



A look at dawn raids in the motor insurance sector

Competition, EU & Regulatory news bulletin

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Introduction

A number of companies active in the motor insurance market in Ireland were subject to dawn raids by the European Commission on 4 July 2017. The Commission officials were accompanied by their counterparts from the Competition and Consumer Protection Commission (the “CCPC”). The Commission has not yet disclosed how many companies are involved or the names of those companies.

A Commission statement indicated that it has concerns that the companies involved may have engaged in anti-competitive practices in breach of EU anti-trust rules that prohibit cartels and restrictive business practices and/or abuse of a dominant market position.

It has been reported in the Irish press that the offices of Insurance Ireland were visited by the officials as part of its investigation. The press reports also indicate that an issue of interest to the officials is a database used by insurance providers in Ireland. The database, known as “Insurance Link”, provides the claims history of individuals who are seeking to take out a new policy with a new insurer.

The motor insurance sector in Ireland has been the subject of a number of investigations by the CCPC recently. In 2013, the CCPC opened an investigation into potential anti-competitive information sharing via a software product. Insurance companies participating in the system provided their future pricing information and therefore subscribers could access their competitors’ future pricing information. This investigation was closed in August 2016 after the companies involved entered into Agreements and Undertakings with the CCPC.

Shortly after this, in September 2016, the CCPC opened another investigation regarding industry participants signaling future increases in motor insurance premiums.

Press reports have noted increases in premiums of approximately 60% over the last three years. However, some industry participants have argued that these increases are as a result of increased insurance compensation awards given by the courts.

Therefore, the motor insurance market has been on the CCPC’s radar for some years now.

Price fixing

Irish and EU competition law prohibits price-fixing. In order for insurance companies to ensure they are not breaching their anti-trust obligations, in particular in relation to the prohibition of cartels, they should:

1. not agree with other industry participants what prices they will charge
2. not disclose their price intentions or strategies with each other
3. carefully review whether their services might facilitate price-fixing

What to do in the event of a dawn raid

Both the CCPC and the Commission have extensive powers of search and seizure (including powers to search the homes of employees) and may be accompanied by members of the Gardaí.

The table below sets out what to do (and what not to do) in the event of a dawn raid. It is important that staff remain cooperative and calm.

What to expect	What to do
Arrival of Commission and/or CCPC officials	Notify your internal dawn raid team and/or your external lawyers without delay
Display of Irish court warrant/EU authorisation and ID	Photocopy the warrant/authorisation and ID so that your competition lawyers can advise you whether the warrant is valid and what the scope of the search warrant permits

What to expect

Commencement of the investigation

The Commission and/or the CCPC officials may inspect, copy or seize records which concern the investigation

The Commission and/or the CCPC officials may inquire into the roles and location of staff

Commission and/or the CCPC officials may interview and question individuals

Commission and/or CCPC officials may "seal" certain parts of your offices for inspection subsequently

Commission and/or CCPC officials may retain seized records

What to do

Both the Commission and the CCPC can begin their investigation before your lawyers arrive. However, you should request that they do not commence the investigation until your lawyers arrive

Keep a record of all activities that the Commission and/or the CCPC officials undertake, including what documents are inspected, copied and/or seized and what key word searches are used for searches on computers. A member of staff should be assigned to each official present to shadow their actions

Do not attempt to hide or destroy any information

Concerns should be raised if there is any doubt as to whether certain documents are within the scope of the investigation and/or warrant, or are legally privileged. Disputed records are "sealed" pending resolution of their status

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Answers should be factual, also it is prudent for respondents to make it clear they are answering questions "under compulsion" or law

Answers should be factual, also it is prudent for respondents to make it clear they are answering questions "under compulsion" or law.

Keep a record of all questions and responses.

Remember all responses can be used as evidence

Staff must be instructed not to enter a "sealed" area

Request a list or copies of retained seized records

Practical implications of dawn raids

The fact that the Commission and/or the CCPC carry out a dawn raid does **not** mean that the companies in question are guilty of any anti-competitive behaviour.

There is no timeframe within which the Commission and/or the CCPC must complete its investigation.

Accordingly, motor insurance companies are strongly advised to take stock of these developments in connection with their own anti-trust compliance and readiness for dawn raids. They should ensure that staff, especially IT staff, have been trained on dawn raid best practice. Also, for those companies that were the subject of the dawn raid on 4 July, they should carry out a thorough legal review of the process and documents provided to the authorities, to assess whether they give rise to compliance concerns.

How can we help

At Eversheds Sutherland we have experience in all matters concerning competition law compliance and dawn raids and have advised clients who were subject to dawn raids. We also provide dawn raid training, including mock dawn raids which are an excellent way to test your company's dawn raid procedures before the cavalry arrive!



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