be informed in case of an on-site inspection (e.g., dawn raid response team leader and a senior management representative).
- **Draft internal alert email.** Company counsel should prepare an internal draft email with initial instructions to staff that can be circulated in the event of a dawn raid. The email alert should instruct employees not to destroy or remove any documents during the raid. In addition, the email should advise employees of their right to have counsel present for any substantive questioning by authorities and note that people outside of the company should not be informed of the raid.
- **Develop communications strategy.** The company should coordinate with outside counsel to decide on an approach for handling media inquiries concerning a potential dawn raid.

## DURING A U.S. DAWN RAID

- **When the authorities arrive**
  - **Courteously greet authorities.** Company personnel should politely greet the authorities and request a copy of the search warrant and any other documents authorizing the raid.
  - **Contact dawn raid response team.** The company staff members who greet the authorities should immediately contact the dawn raid response team leader, as well as another senior member of the in-house legal department and the pre-designated senior management representative.

- o **Contact outside counsel.** The dawn raid response team leader or another in-house legal department member should immediately contact domestic and then foreign outside counsel to inform them that a raid is taking place. Ideally, company employees should email or fax a copy of the search warrant and any other documents authorizing the raid to outside counsel.
- o **Check the documents authorizing the raid.** Company personnel should check the authorities' search warrant and any other documents authorizing the raid and determine: (1) the accuracy of the name and location of the listed company, (2) the warrant's date, (3) the investigation's subject matter (e.g., product scope, geographic scope, and time period of alleged infringement), and (4) the agencies and investigators conducting the investigation. If it is not possible to provide outside counsel with copies of these documents, the company personnel who review the raid authorizing documents should report the documents' contents to outside counsel in as much detail as possible.
- o **Check identification of authorities executing the raid.** Company personnel should check the agents' identification to the extent possible and issue badges identifying them while they are on the premises.
- o **Organize dawn raid response team meeting.** Outside counsel should join the dawn raid response team in a meeting to discuss the inspection's scope and employees with whom authorities may request an interview. The team should designate which employees will shadow the authorities to the extent permitted.
- o **Inform on-site company employees.** Company counsel should issue a version of the company's draft dawn raid email alert to employees located on the premises.
- o **Determine whether there are other inspection sites.** Company personnel should try to determine whether the investigation extends to other company locations or the homes of any company employees. If other locations are subject to search, company counsel should arrange for comparable response team support at the other locations.
- **During the inspection**
  - o **Monitor the authorities to the extent possible.** If permitted, the designated company personnel should follow and observe the authorities throughout their search, keeping written notes of their actions and what documents they inspect.
  - o **Direct requests from the authorities to counsel.** Company personnel should direct any such requests to company counsel, including, for example, inquiries concerning the locations of documents or consent to search the same.
  - o **Create a record of items seized.** To the extent possible, company personnel should record documents and other items the authorities seize or copy. They should return hardcopy documents to their original locations when inspectors have completed their review.
  - o **Identify privileged or confidential documents.** If company counsel is aware of privileged or confidential documents within the set of documents subject to inspection or seizure, they should notify the authorities. To the extent possible, notification to the authorities should include information substantiating a privilege claim, including the author and addressee of the documents and the purpose and circumstances of their preparation. Disclosures to the authorities substantiating claims of privilege should not include information concerning the documents' content. If the authorities disagree that the documents are privileged or confidential, company counsel should request that the documents are placed in sealed envelopes when they are seized.

- **Do not destroy, conceal or falsify company documents.** Company personnel should not destroy or tamper with any documents during a dawn raid, as doing so can lead to serious, potentially criminal, penalties. This can also significantly damage the company's defense in the antitrust investigation.
- **Do not speak to anyone outside the company about the raid.** Company personnel should not speak to individuals outside of the company about the raid or the investigation's content. After the raid is completed, the designated member of the dawn raid response team may issue a public statement, subject to outside counsel's advice.
- **Do not discuss the substance of the investigation internally.** It is in the company's best interest to limit its employees' knowledge of the investigation to ensure that the employees do not learn details of which they were not previously aware. Moreover, company personnel should not discuss events relating to the investigation to avoid the appearance of coordination to obstruct justice.

### **AFTER A U.S. DAWN RAID**

- **Inform employees.** The dawn raid response team leader should inform on-site employees that the dawn raid has ended.
- **Collect inspection record.** The outside counsel should collect reports from the personnel who accompanied the authorities during their search. These reports should note any incidents that occurred during the dawn raid (e.g., objections to searches of particular locations).
- **Debrief the dawn raid response team with outside counsel.** The team should meet with outside counsel to discuss any outstanding issues relating to potentially relevant documents that the authorities did not find and the application of privilege to documents that were seized.
- **Cease any contact with competitor companies.** Until the company has more information concerning the investigation's content and scope, company personnel should suspend contact with employees of competitor companies.
- **Consider suspending document destruction.** The company should consult with outside counsel to consider issuing a document preservation notice applicable to certain employees.
- **Consider notifying insurers, auditors, and/or regulators.** The company should consider to whom it needs to make disclosures relating to the investigation, including applicable Securities and Exchange Commission filings.
- **Begin an internal investigation.** Outside counsel should commence an internal investigation. It may be possible to limit criminal liability and penalties by identifying wrongdoing and cooperating with the DOJ.

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