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How to Keep a Dawn Raid Under Control

Part 2: Keywords

"During a dawn raid conducted by the AMO, keywords should be used to focus the search for electronic data on information relevant to the investigation. However, if AMO uses overly broad keywords without adjusting them already during the inspection, companies face significant consequential costs on attempts to scale down the vast set of business information taken by the AMO." Martin Bako

Unannounced inspections by the Slovak Antimonopoly Office ("AMO"), commonly known as dawn raids, are among the most intrusive investigative measures a company can face. During a dawn raid, AMO may gain access to substantial volumes of electronic data, including emails, documents and internal databases.

For this reason, dawn raids must be conducted in a proportionate and targeted manner. The way in which AMO searches for and selects electronic data during dawn raids has a fundamental impact on the scope of the entire inspection and on its practical implications for the company.

Why are keywords used during dawn raids?

Without limiting the scope of the search, inspectors could potentially review virtually all electronic data available to the company. That is why, in practice, AMO uses keyword searches. Their purpose is to focus the review on information that may be relevant to the investigation and to make the inspection more efficient.

When keywords work.

In many cases, this approach works without difficulty. Well-designed keywords enable inspectors to identify a focused set of emails and documents for closer review.

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For companies, this generally means faster inspection and less disruption to normal business operations.

When keywords become a problem.
Difficulties arise when keywords are overly broad or insufficiently tailored to the subject matter of the investigation. For example, a keyword may appear in virtually every email, because it forms part of a company name, domain name or standard email signature.

As a result, even after applying the keywords, entire email inboxes or extensive databases may be selected.

In such cases, AMO may copy large volumes of data and postpone the assessment of relevance until a later stage. The subsequent review is carried out at AMO's premises in the presence of company representatives.

This process can be time-consuming, organizationally demanding and costly. To protect its rights, a company may need to dedicate internal resources and legal counsel to the review process, including the identification of irrelevant material and legally privileged communications.

How AMO view this?
AMO generally takes the view that it has the power to examine all documents it finds and to assess their relevance to the subject matter of the investigation. In its view, keywords searches are not a legal requirement but rather a practical tool for conducting the inspection more efficiently.

AMO also frequently points out that, at the time of a dawn raid, it is working solely on the basis of certain leads and cannot always be expected to use entirely precise and narrow keywords. Even keywords relating to the subject matter of the investigation may, in its view, be relatively broad.

Our perspective and case law.
However, AMO's powers in relation to electronic data are subject to legal limits. Although the law does allow for a wider range of data to be temporarily secured in certain situations, particularly where inspectors are unable, for technical reasons, to access information or make copies of it on the spot, this is an exceptional procedure intended solely to overcome such a technical obstacle.

Accordingly, this exceptional mechanism should not be used as a substitute for a properly targeted keyword search.

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In other words, it is not sufficient that the keywords used were formally related to the subject matter of the dawn raid. Ultimately, the key question is whether the copied documents genuinely fall within the scope of the investigation.

Slovak courts have also pointed out that unduly broad data collection during dawn raids – including cases where this occurs following the use of inappropriately chosen keywords – can be problematic.

When should this issue be addressed?
Experience suggests that concerns regarding overly broad keywords are often difficult to remedy once the dawn raid has ended. The decisive moments arise during the dawn raid itself, often under time pressure.

Companies should therefore consider raising concerns about keywords that are clearly irrelevant or excessively broad during the inspection itself and seek their refinement where appropriate. Doing so may reduce the volume of collected data and avoid lengthy and costly follow-on review exercises.

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