

How firms learn to live with China antitrust raids

REUTERS, Hong Kong/Beijing

IN the early afternoon on August 4, 10 men in suits and casual business wear barged into a busy office at Mercedes-Benz's east China sales office, near Shanghai's Hongqiao international airport. "People were starting a new week and were just back from lunch, when the men arrived," said a person familiar with the scene. "They didn't have the slightest idea they were coming to rip the office apart and question people for data and information for the next 10 hours," he said, adding the men were antitrust investigators from China's National Development and Reform Commission (NDRC).

Such US and European-style "dawn raids" have become a powerful weapon for China's increasingly aggressive antitrust enforcement agencies, the NDRC and the State Administration for Industry and Commerce (SAIC), allowing them to seize evidence that may aid broader probes into antitrust violations or corruption.

Several major foreign companies have been raided in recent months - from car and drugs manufacturers to technology firms such as US software giant Microsoft Corp - as China steps up enforcement of a 2008 anti-monopoly law.

The raids have spawned a cottage industry in preparing multinational companies on some basic do's and don'ts in the event of a surprise visit.

Companies are giving staff practical coaching, including holding mock raids, and bringing in legal experts to train them on how to handle intense, on-the-spot questioning, negotiate cultural hurdles, and make contingency arrangements to source emergency legal advice.

"We're seeing an increase in the sophistication of the enforcement agencies, and personnel," said Marc Waha, a partner in the antitrust practice at law firm Norton Rose Fulbright in Hong Kong. "They've spent a lot of time with other agencies in Germany and Europe learning about conducting investigations and the value of onsite inspections. That's why we're seeing more active enforcement."

Companies operating in China have few rights with respect to dawn raids, and laws about what evidence can be seized - such as original documents and files rather than



REUTERS

A woman walks past a Mercedes-Benz car dealership in downtown Shanghai, China.

copies - are ambiguous.

Critically, legal privilege, which in the United States and Europe protects communication between a company and its legal adviser and is regularly used to withhold evidence, is generally not recognised in China.

"In China, there's very little guidance out there, it's much more Wild West because it's all so new," said Mark Jephcott, head of the Asia competition practice at Herbert Smith Freehills in Hong Kong.

The SAIC and NDRC did not respond to requests for comment.

Raids typically involve 10-30 antitrust agency officials arriving unannounced at a company's premises, usually early in the morning, and searching desk drawers, computers, files, lockers, safes and even vehicles, lawyers familiar with the process said.

Raids by uniformed SAIC officials are generally regarded as relatively professional, while the NDRC and local

Development and Reform Commissions can be more heavy-handed and often arrive in plain clothes, they said.

Either way, "it's very stressful and unpleasant," said Jephcott, who has been present at several raids, both as a former EU antitrust official and as a legal adviser.

Amid the initial chaos of a corporate raid, it's important to remember basic Chinese customs and courtesies, said Liyong Jiang, a partner at Beijing-based law firm Gaopeng & Partners, and a former official at the Ministry of Commerce, China's merger control agency.

Exchanging business cards and offering tea or coffee, and maybe ordering in lunch, too, are important gestures of cooperation, he said. "It doesn't matter what you offer, it's the gesture that's important. It's the Chinese way."

Having the regulators' business cards can also help a company's lawyers track down officials later for further communication - not always a simple process due to the

bureaucracy at China's state agencies. Sitting down to a take-away lunch can help senior managers and lawyers chat with officials and build a rapport, Jiang said. "They'll be less stringent - they are human, too."

That may not work for everyone, though.

Another of those with knowledge of the Mercedes-Benz raid said the investigators, backed up by two or three computer technicians, went through the office "cubicle by cubicle and room by room ... questioning senior managers ... and downloading information from computers."

"Those investigators didn't take any breaks. They didn't drink tea or eat snacks or dinner," the person said, adding the officials only left at 11 p.m. "It was a very serious affair."

