

Challenges related to evidence gathering after dawn raids and other formal investigation tools

The Kenyan experience

Gideon Mokaya
Competition Authority of Kenya

"A Kenyan economy with globally efficient markets and enhanced consumer welfare for shared Prosperity"

CONTENT

1. Kenyan experience on the first raid highlighting the potential challenges faced in the raid?
2. The legal hurdles that were faced and how were they handled?
3. Discussion questions.

SEARCH MANDATE AND PROCESS

- ▶ Section 32(1) of the Competition Act on searches.
- ▶ Planning and reconnaissance activities with reference to confidentiality, team composition, inter agency assistance.
- ▶ Field communication using whats up application.
- ▶ Execution of the search ,legal counsel and interviews.
- ▶ Data mining from the servers and the limitation of the search warrant.
- ▶ Documenting the inventory.
- ▶ Time limitation.

CHALLENGES-PREPLANNING,EXECUTION AND POST EXECUTION

- The search warrant generality.
- Confidentiality of the process
- Anxiety of the officers(dressing, safety, recognizance)
- Timing and involvement of the police officers.
- The leanness of the numbers for the searches
- Time limitation
- The delay in search waiting counsel.
- Data mining from the servers and issue of carrying away the desktops.
- Lack of data analysis tool kit
- Court injunction to stop investigation

LESSONS LEARNT

- Develops search and seizure guidelines
- Trains investigation officers on digital searches
- Develop steps to take in order to narrow the amount of electronic data taken during raids
- Sensitize the court on the wording of the warrant
- Allocate more investigators to the different work stations
- A search tool kit to enable to seize all documents
- company's systems administrator's cooperation
- Officers and forensic specialists to work closely during all stages in the gathering of digital evidence.

DISCUSSION QUESTIONS

- How long should we wait for company lawyers given the limited timelines?
- To what extent should we carry computers and other equipment from the company premises given the decapitating effect it has to businesses?
- Can we outsource IT data mining and analysis services during the search.
- The right number of staff for searches given the size of the Authority?
- Should we share guidelines for searches to stakeholders(internal or external use)?