

# Investigative Techniques

## On-site inspections: dawn raids



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Taipei, September 2013

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## Dawn raids in Peru



- Importance
- Scope
- Obstruction: current problematic
- Challenges



## Importance of dawn raids



- **Helps to preserve the relevant information** for antitrust investigation, specially **cartels**, known as the most harmful conduct against the dynamic of the free competition.
- Allows the authority to have more and better information to **make a deterring decision** by knowing the scope of the practice, benefits obtained, participants, implementation, etc.
- It is a signal to the economic agents: **increases the probability of detection.**



## Competition authorities



### **The Commission**

Commission of Defense of Free Competition is an organ of INDECOPI (for its acronym in Spanish, National Institute of Defense of Competition and Protection of Intellectual Property), the Antitrust Authority in Peru.

### **The Secretariat**

The Technical Secretariat is an instructive organ of the Commission. Is in charge of market investigation and elaborates opinions on antitrust cases. Likewise, the Secretariat defines whether to start or not a case.



## Legislative Decree 1034

### Antitrust Act



15.3. For the development of its investigations, **the Technical Secretariat is empowered to:**

*(c) To conduct inspections, with or without prior notification, at the premises of the natural or legal person, business associations and autonomous properties, and examine books, records, documents and goods, being entitled to check on the development of the production processes and take the statement of the persons found at the premise. In the inspection may take copies of physical files, magnetic or electronic, as well as any document that is deemed relevant or taking photographs or filming as may be necessary... To access such premises, police support may be requested.*

*The Technical Secretariat shall obtain **prior judicial authorization** to proceed with the forcible unlocking in case any opposition to entry into the premises occur or they were closed, as well as **to copy private correspondence** that may be contained in physical files or electronic records, according to the especial process (...)*



## Scope of dawn raids



**The Technical Secretariat is able to:**

- **Access** to books, records, documents and goods, being entitled to check on the development of the production processes and take the statement of the persons found at the premise.
- **Take copies** of physical files, magnetic or electronic, as well as any document that is deemed relevant or taking photographs or filming as may be necessary.
- **Immobilize and take** information from the premises.
- Obtain help from the **police agents** for the search.



## Exceptional Cases



The Secretariat needs **judicial authorization** in the following cases:

(i) To proceed with the forcible unlocking in case any opposition to entry into the premises occur or they were closed.

**(ii) To copy private correspondence that may be contained in physical files or electronic records.**

(iii) To immobilize goods and take them to be examined.



## Effects



Judicial authorization implies a proceeding of requesting to Penal Judge an order that contains all details of the search.

The requesting has the following contingencies:

**1) Affects the discretion of the Secretariat** in deciding not only where but when a dawn raid should take place.

**2) Judges are reluctant to grant authorizations** due to the uncertainty of the applicable law in these cases. Too many categories of information and not fully defined, nor the matter in which a Decision should be based (criminal, civil, administrative, etc.).

**3) Firms used the restriction to obstruct the investigation** and avoid the surprise effect packaging commercial information with private information in order to evade immediate authority access.



## Actions

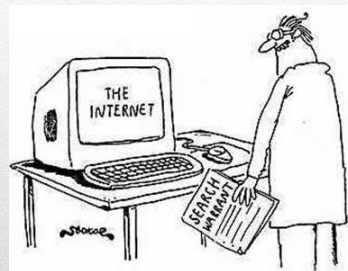
Given the mentioned problems, the Commission and the Secretariat take the following actions:

- 1) **Issued a statement indicating the scope of the protection of private information.** On this respect, it delimited the protection to personal and family information. Firms may allow access to any commercial information relevant to the investigation.
- 2) **Sanctioned firms** that obstructed dawn raids, according to the fines established in Peruvian law for the unjustified refusal to give information to the authority.
- 3) **Reinforce powers of investigation by promoting a legislative reform** that (i) clarifies the category 'private information' and (ii) establishes that the authority in charge of issuing a judicial authorization must be a Court specialized in antitrust law.



## Challenges

- Deal with the **sophisticated technology** used by firms.
- Make the **warrant terms** enough clear not to cause arbitrariness but enough wide to allow the correct search.
- **Provide clear rules or develop principles** for general and especial cases. E.g. finding other illegal information not contained in the term of the warrant.
- **Create a well defined and complete protocol** to empower the development of dawn raids.
- **Avoid forewarn** to other undertakings.
- **Use dawn raids as an exceptional and powerful tool** of investigation: cases where the finding of relevant information is probable.





**Thanks**



## **Facultades de inspección en la Ley**



### **Decreto Legislativo 1034 – Ley de Represión de Conductas Anticompetitivas**

15.3. Para el desarrollo de sus investigaciones, la Secretaría Técnica se encuentra facultada para:

**c. Realizar inspecciones, con o sin previa notificación (...)** y examinar libros, registros, documentación y bienes, pudiendo comprobar el desarrollo de procesos productivos y tomar declaración de las personas que en ellos se encuentren. En el acto de la inspección podrá tomarse copia de los archivos físicos, magnéticos o electrónicos (...)

La Secretaría Técnica deberá obtener **autorización judicial previa** para proceder al descerraje en caso hubiera negativa a la entrega o estos estuvieran cerrados, así como para copiar correspondencia privada que pudiera estar contenida en archivos físicos o electrónicos, conforme al proceso que a continuación se detalla:

(...)