Dawn raid training - through seminars, online courses and one-on-one coaching for frontline staff such as receptionists and security guards - aims to mitigate blunders, help companies contain the inspection and bring out officials' human side.

Growth strong in UK, slips in Japan, eurozone on track: OECD

AFP, Paris

LEADING economies are showing a steady growth trend overall, although Britain is doing particularly well and Japan and Germany are showing signs of losing pace, the OECD said on Monday.

The eurozone as a whole, and France, are on a stable growth path, the latest OECD data showed, contrasting with several recent indicators suggesting that France is lagging in the 18-member single-currency zone.

The Organisation for Economic Cooperation and Development, grouping 34 advanced democracies, said that its index of leading indicators for "the United States and Canada also continue to point to stable growth momentum."

This was also the case for Britain, a member of the European Union but not of the eurozone, "where growth momentum remains above-trend rates," the OECD's monthly index showed.

There were signs of a blip in Japanese growth, but this "probably reflects one-off factors," the OECD said.

The figures for Germany, the leading eurozone country, suggested that growth was losing its vigour, whereas in Italy the data continues to indicate a positive growth momentum."

The OECD index is regarded as a reliable pointer to turning points in economic activity relative to trends.

The outlook for France and for Italy will be welcome in those two countries, in France because recent data has been discouraging and in Italy because the economy was shown last week to have slipped unexpectedly back into recession.

The president of the European Central Bank, Mario Draghi, warned last week that recover in the eurozone would be "weak, fragile and uneven."

The OECD said that its index for big emerging economies, which are not among its members, showed that growth was running at about trend levels in China and Russia, below trend in Brazil, and was picking up pace in India. Russia's state statistics service said on Monday that the economy had expanded by 0.8 percent in the second quarter of 2014.

The OECD data comes against a background of growing uncertainty for the Russian economy which is increasingly threatened by western trade sanctions over the conflict between Russia and Ukraine.



AFP

AirAsia Group Chief Executive Officer Tony Fernandes addresses the media during a press conference in Kuala Lumpur yesterday. AirAsia launched its new 'Premium Flex' services providing benefits to travellers such as flexibility to change their flights up to two times with no fee, complimentary 20kg baggage allowance and Xpress boarding among others.

Russia's economy expands 0.8pc in second quarter

AFP, Moscow

RUSSIA'S economy grew by 0.8 percent from April to June compared with output during the same period last year, a preliminary estimate by Russia's statistics committee showed on Monday.

The figure is lower than a 1.2-percent growth forecast reported by Russia's economy minister last month, and slightly less than the 0.9-percent annualised pace recorded in the first quarter.

The Rosstat state statistics service did not provide a quarterly figure. The economy minister warned earlier that Russia could slip into recession, commonly defined as two successive quarters of economic contraction.

Russia's economy was already expected to slow from last year's disappointing growth figure of 1.3 percent, the lowest reading since the 2009 global financial crisis, before Western powers unleashed punishing sanctions last month in response to Moscow's defiant stance on Ukraine.

The United States has prohibited three leading Russian banks from raising anything but short-term funding on US markets.

The European Union also began imposing so-called sector sanctions, crimping access of Russian state-controlled banks to European capital markets.

Tata Motors net profit more than triples on strong sales

REUTERS, New Delhi

Tata Motors Ltd, India's biggest automaker by revenue, on Monday beat forecasts as first-quarter net profit more than tripled on strong sales of its luxury Jaguar and Land Rover vehicles that continued to offset a drop in domestic sales.

Tata Motors, part of the \$100 billion Tata conglomerate, said consolidated net profit for the April-June quarter rose to 53.98 billion rupees (\$882.31 million) compared with 17.68 billion rupees a year ago.

Analysts had expected an average profit of 37.1 billion rupees.

Consolidated revenue grew 38.2 percent to 646.83 billion rupees.

