



# DAWN RAIDS AND REG. 1/2003 REVISION

A NEW DAWN FOR DAWN RAIDS: WHERE DO WE STAND AS REG. 1/2003 REVISION STEPS UP?

**KEY TAKEAWAYS**

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**Nathalie JALABERT-DOURY** | Partner, Mayer Brown, Paris/Brussels

**Steven VERSCHUUR** | Judge, General Court of the European Union, Luxembourg

# ATTENDEES

## AGENCIES & INSTITUTIONS

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DG COMP

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EFTA Surveillance Authority

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European Commission

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General Court of the European Union

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Mission of Japan to the EU

## ECONOMISTS & CONSULTANTS

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Biontino

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FTI Consulting

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Ntrust Corporate Finance

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Shearwater Global

## CORPORATIONS

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Apple

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IFRA

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Johnson&Johnson

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Trane Technologies

## LAW FIRMS

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A&O Shearman

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ADVANT Beiten

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AKD

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Alston & Bird

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Altius

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Avocats Rechtsanwälte

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Baker McKenzie

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BCLP

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CMS

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Cooley

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Covington & Burling

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Euclid Law

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Eversheds Sutherland

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Gibson Dunn & Crutcher

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Herbert Smith Freehills Kramer

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Hügel Rechtsanwälte

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Jones Day

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Latham & Watkins

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Mayer Brown

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Morrison&Foerster

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Msb Associates

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NOERR

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Norton Rose Fulbright

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Sheppard, Mullin, Richter & Hampton

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Skadden

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Steptoe

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White & Case

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Willkie Farr & Gallagher



## PANEL DISCUSSION

**Nathalie JALABERT-DOURY (Partner, Mayer Brown, Paris/Brussels) moderated this discussion.**

### **Nathalie Jalabert-Doury**

Partner, Mayer Brown, Paris/Brussels

Digital transformation: Article 20 of Reg.1/2003 bears the marks of time but the Commission already succeeds carrying out very sophisticated data searches with the support of the Courts, including where relevant on data located outside the EU (Nuctech). There however needs to be a limitation on what the Commission can consider accessible.

Preservation orders: Either there is a general obligation to retain (which is not my interpretation of Qualcomm) or we may indeed consider specific preservation orders but it is one or the other.

Remote inspection: a competition counsel nightmare if by remote inspections we mean searching on a live platform directly, but that's apparently and hopefully not the plan.

In-house and legal privilege: France adds to other existing regimes and they develop slowly precisely because of Akzo – Isn't it time to rethink Akzo?

### **Hubert Beuve-Méry** (speaking in a personal capacity)

Senior Expert, Cartels, DG COMP, Brussels

#### **Modernising EU Competition Investigations for the Digital Age**

Whilst they have remained effective, the Commission's investigative powers should be adjusted in the face of cloud computing and globalization.

Today's business records are kept almost exclusively in digital form. Digital business records are easy and quick to amend or delete. New preservation powers should protect the Commission's future ability to gather the relevant facts and context for its investigations.

According to the case law, inspections shall in principle start and continue at the undertakings' premises. Should this requirement be maintained when business records are generally kept in the cloud, i.e. not inside the inspected undertaking's premises anymore?

If the revised Reg.1/2003 would open the possibility to conduct inspections in places other than the undertaking's premises, procedural safeguards equivalent to those currently existing under Article 20 should be guaranteed.

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Jeanne Cordier and Louise Brival Hilbert drafted the following synthesis for Concurrences. The views expressed in this presentation are those of the speakers and do not necessarily represent those of the institutions to which they are affiliated.



## Craig EARNSHAW

Senior Managing Director, FTI Consulting, London

### **Rethinking Competition Investigations Within a Cloud-Based Economy**

Corporate data is no longer stored primarily on local servers or office devices. It is increasingly distributed across cloud environments, third-party platforms, and global networks.

The scope of investigations has become more complex, extending beyond emails and documents to mobile phones, collaboration tools, cloud services, instant messaging platforms, and AI-generated content.

Effective investigations now depend on strong data governance. Companies need clear visibility over where data is stored, who can access it, and how long it is retained.

Data preservation is increasingly challenging due to fragmented retention policies, disappearing messages, and the limited in-platform preservation capabilities of many modern applications. Approach needs to combine use of in-platform technical capabilities, traditional digital forensic methodologies, and strong information governance.

Preservation orders can be a useful tool, but they must be carefully targeted. Broad preservation requirements can create significant technical, operational, and cost burdens for large multinational companies due to the scale of the IT estate.

Remote inspections could improve efficiency and reduce disruption, but they cannot fully replace traditional investigative methods given technical limitations, access restrictions, and the complexity of modern data environments.

## Steven Verschuur *(speaking in a personal capacity)*

Judge, General Court of the European Union, Luxembourg

### **Judicial Safeguards and Legal Limits in Digital Competition Investigations**

Ongoing cases are testing whether the Commission can access data stored outside the EU when that data is relevant to activities affecting the European market.

Courts appear willing to support broad investigative powers in cross-border cases, provided there is a sufficient connection to the EU and no proven conflict with foreign laws.

Existing case law has already validated the Commission's ability to collect large datasets and conduct subsequent reviews off-site, reducing disruption for businesses while preserving investigative effectiveness.

Any move towards more intrusive digital investigations or unilateral remote access powers would likely require stronger judicial oversight and enhanced procedural safeguards from the outset.

Recent litigation highlights growing tensions between investigative needs and privacy rights, particularly when requests involve sensitive personal data or private communications.

The key legal test remains proportionality: effective enforcement is a legitimate public interest, but investigative measures must be necessary, targeted, and accompanied by safeguards to protect fundamental rights.

The time may have come to debate whether legal privilege rules for in-house counsel should be reconsidered, reflecting the expanded strategic role of corporate legal departments, while maintaining protections against abuse.