



A GUIDE TO WHAT TO DO AFTER A DAWN RAID BY THE COMPETITION AUTHORITIES



The European Commission and national competition authorities have significantly increased their competition law enforcement activities in recent years.

They have the power to conduct “dawn raids” - surprise inspections at company premises - in which they seize evidence as a first step in what can be protracted investigations.

How a company responds to a dawn raid will have a significant impact on its defence before the Commission or national competition authorities.

The following guide outlines what steps a company should take following a dawn raid.

1. Note: a speedy analysis may be vital if a leniency application is to be considered.
2. If you have not already done so, assemble a Task Force comprising a responsible member of the company’s senior management team, and in-house counsel. We strongly recommend that you instruct an external Advisory Team of HFW lawyers. In particular, this will enable the company to benefit from the protection of legal professional privilege against disclosure of documentation created in relation to the Commission investigation.
3. Obtain copies of, and review, the authorisation and other documents (e.g. warrant) provided by the Commission at the start of the dawn raid.
4. Develop an external communication strategy. In particular, prepare a written statement to be released if approached by the press, which states that your company has been visited by the Commission, and that it is cooperating with the investigation.
5. Consider the merits of holding an initial meeting with the individuals within the company who have been approached by the Commission (the Individuals Concerned) to assess what the focus of the Commission’s investigation was, and what potential breaches of competition law may have occurred, if any. We would strongly recommend that the Advisory Team is present at this meeting. A detailed note of the meeting should be taken, but by external counsel only (i.e. members of the Advisory Team, for the purposes of preserving legal professional privilege).
6. Where it considers it possible to do so, and to facilitate cooperation, the company should reassure the Individuals Concerned that they have the full support of the company.

7. Review as a matter of priority any documents identified as key documents by the Individuals Concerned.
8. As regards documentation, the Commission may have (i) selected and copied certain documents (electronic or hard copy), and (ii) copied (electronically) entire document folders or databases, (without reviewing them) for review at a later date.
9. Consider the specified scope of the Commission's investigation and discuss how to prioritise the document review (which will be conducted by the Advisory Team) of all the documentation copied and taken by the Commission. Discussions with the Individuals Concerned may assist in the prioritisation of the document review process.
10. Prepare and review a report of the dawn raid. Put together a list of all of the questions posed by the officials during the course of the investigation, and review the answers given. Correct any inaccuracies in the information given. Follow up any incomplete or unanswered questions.
11. Consider (with the Advisory Team and your internal IT support team) how to put all electronic and hard copy documentation into a single location and format, which enables its efficient review by the Advisory Team.
12. The Task Force, the Advisory Team, and the internal IT support team should consider the merits of instructing specialist IT consultants to organise documentation effectively.
13. As regards the documentation that has been copied and taken away for review at a later date, the Commission will likely invite the company and its lawyers to supervise its review of the additional information. Consider the merits of looking at this documentation beforehand.
14. When reviewing documentation copied and/or taken by the Commission, consider whether it is relevant to the investigation, and whether it is legally privileged.
15. Prepare for potential follow-up unannounced inspections that may result from the review of the documents collected during the previous inspection, or as a first step of a follow-up investigation.
16. Consider whether to open communication channels with the Commission, identifying the key case handlers and decision makers within the Commission.
17. Conduct a broader competition law audit (carried out by the Advisory Team, in order to preserve legal professional privilege) to assess whether the company has any (other) potential competition law liability. Identify individuals within the company who are active in the "at risk" areas of the business (for example, pricing).
18. If, during the course of the internal review, potential breaches of competition law are uncovered that fall outside the scope of the Commission's investigation, discuss the potential implications with the Advisory Team, including whether it would be advisable to make a leniency application.
19. Implement a drafting policy in relation to the creation of sensitive and/or potentially privileged communications.

HFW has experience of providing advice to clients across a range of industry sectors on competition law compliance and what to do if/when things go wrong. We are able to provide competition compliance training, tailored to the specific requirements of clients, and to conduct mock dawn raids (at company premises).

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