



**Republic of Serbia**  
**Commission for Protection of Competition**

**Rights and Obligations of the Parties during Dawn Raids<sup>1</sup>**

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<sup>1</sup> This notice is for information only and is aimed at providing basic information to the parties to the proceedings on the competences of the Commission for Protection of Competition to carry out dawn raids, their rights and obligations during the course of a dawn raid and potential penalties in the case of interference with the course of inspections. This document is without prejudice to any formal interpretation of the provisions of the Law on Protection of Competition, and does not constitute a legal act. The parties to the proceedings are instructed to address their legal counselors or procurators with respect to their rights and obligations in the proceedings conducted before the Commission.

The Commission for Protection of Competition is an independent and autonomous organization that performs public competencies in accordance with the Law on Protection of Competition (Official Gazette of the RS 51/09 and 95/13). The Commission, inter alia, conducts proceedings for investigation of competition infringements, such as restrictive agreements and abuses of dominance, establishes the infringements of competition and sets out the measures for protection of competition (in the form of an obligation to pay a monetary sum) and other measures in accordance with the Law.

Pursuant to the provisions of the Law, the Commission has the competence to carry out dawn raids in investigation procedures pertaining to the competition infringements.

Dawn raids are carried out by authorized persons of the Commission, in accordance with the provisions of the Law on Protection of Competition and the Law on General Administrative Procedure, and within the powers established by a Conclusion on implementing inspections enacted by the Commission President.

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## Powers of authorized persons of the Commission

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- to **enter and inspect business premises**, vehicles, land and other facilities at the seat of the party and other locations where the party or a third person conduct their business and other activities
- to **inspect business and other documents**, regardless of the manner in which these documents are kept. This also implies a search of electronic documents by means of not only built-in (keyword) search tools, but also forensic equipment used by authorized persons of the Commission
- to **confiscate, copy or scan business documents**, and if this is not possible due to technical reasons, the authorized person may confiscate business documents and keep them as long as it is necessary to make copies of these documents. Copying electronic documents can be performed by using forensic equipment (Forensic IT tools)
- to **seal all business premises and business documents** during the inspection
- to **take oral or written statements from a representative of the party or its employees**, as well as documents on the facts that are the subject matter of the inspection, and if a written statement is necessary, the authorized person must determine the date by which such statement must be submitted
- to **set a temporary seizure** of documents and belongings
- to perform other duties in accordance with the objectives of the proceedings

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## **Obligation of the party to the proceedings to cooperate with authorized persons of the Commission**

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The party to the proceedings is obligated to enable undisturbed course of a dawn raid, ordered by the Commission President in a Conclusion pursuant to the provisions of Article 41 and 53 of the Law. In that regard, a legal representative and other employees or persons hired by the party are, inter alia, obligated:

- to enable authorized persons of the Commission to enter any business premises
- to enable authorized persons of the Commission to access business documentation and other requested documents, regardless of the manner in which these documents are kept
- to enable authorized persons of the Commission to access computers and other electronic devices found on the business premises of undertakings, which implies the provision of passwords to access computers, servers, etc.
- to comply with orders of authorized persons which relate to the temporary prohibition on the use of computers, mobile phones and other forms of communication, temporarily disconnecting running computers from the network, etc.
- to provide answers to authorized persons to inquiries in relation to premises, belongings and documents relating to the subject matter of the inspection and to actively cooperate with officials of the Commission in other manners
- to cooperate fully and actively in all other manners with authorized persons of the Commission with the inspection

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## **Rights of the party to the proceedings**

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The party to the proceedings under a dawn raid on its business or private premises holds a right to request from officials of the Commission:

- to provide a proof of identity, that is, to present their official identity cards
- to become acquainted with the subject matter of the proceedings and rationales for the conduct of inspections, as well as to request to be handed a Conclusion on instituting proceedings and a Conclusion on implementing inspections
- to be present during inspections, to communicate with the authorized person of the Commission heading the Commission's team and to provide necessary explanations on the content of documentation relating to the subject matter of the inspection
- that documents, which represent confidential communication within the meaning of the provision of Article 51 of the Law, be specially marked and separated from the documentation collected during the dawn raid
- to request copies of the minutes of the inspection from officials of the Commission, and the list of collected documentation and belongings which are copied or temporarily seized during the dawn raid

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## Presence of attorneys at law

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- The party to the proceedings holds a right to an attorney at law present during the course of a dawn raid

In the case that an attorney at law is not present at the time of arrival of officials of the Commission, **the conduct of the inspection will not be delayed pending arrival of attorneys at law.** Officials of the Commission will immediately proceed to secure the premises, belongings and documentation which are the subject matter of the inspection. After arrival of the attorney at law, officials of the Commission will inform him/her on the subject matter of the inspection and actions taken hitherto.

The communication between the party to the proceedings and its procurator holder/attorney at law which directly relates to the proceedings, represents a privileged communication within the meaning of the provision of Article 51 of the Law.

## Penalties for preventing a controlling authority to effect inspections

In the case that a legal representative of the party or other employees or persons hired by the party fail to comply with the legal commitment to cooperate with officials of the Commission during the inspection, the Commission will take the following measures:

- undertaking will be imposed a procedural penalty measure in accordance with Article 70 of the Law
- criminal charges will be filed against persons which prevent, attack or take part of a group preventing by joint action an official of the Commission in the discharge of duties (Articles 322-324 of the Criminal Code)
- criminal charges will be filed against persons which prevent officials to effect inspection of business books or other documentation, premises and other related facilities (Article 237 of the Criminal Code)
- inspections will be made possible with the presence and assistance of the Police Force officers
- prevention of inspections will be assessed as an aggravating circumstance when determining the measure for protection of competition (monetary amount), if the infringement of competition is established in the course of the proceedings