

# Dawn Raid Manual

## 1. Introduction

- 1.1. A dawn raid is an unannounced inspection by officials of a regulatory, criminal investigative and/or competition authority or other governmental organisation of business premises on the basis of a suspected violation of relevant laws. Investigators will conduct such investigations in relation to potential infringements of the laws (for example, competition law infringements - please also refer to the Competition Policy in this regard).
- 1.2. This Dawn Raid Manual contains a practical guide on how to manage such an investigation.

TERM	DEFINITION
<b>HES</b>	HES International and all wholly-owned or controlled direct and indirect subsidiaries of HES International, as well as joint ventures in which HES holds a majority interest.
<b>HES Personnel</b>	Any board of directors member, officer, employee, or independent contractor of HES and its group companies and majority joint ventures.
<b>Investigators</b>	A public official of a regulatory, criminal investigative and/or competition authority or other governmental organisation, executing or assisting during the investigation.
<b>Response Team</b>	The individuals stated on Annex 1.

- 1.3. Annexes:
  - Annex 1: Response Team
  - Annex 2: External Legal Counsel

## 2. Practical Guidance

### DO:

- First thing is to consult the external legal counsel, or the Response Team (Leader), to ensure the proper reception of the Investigators;
- Keep the investigation, including the existence and content thereof, confidential at all times;
- Comply with any instructions given by the Investigators, the Legal or Response Team or external counsel (for example as to not accessing certain accounts or not sending external emails);

- Provide any logistical information requested, such as the location of a particular office, desk, person, or how emails or other documents are organised or held. If the Investigator asks questions that go beyond logistical/practical information, ask for external counsel to be present;
- Provide access to any devices or documents requested (including where password-protected); and
- Remain calm and polite in any dealings you have with the Investigators.

#### DON'T:

- Respond to or follow-up any request by an Investigator, without having consulted the external legal counsel, or the Response Team (Leader);
- Conceal, delete or destroy any documents (whether in hard copy or on computer or phone, including email or (instant) messages, recordings/voicemails), or tamper with or amend these. To do so may amount to a criminal offence with penalties of fines and/or imprisonment;
- Obstruct the investigation in any way;
- Provide any false or misleading information to the Investigators, but if you do not know an answer do not guess or volunteer information; and
- Touch any materials that have been compiled by the Investigators (e.g. their copies of documents or property that has been seized) or tamper or break any seals that have been put in place by the Investigators.

#### Response Team

- 2.1. In anticipation of any potential dawn raid, HES has assembled a so-called Response Team of a limited number of HES Personnel best placed to manage and guide a dawn raid. Please refer to Annex 1 with a list of the contact details of the Response Team.
- 2.2. If Investigators arrive at HES' premises, the Chief Compliance Officer should be called immediately. If this person does not pick up, leave a voicemail and inform him/her immediately by email and try to contact someone else from the Response Team.
- 2.3. The Response Team Leader should immediately go to the reception to greet the Investigators noting down the time they arrived and the names of the Investigators attending. The Response Team Leader should explain their role is to represent HES during the inspection and to facilitate the efficient execution of the inspection. The Response Team Leader should as a matter of priority:
  - request to see documents authorising inspection, i.e. the warrant, authorisation and/or other decision granting authority for the inspection and check the authorisation documentation for the grant of powers (as required by law in the relevant jurisdiction);
  - request to see identity papers of the Investigators carrying out the inspection;

- make two copies (or have them made) of the Investigator's identity papers and documents authorising the inspection. Check the authorisation documentation for (i) scope of powers, (ii) scope of investigation (what product, services, company, time period), (iii) validity (signed, dated, premises identified, identity of Investigators); and
  - invite the Investigators to wait in a suitable room which does not contain any documents or IT equipment. Investigators should be willing to wait up to 30 minutes for legal advisers to arrive before starting their investigation, even though they are under no obligation to wait. If the Investigators are not willing to wait, their movements must not be obstructed, but they must not be left unattended.
- 2.4. At the same time, the Response Team Leader should immediately contact external counsel and provide all information they have (including the number of Investigators and whether the Investigators are insisting on starting the inspection) and also email copies of the warrant, authorisation and/or decision as soon as obtained from the Investigators. Please refer to Annex 2 with a list of the contact details of external counsel.
- 2.5. The Response Team Leader should then request that the Investigators wait a short time until external counsel has arrived before commencing the inspection or ensure that any issues or questions are raised with external counsel by telephone. In the meantime, the Response Team Leader should ask whether the Investigators would like to speak to or seize any data or communication devices of any particular individuals. He/she should also contact the IT teams immediately and instruct them to be on stand-by. No individual should answer (substantive) questions of an Investigator or comment on the charges at issue or any other matter without the presence of a member of the external counsel.
- 2.6. Once external counsel has arrived, discuss whether an immediate application for immunity or leniency should be made.
- 2.7. At the beginning of an investigation, the Response Team should be briefed by the external legal counsel or, if not yet present, the Response Team Leader. Specifically the Response Team should be informed of the scope of the investigation, i.e. what are the Investigators looking for? What products/services are being investigated? What time period? What is the alleged offence? This can be determined by reviewing the relevant authorisation documents, such as the EC authorisation/decision and/or warrant;
- 2.8. The Response Team should be reminded to:
- Cooperate and be friendly, whilst maintaining a keen eye on HES' defence rights;
  - Accompany the Investigators at all times;
  - Keep a written record of all factual questions and answers (questioning should not go beyond the explanation of facts or documents; if Investigators' questions exceed this scope, external counsel should first be consulted or looped in);
  - Ensure that answers to any factual questions remain short and accurate;

- Keep copies of all documents copied by the Investigators;
- Volunteer no additional information or views – do not speculate or guess about what to respond to queries. If you do not know the answer, please indicate that;
- Sign nothing;
- Be polite, but firm; and
- Under no circumstances attempt to destroy any documents and/or other evidence which might relate in any way to the investigation.

