

In Brief

Dealing with Dawn-Raids by the Irish Competition Authority

The Irish Competition Authority regularly dawn-raids businesses, professional bodies, trade associations and homes. Everyone in business in Ireland needs to be briefed on how to deal with such unannounced visits. A&L Goodbody's EU and Competition Law Group briefs you on what you need to know.

It Could Happen to You

You are sitting at your desk. The phone rings. Your receptionist says that a number of people from the Authority (including the Gardaí) are in reception armed with a District Court warrant. Before you hang up, one of the investigators is in your office determined to search through your files, read your diary, check your computer, scan your e-mails and ask you various questions about what you did two years ago. Businesses, professional bodies and trade associations throughout Ireland would testify that these dawn-raids are now a genuine risk.

Who?

The Authority is the independent agency charged with regulating anti-competitive business practices in Ireland. They have wide powers of investigation. Breaches of the Competition Act 2002 (as amended) can expose:

- businesses to fines of up to the greater of €4m or 10% of world-wide turnover; and
- senior officers of those businesses to fines of up to €4m and/or imprisonment for up to five years.

These penalties are imposed by the courts while the breaches are investigated by the Authority. Dawn-raids are conducted by authorised officers of the Authority (including the Gardaí). The Authority will often assist the European Commission on joint raids in Ireland when the Commission is investigating breaches of EU competition law and can carry out dawn-raids to assist competition authorities of other Member States regarding breaches of EU competition law.

Why?

The Authority conducts dawn-raids to gather information or evidence about alleged breaches of Irish and/or EU competition law. Such breaches include anti-competitive arrangements and abuses of dominance. You may be dawn-raided because it is suspected that you have evidence of a breach of Irish and/or EU competition law whether committed by yourself or by others. Dawn-raids are usually the result of own-initiative investigations by the Authority or following complaints to the Authority by third parties.

Where?

The Authority may search any premises used in connection with a business. Most dawn-raids are on offices but dawn-raids can also be conducted on the homes and vehicles of directors or employees, if the Authority believes that relevant information or evidence is kept at those locations.

When?

The Authority may visit at any time during normal working hours, which may or may not be first thing in the morning. Visits can last an entire business day or longer. Your day's business may be entirely disrupted as the Authority's officials search your offices and ask questions of you and your staff.

What does the Authority do During a Dawn-Raid?

The Authority arrives unannounced and may enter premises by force if necessary. They present a copy of the District Court warrant which authorises the Authority to conduct the dawn-raid. Typically, the investigators divide into groups. One group reads through files, diaries and other documents. Another group photocopies documents. A third group examines computers and makes copies of computer files. The Authority may also seize original documents to take them away and may seize computers and laptops, as well as copying entire hard drives. After reviewing the information on-site, the Authority will probably conduct interviews with some executives and other employees in the building about matters under investigation. The Authority will give you an inventory of the documents which have been copied and the original documents it has seized. You do not need to sign the inventory but you should take a copy of it.

What Should You Do?

- One person in your organisation should take charge of the situation. This person should act as co-ordinator of the investigation. Have a member of the management briefed in advance on how to deal with such raids.
- Check the warrant presented by the Authority. Does it correctly name the business? Does it relate to the correct address? Ask for proof of identity and take a copy of each. Ask the Authority to wait for the co-ordinator to arrive (though it is not obliged to do so). Establish if the Authority is simultaneously raiding premises of subsidiaries of the business and/or homes of employees.
- Call your specialist competition lawyers (contact details below) who will travel immediately to your offices and, as lawyers, will be able to give you privileged legal advice. Alert all relevant management personnel, head office and your PR team or consultants. Stress that matters are confidential.
- Identify the Authority's team leader and ask them what is the purpose of their visit.
- Have a member of your management team accompany each Authority official at all times and note everything they say and do.
- The Authority may photocopy all relevant documents or choose to seize the originals. The Authority should not read or copy correspondence with lawyers as it is 'privileged'. If they try to read or copy such documents, formally object and then ask that the documents be put to one side for your lawyers to discuss with the Authority after the dawn-raid. If not, ask that all such documents be sealed for later determination by the Authority with your team of lawyers.
- Make a second copy of each document which is being copied by the Authority. Make a copy of each original document which the Authority proposes to take with them. Read the copies which are being made by the Authority and the originals which are taken. This is particularly important for anyone who may be asked questions by the Authority at the end of the dawn-raid.
- The Authority may decide to copy computer files. They may only copy files relating to the business named in the search warrant. If they try to copy other files (or seize a computer or laptop), object formally and then ask that the copy (or computer or laptop) be put to one side for your lawyers to discuss with the Authority after the dawn-raid, as to whether it may be copied or taken. If not, ask that it be sealed until your lawyers have been able to verify the relevance of the contents with the Authority. Try to ensure that a copy is made of whatever computer records are copied and/or taken by the Authority.
- If the Authority questions you then only answer if the Authority compels you to do so. Before answering, state that you are only answering under compulsion. Answers must be truthful and accurate because it is an offence to mislead the Authority. However, if you do not know the answer to the question then say so – you are not expected to know everything. Never speculate what you think the answer is – always be certain and only answer what you know (and what you are obliged to answer). Seek legal advice before answering questions generally but particularly questions which could incriminate you. If you are cautioned (e.g. by the Gardaí or the Authority) you should normally invoke your right to silence.
- Keep detailed contemporaneous notes on the dawn-raid. Have a tape recorder available for any interview.
- Do not issue a press release or comment publicly on the dawn-raid unless it becomes public knowledge. Advise your staff that confidentiality is imperative in this situation and do not disclose the dawn-raid to any third party.
- Co-operate with the Authority and do not obstruct or impede the investigation. While the investigation may seem unreasonable, the Authority has wide legislative powers of search and investigation.
- After the dawn-raid, gather your employees for a full de-brief and identify any steps that may be required to correct any errors during the dawn-raid.

A&L Goodbody's EU and Competition Law Group is at the forefront of competition law developments in Ireland. The Group represents national and multi-national corporations, trade associations, professional bodies and government interests.

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