

Dawn raids by the Competition Commission:



A First Aid Kit

Officials from the Competition Commission may visit your offices unexpectedly to investigate potentially anti-competitive activities. These are commonly referred to as 'dawn raids'. The law entitles the Competition Commission to do this and obliges all companies to co-operate. This first aid kit sets out some of the "dos" and "don'ts" of how you should handle a dawn raid.

DO

- ✓ Seek legal advice internally or externally as soon as possible.
- ✓ Refer visitors claiming to be from the Competition Commission to your legal department. The officials should accept a short delay before starting to examine documents in order to allow the company to seek legal advice. You should not be regarded as obstructing the officials if you call the company's in-house or external lawyers for advice and assistance. Give your lawyers clear instructions of where you are and your telephone contact details so that they can reach you.
- ✓ Be aware that anything you say to the Competition Commission 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 providing the basis for the investigation. Such notice should state the purpose and scope of the investigation. Find out as precisely as you can what it is the officials are looking for and whether the Competition Commission is seeking to compel disclosure of information or seeking voluntary assistance with their enquiries.
- ✓ Check and copy the identity documents of the Competition Commission officials.
- ✓ Arrange for the provision of appropriate IT support to allow the officials to conduct their investigation.
- ✓ Secure documents or equipment in the manner requested by the Competition Commission officials. Any employees affected by any IT measures carried out by the officials should be instructed not to interfere in any way.
- ✓ Provide access to electronic or paper copies of any books and records related to the business, irrespective of the medium on which they are stored, including laptops, desktops, tablets, mobile phones, CD-ROM, DVD, USB-key etc.
- ✓ Try to arrange for each official to be assisted/shadowed by a member of staff and, if possible, also a lawyer.
- ✓ Keep as full a record as you can of what the officials ask for and inspect, of questions asked and answered, and of any other discussions.

- ✓ Ascertain before attending any interview with the officials whether this is on a compulsory or voluntary basis. In either case, you are entitled to and should seek legal advice before being interviewed.
- ✓ Ensure any answers you give to any requests during the inspection for explanations of documents, the whereabouts of documents, people's roles etc. are truthful and full.
- ✓ Assert legal privilege in any documents which you consider to be privileged and which the Competition Commission is therefore not entitled to inspect. If there is a dispute about this, you should seek to agree with the officials to have the relevant documents put to one side for later resolution by advising lawyers.
- ✓ Ensure that you have your own copy of all documents copied by the officials (including CD-ROMs) and of their document inventory. The officials may offer to provide a CD-ROM or memory stick containing an index and copies of the electronic documents they have taken.
- ✓ Seek immediate legal advice if at any stage you are uncertain as to your rights and responsibilities.
- ✓ 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 by the Competition Commission.
- ✗ Delay in seeking to contact any executive (however senior or wherever they may be) the officials ask to see.
- ✗ Destroy or delete any records, paper or electronic.
- ✗ Appear unhelpful or obstruct the investigation.
- ✗ Sign anything at the officials' request without legal advice.
- ✗ Speculate when answering any questions from the Competition Commission.

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