

Commission jumped the rails in Czech train operator's dawn raid

The Commission can only conduct a dawn raid once it has sufficient grounds to suspect infringement. To prevent a fishing expedition, the dawn raid's subject matter and purpose cannot go beyond the essential features of the suspected infringement. However, the Commission is not required to turn a blind eye to documentary evidence lawfully obtained during a dawn raid which points to a separate infringement of EU competition law.

This is why the General Court recently annulled the Commission's dawn raid decision on railway operator eské dráhy, as it was based on a scope wider than predatory pricing and on more routes than only the Prague-Ostrava line, but left untouched the second dawn raid decision, as that was based on documents lawfully obtained during the first dawn raid which raised suspicions of a different infringement. Companies are advised to check precisely what information on the suspected infringement is available to the Commission prior to the dawn raid, to determine its legitimate scope.

In April 2016, the European Commission conducted a dawn raid at the premises of the main Czech railway operator, eské dráhy. In its dawn raid decision, the Commission specified that it intended to investigate a possible infringement of the prohibition against abuse of a dominant position – particularly regarding prohibited predatory pricing practices – on certain railway lines including, but not limited to, the Prague-Ostrava line. The Commission had based its decision on information obtained from various sources. The General Court [agreed](#) with eské dráhy that, when looking at this information, the Commission only had sufficient grounds to suspect a predatory pricing infringement on the Prague-Ostrava line. The General Court therefore annulled the Commission's decision for suspected infringements other than predatory pricing, on lines other than the Prague-Ostrava line.

In June 2016, the Commission carried out a second dawn raid at the premises of eské dráhy on suspicion of a possible violation of the cartel prohibition. This suspicion was based on information found in documentation the Commission had obtained during its first dawn raid. The General Court first [reiterated](#) earlier case law: even though the Commission cannot search for evidence relating to a potential breach of EU competition rules other than those related to the subject matter of the dawn raid decision, it is not obliged to disregard information genuinely found by accident. Furthermore, the General Court considered that it is possible for documentation to contain information about more than one competition law infringement. According to the General Court, the documentation found during the first dawn raid was relevant to the predatory pricing suspicions, because it contained information on eské dráhy's costs and strategy. As a result, the information was lawfully obtained and could therefore also be used as a basis for the second dawn raid.
