Breakout Session 3: Challenges related to evidence gathering after dawn raids and other formal investigation tools

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General Framework

- Complex cartel cases involve a large number of companies and the analysis of terabytes of data. Dawn raids usually take 1 or 2 days maximum.

- All seized documents (relevant or irrelevant) are included in the case file, which may raise problems as regards access to file.

- Not all documents will be used to prove an infringement. But, as a general rule, parties must have access to all documents in the file (inculpatory or exculpatory).

- Need to find balance between the right of defence and due process, the protection of business secrets and the public interest (investigation and effective competition).

- **How to deal with irrelevant data? How to avoid seizing thousands of irrelevant documents? How to conduct more efficient and targeted dawn raids?**

Planning

- In 2016 the PCA launched an **internal training programme in IT forensics** for case handlers.

- Specific software for conducting **electronic searches** (v.g. Nuix, Total Commander, Agent Ransack) **and assessing data** after a dawn raid (Nuix Investigator).

- Ordinary case files are being replaced by **electronic case files** (using MD5 HASH to certificate that seized documents were not modified).

- Access to file through **data room**.

Challenges

- **Preparation:** better preparation of officials and IT experts; running of mock dawn raids using electronic data provided by leniency applicants; keyword test.

- **Data review during dawn raids**: data review before closing dawn raid? longer duration of dawn raids? Data review on-site or at the PCA's premises?

- **Post dawn raid**: electronic review of seized documents; risks; dedicated task force; permanent cooperation with IT experts; irrelevant data should be returned/destroyed?