

6 May 2025

EU Court Confirms Low Evidential Threshold for “Own Initiative” Dawn Raids

The General Court’s ruling on 30 April 2025 in [Symrise v Commission](#) examines the legal basis for conducting a dawn raid against the background of the Commission’s investigation into an alleged cartel in the fragrance sector. The ruling reinforces the low evidential threshold for a dawn raid and may embolden the Commission in its ambition to rely less on its leniency programme to surface cartel activity.

What is the basis for a dawn raid on the Commission’s own initiative?

- Dawn raids commonly follow a leniency application providing clear evidence of the existence of a cartel and its participants. By contrast, the fragrances sector dawn raids were based on evidence gathered on the Commission’s own initiative, rather than from whistleblowers.
- The prerequisite to undertaking a dawn raid is that the Commission has reasonable grounds to suspect an infringement. Symrise claimed that the Commission’s decision authorising the inspection did not show reasonable grounds to suspect the applicant’s involvement and was based on unverified assumptions. It claimed that the Commission was conducting a “fishing expedition”.
- The judgment confirms that the factors which lead the Commission to suspect an infringement must be assessed as a whole, and can be mutually supportive. Applying that approach, the Commission: (1) rejected Symrise’s claim that the body of evidence gathered by the Commission was not “sufficiently serious”; (2) confirmed that evidence which Symrise claimed to come from a single source was corroborated by public information gathered by the Commission; and (3) dismissed Symrise’s concerns that the evidence was unverified.

What needs to be disclosed in the authorisation decision?

- Commission decisions authorising a dawn raid must specify the subject matter and purpose of the dawn raid – this defines the limits of the Commission’s search powers, enables the recipient to ascertain the reasons for the decision and enables the court to review its legality. Symrise claimed that the decision authorising the dawn raid was not sufficiently reasoned to allow it to understand the scope of the investigation.
- The Commission does not have to disclose all the information it has. It does, however, need to indicate clearly the presumed facts which it intends to investigate. This comprises what it is looking for and the matters to which the inspection relates.

- The essential elements that must be set out in the authorising decision include the relevant market thought to be affected, the nature of the suspected infringement and the supposed degree of involvement of the business being raided. The duration of the suspected infringement does not need to be specified.
- The Court held that the dawn raid authorisation decision met these requirements and provided Symrise with sufficient information to understand the scope of the investigation. Although Symrise’s suspected degree of involvement was not expressly stated, it could be inferred from the decision.
- The ruling also confirms that while the starting date for the dawn raid must be stated in the authorisation decision, there is no requirement to specify a longstop or end date. Provided that it ends within a reasonable time (which the present one did), the investigation does not create a disproportionate interference with the fundamental right to privacy of the business concerned.

Takeaways

- The Commission has been seeking to boost the proportion of antitrust investigations commenced on its own initiative rather than relying on leniency. This ruling confirms that the threshold for dawn raids can be met without a leniency application or intelligence from another competition agency. This may embolden the Commission in pursuing this approach. It is all the more important to design and implement effective compliance policies and manuals, as well as having a dedicated dawn raid team that could be mobilised quickly.
- While the *Symrise* appeal was unsuccessful in this case, it is important to carefully examine the information set out in a dawn raid decision, as it sets the parameters for the raid. Being able to show that a particular set of documents is outside the subject matter of the raid and therefore not relevant can be a powerful way to protect business materials from disclosure. At the outset of a raid, a close read of the authorisation decision is a critical first step. Businesses under investigation may want to raise any ambiguity with the Commission officials and seek to agree clear limits so that there is clarity around the question of relevance.

* * *

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Ross Ferguson
+44-20-7601-8646
rferguson@paulweiss.com

Annie Herdman
+44-20-7601-8602
aherdman@paulweiss.com

Nicole Kar
+44-20-7601-8657
nkar@paulweiss.com

Henrik Morch
+32-2-884-0802
hmorch@paulweiss.com

Rich Pepper
+44-20-7601-8660
rpepper@paulweiss.com

Senior Knowledge & Innovation Lawyer Catherine Hammon and Paralegal Martin Toskov contributed to this Client Alert.