

DAWN RAIDS BY THE CMA OR THE EUROPEAN COMMISSION: A FIRST AID KIT

To investigate potentially anti-competitive activities, officials from the Competition and Markets Authority (CMA) may carry out unannounced inspections at your offices in the UK. The European Commission has equivalent inspection powers in the territories of EU Member States, alongside relevant national competition authorities.

These unannounced visits are commonly referred to as ‘dawn raids’. There has been a resurgence of dawn raids in the UK and across Europe in recent years and this trend is set to continue. Companies are obliged to cooperate with the legitimate exercise of the authorities’ inspection powers.



This first aid kit sets out the key “dos” and “don’ts” of how you should handle a dawn raid by the CMA or the European Commission (the “Competition Authorities”).

DO

- ✓ Contact the company’s in-house legal department or external lawyers as soon as possible to notify them of the officials’ arrival. Be mindful that - where guidance is sought internally in the context of a dawn raid by the European Commission - in-house lawyers’ legal advice will not be protected by EU legal professional privilege (meaning that it may be disclosable to the European Commission at a later stage).
- ✓ Refer visitors claiming to be from the Competition Authority to the legal department. The Competition Authority’s officials should accept a short delay before starting to examine documents to allow the company to seek legal advice. You should not be regarded as obstructing the inspection if you call the company’s in-house or external lawyers for advice and assistance. Give them your location and telephone number (so they can reach you).
- ✓ Be aware that anything you say to the officials may be used against the company and, possibly, you.
- ✓ Identify which of the officials is the team leader. Ask to see, and check carefully, any notice or warrant providing the basis for the inspection. That authorisation document should state the location, purpose and scope of the investigation. Provide a copy of the document to the company’s lawyers.
- ✓ Find out as much as you can about what the officials are looking for and whether the Competition Authority is seeking to compel disclosure of information or seeking voluntary assistance with its enquiries.
- ✓ Check and copy the identity documents of the officials. Provide a copy of these to the company’s lawyers.
- ✓ Arrange appropriate IT support to allow the officials to conduct the inspection. This will be a priority for them.
- ✓ Secure documents or equipment in the manner requested by the officials. Any employees affected by IT measures carried out by the officials should be instructed not to interfere in any way. Consider whether automated destruction policies need to be paused and/or preservation notices sent to employees.
- ✓ Where requested, facilitate access to electronic and hardcopy materials relating to the subject matter of the inspection, irrespective of the medium on which they are stored (e.g. laptops, desktops, tablets, mobile phones, hard drives, USB keys, (third-party) cloud-based services etc.).

- ✓ Try to arrange for each official to be assisted/shadowed by a member of staff and, if possible, a lawyer.
- ✓ Keep as full a record as you can of what the officials ask for and inspect, any questions asked and answered, and of any other discussions.
- ✓ Answer truthfully, fully and promptly any requests for explanations of documents, e.g. their whereabouts, who prepared them (and that person's role) etc. Do not speculate if you do not know the answer.
- ✓ The officials may wish to interview certain individuals. If so, they should make clear whether this is on a compelled or voluntary basis. If the latter, you should raise this with the company's lawyers before agreeing to be interviewed. (If the CMA suspects you of having committed a criminal offence, they should conduct any interview under caution and you should take legal advice as to whether you should proceed with the interview.)
- ✓ Assert legal privilege in any documents which you consider to be privileged and which the Competition Authority is therefore not entitled to inspect. If there is a dispute about this, you should seek to agree with the officials that the relevant documents will be put to one side for later resolution by the company's lawyers.
- ✓ Maintain your own copies of all (electronic and hardcopy) documents copied by the officials, and of their document inventory. The officials may offer to provide an index and copies of the documents they have taken. In some circumstances, they may seek to seize or copy data for later review at their own premises - if so, you should raise this with the company's lawyers to ascertain whether the officials are permitted to do so.
- ✓ Seek immediate guidance from the company's lawyers if, at any stage, you are uncertain as to how to proceed.
- ✓ Remain calm and courteous throughout any visit.

DON'T

- ✗ Refuse admission or keep the officials waiting unduly.
- ✗ Tell any person outside the company (except the company's external lawyers) what is happening.
- ✗ Interfere in any way with the IT measures carried out or required by the Competition Authority.
- ✗ Delay in seeking to contact any executive (however senior or wherever they may be) the officials ask to see.
- ✗ Destroy, delete, amend or tamper with any materials, or appear unhelpful or obstruct the officials.
- ✗ Sign anything at the officials' request without first seeking guidance from the company's lawyers.

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