'Naked PCs' lay bare Microsoft's emerging markets problem

REUTERS

ON a trip to Beijing a decade ago, Bill Gates was asked by a senior government official how much money Microsoft Corp made in China. The official asked the interpreter to double check Gates' reply as he couldn't believe the figure was so low.

It's a problem that hasn't gone away. Indeed, Microsoft's current issues in China conceal a deeper problem for the US software giant - despite the popularity of its Windows operating system and Office suite, few people in emerging markets are willing to pay for legitimate copies.

This not only costs Microsoft in lost revenue, but is also holding back the spread of its newest Windows 8 version - analysts say even buyers of pirate software prefer older versions. According to StatCounter, a website that tracks what software is loaded on Internet-connected computers, more than 90 percent of PCs in China - now the world's biggest market - are running pre-8 versions of Windows.

Microsoft is trying to tackle this. This year it's offering Windows 8 at a discount to PC manufacturers who install its Bing search engine as the default. And it's giving away versions of Windows 8 for phones and some tablets.

But, as the industry shifts from desktop to mobile, the cloud and free or cheap software, China sums up both the old and new challenges Microsoft faces in making money in emerging markets - and, increasingly, in developed ones.

"The great danger for the company is that what has happened to them in emerging markets - basically no revenue from new PCs because of piracy - is not far off what's happening everywhere," said Ben Thompson, the Taiwan-based author of *stratichery.com*, a popular technology blog.

For sure, China is a major, and unique, headache for Microsoft. Many of the problems are tied to a broader push by the Chinese government to limit foreign firms' dominance and encourage local technology firms to become viable competitors.

After years of healthy relations with Beijing, Microsoft last month was suddenly targeted by anti-monopoly regulators who raided its China offices as part of a price-fixing investigation.

But the spats mask the fact that Microsoft has never really cracked how to get people in



REUTERS/FILE

An attendant checks a computer during the launch of Microsoft Windows 8 operating system in Hong Kong in 2012.

emerging markets to pay for its software. The company rarely breaks out revenues by geography, but it has provided clues about the size of the problem.

In 2011, then CEO Steve Ballmer reportedly told employees that, because of piracy, Microsoft earned less revenue in China than in the Netherlands - with 1 percent of its population - even though China bought as many computers as the United States.

According to the BSA anti-piracy lobby group that Microsoft co-founded, emerging markets account for 56 percent of all PCs in use, and 73 percent of software piracy. Of the \$77.8 billion revenue Microsoft generated in its 2013 financial year, China, Brazil and Russia each "exceeded" \$1 billion, according to a Microsoft presentation. For comparison, Apple Inc generated \$27 billion in Greater China, which includes Hong Kong and Taiwan, in its 2013 financial year.

For Microsoft, that's a lot of lost revenue from the heart of its business. "Windows and Office are still very much the core of Microsoft," says Sameer Singh, an India-based analyst.

The most recent breakdown by Microsoft of its results by product line - for the first quarter of fiscal 2014 - shows that 56 percent of its

global revenue and 78 percent of operating profit came from Windows and Office.

Microsoft doesn't just lose the revenue from pirate copies, it also loses access to customers who might buy other Microsoft products that work with or on top of Windows and Office.

Across most markets, Windows and Office account for more than half of revenues, says Andrew Pickup, Microsoft's Asia PR chief. This, analysts say, is because many of Microsoft's other products, such as Exchange and Windows servers, depend on customers already using Windows and Office.

"The Microsoft ecosystem is obviously pretty interconnected," says Jan Dawson of US-based Jackdaw Research. "So it makes sense that the proportion of revenue would be similar in emerging markets."

Part of the intractability of piracy in emerging markets is that each part of the chain poses a problem.

For PC makers working on wafer-thin margins the operating system is one of the costliest parts of the machine, while mom-and-pop shops which form the bulk of retailers in such markets can't afford to turn away price-sensitive customers who are comfortable buying pirate software.