



CURRENT TRENDS IN SLOVAK AND
EUROPEAN COMPETITION LAW
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INSPECTIONS

In the practice of the European Commission

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European Commission - DG Competition

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DG COMP inspections

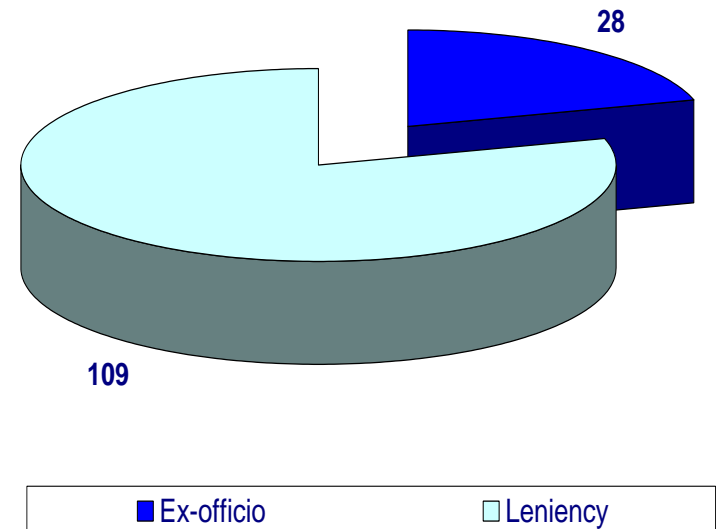
- Definition
- Inspections in Business and Non-Business Premises
- Challenging an Inspection
- Cooperation & Inspections

Inspections – Definitions

Aim : Fact finding : "sweeping"

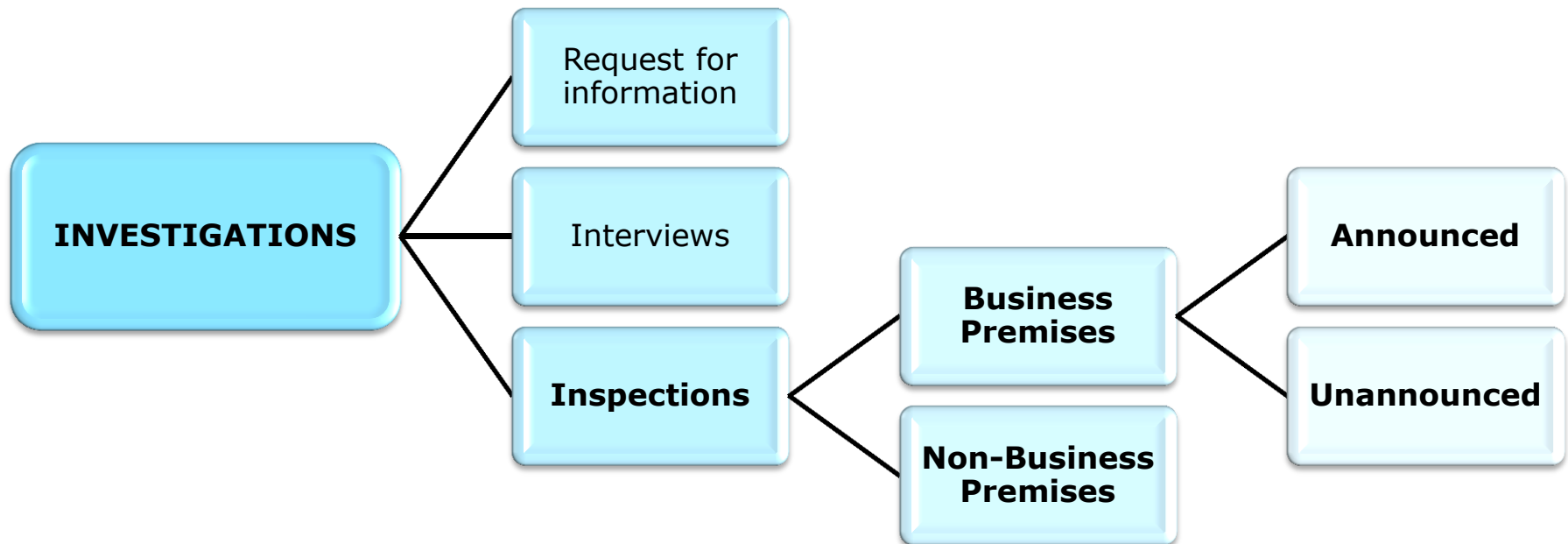
Origin:

- Leniency
- Ex officio
 - *whistle-blowers*
 - *complaints*
 - *market intelligence*
 - *European and international cooperation*



Legal framework: Article 18 to 21 Regulation 1/2003

Inspections – How ?



