



# How to Prepare for and Respond to a US Antitrust Raid

This Checklist from our website sets out the general steps a company should take before, during and after a raid by US government authorities in connection with an antitrust investigation.

**A**ggressive cartel enforcement continues to be a priority of the US Department of Justice's (DOJ's) Antitrust Division, which is currently involved in its largest cartel investigation ever (see *Box, Recent Cartel Enforcement Actions*). While investigating potential criminal antitrust violations, the DOJ may use search warrants to obtain documents and information. In many instances, the search warrants are executed through a raid, which is a surprise, on-site search of corporate offices by the DOJ and Federal Bureau of Investigation (FBI). During a raid, DOJ and FBI agents may seize file cabinets or boxes of documents, confiscate computers or download computer files and servers and interview employees.

The following is a set of general procedures to have in place and implement in the event of a raid by the DOJ and FBI in connection with an antitrust investigation.

## BEFORE A RAID

- **Identify antitrust counsel.** The legal department and other appropriate company personnel should have the contact information for experienced antitrust counsel in case a raid takes place. This should include not only contact information for the company's primary antitrust attorney, but also one or two other antitrust attorneys with the company's law firm (in case the primary attorney is not immediately available). For companies with cross-border operations, antitrust counsel in the European Union and other jurisdictions with active competition enforcement should be selected as well.
- **Train employees.** The legal department should train appropriate personnel at the company so they can respond properly if a raid occurs. These personnel also should have access to the contact information for antitrust counsel. Personnel who should be trained include:

- receptionists;
- security staff;
- legal department staff; and
- appropriate senior management.

## DURING A RAID

- **Contact antitrust counsel.** No matter what time of day or night, company personnel should immediately contact the pre-identified antitrust counsel to inform her that a raid is taking place. If the primary contact is not available, they should contact one of her listed subordinates. Companies with cross-border operations can expect foreign antitrust authorities to conduct similar raids in other countries. Procedures and substantive rules governing raids vary in other countries, and unique situations may arise in a given case that justify deviating from these recommendations. Therefore, when a company becomes the target of a government raid, employees must seek real-time advice from antitrust counsel on how to respond.
- **Request postponement until antitrust counsel arrives.** Company officials should ask that the authorities wait until antitrust counsel can be summoned. However, the authorities are not required to wait for antitrust counsel to arrive.
- **Ask for a copy of the documents authorizing the raid.** If the authorities do not provide copies of the search warrant and any other documents authorizing the raid, company personnel should ask to see them. The company personnel that reviews the documents should report their contents to antitrust counsel and record as much of the contents as possible.
- **Ask to see the identification of the authorities executing the raid.** Company personnel should keep a record of the agents' identities.

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- **Limit communications with government authorities.** Company personnel should inform the authorities that they do not want to answer any substantive questions without the presence and advice of antitrust counsel. In particular, company personnel should not:
  - agree to be interviewed about any substantive matters (such as the substance of documents or business conduct);
  - answer any questions about the contents of any documents seized or aid the authorities in their interpretation; or
  - volunteer any information to the authorities.
- **Cooperate in collecting documents.** Company personnel should reasonably cooperate with the authorities in answering questions about the location (though not the contents) of documents. Company personnel may try to direct the authorities to the specific categories of documents they are searching for to minimize disruption to the company and prevent the seizure of irrelevant documents. However, the authorities may ignore those attempts.
- **Keep track of documents and other items seized.** Company personnel should keep a record of documents and other tangible items seized by the authorities.
- **Identify privileged or confidential documents.** To the extent that company personnel are aware of attorney-client privileged or confidential documents included within the seized materials, they should expressly note this in the record and inform the authorities.
- **Do not destroy company documents.** Company personnel should not destroy any documents in the event of a raid. This can lead to severe (and possible criminal) penalties and significantly hamper the company's defense in an antitrust investigation.
- **Do not transmit company documents overseas.** Sending company documents out of the country may

be considered obstruction of justice. Transmitting documents from another country into the US may enable a government authority to access a document when it otherwise may be outside its reach. Therefore, during or after a raid, company personnel must not:

- send company documents located in the US to other jurisdictions; or
  - send or bring documents from outside of the country into the US.
- **Do not speak to anyone outside of the company.** Company personnel should not speak to the press, competitors or anyone outside of the company about the raid or the substance of the investigation. At the appropriate time, a designated company representative may make a statement subject to the advice of antitrust counsel.
  - **Do not discuss the substance of the investigation internally.** Company personnel should not attempt to obtain details regarding the substance of the investigation. It is better for company personnel not to learn anything of which they were not already aware. At the appropriate time and place, employees with substantive information will have to speak with antitrust counsel about the substance of the investigation.

### AFTER A RAID

- **Inform senior management.** Company personnel present at the raid should inform senior management about the raid and also notify the board of directors so they can consider whether a special audit or litigation committee is necessary.
- **Stop any contact with competitors.** Until the extent of the investigation is known, general counsel should instruct all employees to immediately cease all contact with competitors.
- **Identify executives who may be involved in the alleged violations.** Ensure that any executives who may be involved in the alleged violations are not

## RECENT CARTEL ENFORCEMENT ACTIONS

Antitrust cartel enforcement has long been a focus of the DOJ, and there is no sign of it winding down.

Currently, the DOJ is conducting an ongoing investigation of the auto parts industry, its largest criminal investigation ever. After two rounds of charges in this investigation, cartel participants have racked up criminal fines of \$748 million. These fines exceed the amount of total criminal fines obtained by the DOJ during the last fiscal year, and include the second largest criminal fine ever (\$470 million) imposed for a Sherman Act violation.

Seven executives have also pled guilty in connection with the investigation and agreed to serve time in prison. These include two Japanese executives who each agreed to serve two years in prison, which is the longest prison term imposed on a foreign national voluntarily submitting to US jurisdiction for an antitrust violation.

involved in planning the company's response to the government's investigation.

- **Determine whether any employees will need separate antitrust counsel.** If an executive or other employee appears to be involved in the alleged violations, it is important to decide whether she needs her own, separate antitrust counsel to avoid potential legal and ethical conflicts.
- **Identify any Securities and Exchange Commission (SEC) issues.** General counsel should determine whether the company needs to make any disclosures related to the government's investigation in upcoming SEC filings.
- **Develop a communications strategy.** The company should coordinate the strategy with antitrust counsel. The strategy should be targeted to at least three different audiences, including the:
  - media;
  - customers; and
  - employees.
- **Begin an internal investigation as quickly as possible.** If you learn of an antitrust investigation through a government raid, it is likely too late to qualify for immunity through the DOJ's leniency program. However, the company may still be able to mitigate any liability.

>> For a Practice Note providing more information on responding to an actual or potential antitrust investigation, search [Criminal Antitrust Enforcement in the US](#) on our website.

>> For more information about the DOJ's leniency program, search [Leniency Program for Antitrust Violations](#) on our website.