

The Spanish National Competition Authority issues guidance on dawn raids in Spain.

On 7 June 2016, the National Markets and Competition Commission (NMCC) has published a notice (**Notice**) providing information on the procedure followed by NMCC when carrying out dawn raids. The NMCC's note contemplates the main milestones of an inspection (*i.e.*, legal authorization and entry into the premises of the company, powers of inspectors, rights and obligations of companies and the treatment of the information seized). In particular:

- Companies are obliged to submit to dawn raids. In the event of obstruction or refusal to the inspection, fines may amount to up to 1% of the company's total turnover in the previous financial year, and the obstruction may be regarded as an aggravating circumstance in the antitrust proceedings. In that regard, according to the Spanish Competition Act (SCA) and existing case law,¹ the following may be regarded as obstruction: (i) unjustified delay in allowing entry into company premises; (ii) incomplete supply, during the inspection, of books or other professional documents required; (iii) provision of inaccurate, incomplete or deceitful responses when answering the questions posed by the inspectors; (iv) breaking the seals placed by inspectors.
- The NMCC inspectors must hand the investigation order at the start of the dawn raid, which shall contain (i) the names of each of the NMCC inspectors carrying out the dawn raid; (ii) the name of the company subject to inspection; (iii) the object, purpose, scope and date of the dawn raid; (iv) fines foreseen in the SCA in the event of obstruction; and (v) a reference to the facts that the investigation seeks to verify.²
- At the end of the dawn raid, the computer search terms used must be disclosed to the company.
- In the event of opposition, or risk of opposition to the dawn raid by the inspected company, the NMCC will request and produce the court order. Once the court order is notified, refusing to sign the acknowledgement of receipt and let the inspectors in could be regarded as contempt of court and lead to criminal charges.
- In line with EC Regulation 1/2003, NMCC inspectors may access any premises, land and means of transport, examine books and any other professional documentation, regardless of where they are stored, make copies in any format of such books or documents, seal premises (with consent of the inspected or with a court order), books, computers, tablets, smartphones, or ask for on-the-spot explanations. In order to avoid the inspectors gathering documents related to the privacy of the persons inspected or privileged attorney-client communications, the company and its staff shall collaborate with the inspectors identifying those restricted documents.³

The Notice may be found at:

https://www.cnmc.es/Portals/0/Ficheros/Competencia/Inspecciones/201606_Nota%20informativa%20inspecciones%20competencia.pdf

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The information contained in this bulletin must not be applied to particular cases without prior legal advice.

¹ See, for instance, Decisions of the NMC of 5 June 2008 and 24 July 2008 (cases SNC/001/08, CASER and SNC/0002/08, CASER-2) or Decision of 1 March 2011 (case SNC/0010/11, GRAFOPLAS).

² See, for instance, judgment of the Supreme Court of 26 January 2015, case SNC/0014/11, *Transmediterránea*.

The Supreme Court (SC) annulled two NMCC decisions fining Transmediterránea (a Spanish shipping company that operates passenger and freight ferries). The SC considered in both cases that the NMCC breached the fundamental right to inviolability of the home (Article 18 of the Spanish Constitution) during the dawn raids that were carried out as part of the proceedings. According to the SC, the decisions ordering the inspections were too generic and lacked the necessary minimum information on the purpose and scope of the investigation.

³ Judgment of the Supreme Court of 9 July 2012.