Conducting inspections - Preparation

- Intelligence gathering
 - OSINT: intelligence collected from publicly available sources
- Legal preparation: Inspection decision
 - Content:
 - Subject and Matter of inspection
 - Starting date
 - Penalties for non-compliance
 - Possibility of *ex post* court review
(*Deutsche Bahn 2013 - T-289/11*)

Conducting inspections – Business Premises (1)

- Prior Notification is required
- Delivery of certified copy
- Minutes of Notification

Conducting inspections – Business Premises (2)

Prior Notification is required

Delivery of certified copy

Minutes of Notification

- Issues :**
- ✘ To Whom ? → *2013: Société Eurauchan*
 - ✘ Where ?
 - ✘ When ?

Conducting Inspection - Powers of Inspectors

1) Enter into premises

- ✘ *What about right of privacy ?*
 - *Hoechst AG – 1989 (C-46/87)*
 - *Roquette Frères – 2002 (C-94/00)*

- ✘ *Compulsory legal assistance ?*



Conducting Inspection - Powers of Inspectors

1) Enter into premises

2) Examine books and records

✘ *Which documents ?*

→ *Nexans - 2012 (T-135/09)*

✘ *What about Legal Professional Privilege ?*

→ *AM & S - 1982 (C-155/79)*

✓ **Solution: the sealed envelope procedure**

→ *Akzo Nobel and Akcros - 2010 (C-550-07)*



Conducting Inspection - Powers of Inspectors

- 1) Enter into premises
- 2) Examine books and records
- 3) Make copies in any form



Conducting Inspection - Powers of Inspectors

- 1) Enter into premises
- 2) Examine books and records
- 3) Make copies in any form
- 4) **Seal premises**

x *What if breach of seal ?*

→ *Suez environment – 2011 (Comp-39.796)*

→ *E.ON Energy AG – 2012 (C-89/11)*

Conducting Inspection - Powers of Inspectors

- 1) Enter into premises
- 2) Examine books and records
- 3) Make copies in any form
- 4) Seal premises
- 5) Ask for explanations

✘ *Right to remain silent*
→ *Orkem - 1989 (C-374/87)*

✘ *Limits to questions ?*
→ *Amann and Söhne - 2010 (T-446/05)*



Conducting Inspection - Powers of Inspectors

- 1) Enter into premises
- 2) Examine books and records
- 3) Make copies in any form
- 4) Seal premises
- 5) Ask for explanations

=> No power of police

Conducting Inspection – Duties of undertakings

1) Submit to inspection

✘ *What if opposition ?*

→ *EPH – 2014 (T-272/12)*

✘ *What if undue delays ?*

→ *KWS – 2012 (T-357/06)*

2) Active cooperation

✘ *Any Risk ?*

→ *Automax s.r.o – 2014 (Antimonopoly office)*

FOCUS on: Forensic IT

Forensic IT = FIT = digital searches

- on network and stand alone devices

lap tops, hard disks, GSMs,
Blackberries, USB keys,
CD-ROMs, etc.

- Commission uses
Nuix software

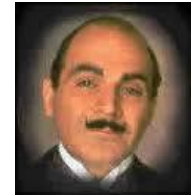


Forensic IT - workflow

IT Inspector



Nuix Operator



FIT Inspector



Nuix Reviewers

Forensic IT: developments

- Cloud storage, mobile devices, ...
- Development of (open source) software to support antitrust investigations
- Continued inspection procedures
- Exchange of know-how and experience between agencies



Conducting inspections – Non-Business Premises

Same conditions + Reasonable suspicion

Same rights and duties

- Issues :**
- ✘ To Whom ?
 - ✘ Where ?
 - ✘ Need to have prior judicial authorization ?

=> principle of proportionality & protection against arbitrary investigation

Challenging an inspection

Challenging the inspection decision

- Practical difficulty
- Within 2 months from the notification, before General Court
- If successful: no possibility to use the evidence collected

Challenging the final decision of the Commission

- Only about the events during the inspection, not the legality of the inspection as such

Cooperation & inspections

- Within the ECN
 - Assistance
 - Act on behalf of the Commission
- *Orange – 2014 (T-402/13)*

EUROPEAN LEVEL
with NCAs



- Outside the ECN with other competition authorities
 - Before inspections
 - During inspections
- OECD, ICN, etc

INTERNATIONAL LEVEL



Thank you !