### Facilities by the Investigators and Response Team

- 2.9. A room should be set aside for the Investigators to use. Investigators cannot be stopped from moving around the business premises. It is also advisable to ask them to talk to people there rather than in more public places.
- 2.10. The Response Team should equally have a room where they can gather, work from and hold internal discussions regarding the progress of the investigation.
- 2.11. The Investigators will need access to a photocopier. They may wish to do the photocopying themselves or may be willing to let HES' staff organise the photocopying. In either case, it is critical that at least two copies of all documents are taken; one set for the Investigators and one set for HES.

### Assistance by the IT Department

- 2.12. In the event of an investigation by the authorities, the IT department must co-operate fully with requests by the Investigators. At least one IT expert should be designated to assist the Investigators as and when needed. IT support that will likely be required includes (i) facilitating access to servers used by the relevant HES individuals that is subject to the dawn raid investigation; (ii) temporarily blocking access to individual email accounts, to 'freeze' potential evidence and prevent tampering with emails or destruction of content during an investigation and (iii) providing "administrator access rights" support and ensuring access to encrypted documents or systems.
- 2.13. Further, HES may be required to provide any hardware that Investigators may wish to use. This may include laptops, external hard drives, CD-ROMs, DVDs, USB-keys, connection cables, scanners, printers, copiers.

### Informing employees about the investigation

- 2.14. HES Personnel affected by the investigation should also be informed as soon as possible, but only after checking if the Investigators are happy with this approach and possibly the content.

## Shadowing Investigators

- 2.15. Each Investigator must be shadowed at all times. The shadows must make sure that a record and duplicate copies of all documents copied and/or seized are made. As regards electronic documents, the Investigators may provide these on an external storage device.
- 2.16. In addition, the shadows should try to ensure that the Investigators do not view or seize documents that are:
- Not relevant and within the scope of the investigation; in relation to electronic documents, this will involve looking over the shoulder of the Investigators while they scroll through documents; and
  - Legally privileged, i.e. communication between HES and external legal counsel.

## Investigator's questions

- 2.17. Investigators are only allowed to ask questions within the scope of their authority. Those requested to respond to questions must:
- Refuse to answer any questions which would involve an admission of guilt (e.g. were you involved in price-fixing activities?)
  - Keep all answers short, factual and accurate;
  - Not volunteer additional information or views;
  - Ask for clarification if they do not understand the question; and
  - Not speculate or guess at answers – if the individual concerned does not know the answer to a question, they should just say so.
- 2.18. A written record must be kept of all questions asked and the answers given. It is advisable to ask the Investigator to review and sign a copy of this record to ensure its contents are not disputed later in the investigation.
- 2.19. External lawyers should be present during any and all interviews.

## Seals and overnight security

- 2.20. When Investigators leave the HES' premises for the day, they will affix a seal to the door of the room where they worked from and keep their materials (or possibly to the doors of certain rooms or computers/cabinets).
- 2.21. These seals must not be broken. Competition authorities have the power to impose very large fines if this occurs (regardless of whether the investigation itself is interfered with).
- 2.22. Where Investigators have affixed a seal, it is important to ensure that all relevant HES Personnel or contractors – including security and cleaning staff - are aware of the need to avoid touching or breaching it. A security guard should guard the seal overnight against any interference.

### De-briefing session

- 2.23. Once the Investigators have left, it is important for the team to gather together to have a de-briefing session. It is tempting to leave this until the following day, but it is much better to have at least an initial de-briefing session whilst the investigation is still fresh in people's minds. If the investigation continues for more than one day, a de-briefing session should be held at the end of each day.

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# Annex 1

## Response Team

Department	Name	Telephone number	Email address
HES International – Legal	Marielle Hoeijmans*	T: +31 10 7900 677 M: +31 6 5201 1859	<a href="mailto:mh@hesinternational.eu">mh@hesinternational.eu</a>
HES International – Legal	Chris Palthe	T: +31 10 3074 717 M: +31 6 1530 2093	<a href="mailto:c.palthe@hesinternational.eu">c.palthe@hesinternational.eu</a>
HES International – Legal	Franciska Andriessen	T: +31 10 3074 722 M: +31 6 2278 5633	<a href="mailto:fa@hesinternational.eu">fa@hesinternational.eu</a>
HES International – Legal	Amber Darthuisen	M: +31 6 2788 9118	<a href="mailto:a.darthuisen@hesinternational.eu">a.darthuisen@hesinternational.eu</a>

\*Response Team Leader

## Annex 2

### External Legal Counsel

Contact details external legal counsel

Law Firm	Name	Telephone number	Email address
Clifford Chance - Amsterdam	Frans Muller	T: +31 20711 9318 M: +31 652326335	frans.muller@cliffordchance.com
Clifford Chance - Amsterdam	Jurre Jurriëns	T: +31 20711 9536 M: +31 622515367	jurre.jurriens@cliffordchance.com