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DAWN RAIDS: GUIDELINES FOR BUSINESSES IN LIGHT OF UKRAINE'S NEW COMPETITION LAW

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Background



The Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Improvement of the Activities of the Antimonopoly Committee of Ukraine” (the “**Law**”) came into force on 1 January 2024. In accordance with the Law, the Antimonopoly Committee of Ukraine (“**AMC**”) acquired new powers to conduct dawn raids.

The AMC, by Order No. 21-rp dated 7 December 2023, approved a new “procedure for conducting inspections of business entities, associations, authorities, local self-governments, administrative economic management and control bodies by the Antimonopoly Committee of Ukraine and its territorial offices” (the “**Procedure**”). The Procedure came into force on 6 February 2024.

Purpose and Grounds



The purpose:

Checking business entities for compliance with the requirements of applicable laws on the protection of economic competition (“**LPEC**”).

The grounds:

The consideration of applications on the violation of rights resulting from anti-competitive behaviour

The direct detection of signs of violations by the AMC

The need to verify information received in connection with the exercise of state oversight over LPEC compliance



The filing of applications by the authorities concerning violations of LPEC

The consideration of cases concerning violations of LPEC



To conduct a dawn raid, the AMC now needs to obtain an authorisation from the commercial court.

Powers of the Competition Authority



Subject to a court authorisation, the AMC has the right to access premises, electronic systems, or other places storing information related to any potential violations of LPEC. During the inspection process, the AMC has the authority to seize items, documents, or other carriers of information, including originals; and to seal premises, electronic systems, or other information storage locations to prevent access to their contents.

DAWN RAIDS: PRACTICAL ADVICE FOR BUSINESSES

Timing

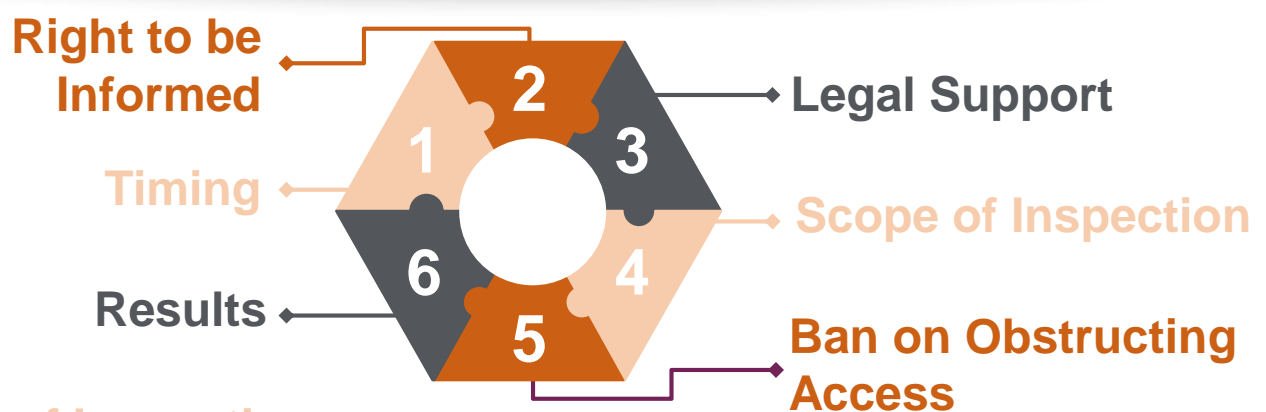
The AMC can conduct inspections during business hours, typically from 0800 to 1800 (carrying out inspections from 2100 to 0700, during public holidays, non-working days and weekends is not permitted) and not for more than 30 calendar days, unless a justified need exists for a longer period.

Right to be Informed

Although a dawn raid may be conducted without warning, before the start of the inspection, AMC representatives are obliged to explain to the persons present during the inspection their rights and duties, to present official ID, the decision of the respective commercial court, and a duly certified copy of the given inspection order.

Legal Support

At the request of a legal entity, an attorney or legal expert with whom such an entity has concluded a contract on the provision of legal assistance will be involved in the inspection. An attorney (legal expert) will present themselves to be present at a dawn raid within three hours of being notified, otherwise the inspection will be started without them.



Scope of Inspection

The actual location of premises, information storage places, electronic communication systems, other possessions that are subject to inspection and/or procedural actions, and the types of procedural actions for which permission has been granted, are specified in the decision of the respective commercial court, and must be provided to the inspected business entity before the start of the dawn raid. In case of any inconsistencies between the actions of the inspectors and the permitted actions specified in the court decision, the affected business entity can express and later submit its objections.

Ban on Obstructing Access

Obstructing an inspection may result in a fine of up to one per cent of the company's revenue from the sale of goods/works/services for the last reporting year.




Results

Based on the results of the inspection, within 10 working days from the day of its completion, a report on the inspection must be drawn up, and, no later than the next working day after this deadline, sent to the affected business entity.






In case of a disagreement with the conclusions of the dawn raid or the facts and data stated in the report, the business entity has the right to submit its objections and explanations within 10 working days from the date of receipt of the report.

DAWN RAIDS: PRACTICAL ADVICE FOR BUSINESSES (cont.)

Preparation

-  Develop internal guidelines. It is extremely important to have a procedure in place for dealing with inspections.
-  Provide training for employees. Everyone in the company should know their role and the inspection rules. It is also important to form a response team for dawn raids.
-  Establish agreements with legal experts for assistance if needed. If your company doesn't have a legal department, it is necessary to ensure that an external lawyer is present at the inspection site.

During the Dawn Raid

-  Do not obstruct a dawn raid: in case of obstruction, the AMC can involve the police, other law enforcement and customs authorities, and the company can be held liable. Do not destroy documents or other evidence.
-  When inspectors arrive, the receptionist should contact the senior manager of the company or other official authorised to coordinate the dawn raid.
-  The authorised official should:
 - ask the inspectors for their identity documents and inspection orders
 - call a legal expert
 - assign employees to monitor the actions of each inspector
-  Be cooperative: officials and employees of the inspected entity are obliged to provide explanations on any issues related to the inspection.
-  Keep a record of what is searched, what is seized, who was involved in the inspection, what questions were asked and what documents were viewed. Make copies of all materials seized.

After the Dawn Raid

- Save all documents that have been created as a result of the dawn raid.
- Hold a risk assessment meeting with the officials and employees involved in the inspection.
- Evaluate the interviews and review all materials copies or seized by inspectors.
- Discuss the results of the dawn raid with a lawyer.
- Analyse the inspection report. If you do not agree with the report, submit your objections to the AMC within the established deadline.



Those needing more detailed guidelines on dawn raids, or seeking to receive special training in this respect, please contact



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