

Dawn-Raids by Ireland’s Competition/Antitrust Agency: A Guide for Executives

Investigators arrive at your office out of the blue. Multiple employees’ email accounts are shut down, client meetings have to be cancelled at short notice and normal work is disrupted. Parts of your business effectively cease to operate. This can last for a number of days.

01



It could happen to you

- You get a call one morning on your way to work. Your receptionist says that a number of people from Ireland’s Competition and Consumer Protection Commission (CCPC) and the Gardaí (the Irish police) are in reception with a District Court warrant.
- When you arrive at work you find an investigator in your office searching through your files, downloading your e-mails, asking for your mobile phone, reading your diary and asking you questions about client meetings from last year.
- The CCPC regularly dawn-raids businesses, professional bodies, trade associations and homes.
- Dawn-raids occur when you least expect it. If you are not adequately prepared and every member of your business is not properly briefed then it could have serious negative legal financial and reputational consequences.

02



Why, where and when?

- **Why** - The CCPC conducts dawn-raids to gather evidence about possible breaches of Irish and/or EU competition law or unfair consumer practices. Your business may be dawn-raided because it is suspected that you have such evidence, whether related to breaches possibly committed by yourself or by others. A dawn-raid could be at the CCPC’s own initiative or following a third party complaint or tip-off.
- **Where** - The CCPC may search any place where activity in connection with the business is conducted. Most dawn-raids are on offices but dawn-raids can also be conducted simultaneously at a wide range of other locations including directors’/ employees’ homes and vehicles.
- **When** - The CCPC carries out dawn-raids at any time during working hours, which may or may not be first thing in the morning. Visits can last a whole day and some last for a number of days. Your entire day’s business is likely to be disrupted as officers from the CCPC inspect your offices thoroughly and interview you and your staff.

03



Who are the CCPC?

- The CCPC is the independent agency charged with investigating and enforcing competition and consumer protection law Ireland.
- Dawn-raids are conducted by authorised officers of the CCPC (including the Gardaí). The CCPC has powers to investigate breaches of the Competition Act 2002 (as amended) (and breaches of the equivalent provisions of EU competition law) that can expose:
 - » businesses to fines of up to the greater of €5 million or 10% of world-wide turnover; and
 - » senior officers of those businesses to fines of up to €5 million and/or imprisonment for up to 10 years.
- The CCPC can assist the European Commission on joint dawn-raids and may also carry out dawn-raids in cooperation with competition regulators of other EU Member States.


04





What to expect

- The CCPC arrives without warning and may enter premises (by reasonable force where necessary if a breach of competition law is being investigated). They will present a copy of the District Court warrant which authorises them to conduct the dawn-raid.
- Typically, the investigators divide into groups. One group searches offices, reads hard-copy files and interviews relevant executives/employees. Another group examines computers and copies digital files.
- The CCPC can seize original documents, laptops, work phones and personal phones among other things.
- The CCPC may seal areas of the office and return to continue the investigation the next day. Once finished, you will be given an inventory of what was copied and/or seized and you should take a copy of this.

START



9AM

What should you do?

Your receptionist should immediately contact the member of management designated as the dawn-raids co-ordinator. They should then ask the CCPC to wait for the co-ordinator to arrive. The CCPC are not obliged to wait and often will not. Co-operate with the CCPC at all times. The investigation may seem unreasonable but the CCPC has wide powers of search, seizure and interrogation and it is an offence to obstruct or impede the investigation.

The co-ordinator should voice/video call your specialist external competition lawyers and they will travel immediately to your offices and will be able to give you privileged legal advice.

Check that key details of the CCPC's District Court warrant are correct (e.g. correct company name, office address) and send your external lawyers a photo/scan. Ask what is the purpose of their visit and establish if other company premises and/or employees homes are also being dawn-raided at the same time.

Ask for each officer's I.D. and warrant of appointment, take a copy and send your external lawyers photos/scans of these documents. Give the officers visitor badges clearly identifying them as regulatory investigators.

The co-ordinator should think of only contacting a small group of key managers, in-house I.T. experts and advisors at the outset. Too large a circulation list can delay and undermine an effective initial response.

When appropriate, alert all relevant management/head office personnel and your PR team. Brief appropriate staff, emphasising that the dawn-raid is highly confidential. Ensure no information is leaked to the press or on social media. Typically, businesses do not issue a press release or comment publicly unless a dawn-raid becomes public knowledge and it is appropriate to do so. Do not disclose the dawn-raid to any third party.

11AM

Have members of your management team accompany each investigator at all times and keep detailed, contemporaneous notes of the dawn-raid. Take a second copy of each document that the CCPC seizes/copies. Read these as they are important for anyone who may be questioned. Have a recording device available for any interviews.

The CCPC are permitted to seize relevant original documents and/or make copies. If the CCPC tries to seize/copy documents that you think are legally privileged, formally request that these documents be kept separate from other documents and that they not be reviewed until a Court determination has been made permitting the CCPC to review them. If the CCPC tries to seize/copy documents that you think contain personal information that is not relevant to the investigation, request formally that the CCPC demonstrate their compliance with their own 2018 Privacy Protocol.

2PM

The CCPC are only permitted to seize/copy documents relating to the business named in the search warrant. If they try to take other files without showing that those files are relevant to their investigation, formally object and ask that the files be sealed and kept separate until your lawyers have been able to verify the relevance of the contents.

The CCPC will search computer files, email accounts and hard-drives and may take digital copies. Have your in-house I.T. experts available to assist in this process. Ensure that a copy is made of all digital records that are taken by the CCPC.

If the CCPC want to question you, seek legal advice before answering (particularly if you are cautioned). Only answer if the CCPC/Gardaí states that you are being compelled to do so by law (and state that you are only answering under compulsion). Only answer if you are certain. Answers must be truthful and accurate. If you do not know the answer then say so and never speculate. It is an offence to obstruct or impede either the CCPC or the Gardaí in the exercise of their powers.

After the dawn-raid, do a full de-brief with your employees and advisors.

END

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