

The HCC dawn raids Greek Banks / A short guide on Dawn Raids

A few days ago, on early November 2019, the Hellenic Competition Commission (HCC) (dawn) raided the premises of the four Greek "systemic" Banks (National, Piraeus, Alpha and Eurobank), Attica Bank and the Greek Banks' Association. The Competition Commission investigated potential collusion of the Banks on the fees they charge for several day-to-day bank transactions.

According to its own press release, the HCC acted ex-officio and following complaints relating to horizontal anti-competitive practices and/or restrictive exclusionary practices by the Banks on the provision of banking and payment services. What seems to have triggered the investigation is the fact that the Greek Banks very recently simultaneously raised their charges for Bank and ATM transactions. It is worth mentioning that following the intervention of the Prime Minister, prior to the dawn raid, the Banks went back, partially, on the increase in their charges, however a broader review of their pricing policies is generally considered necessary.

The investigation received wide and positive media attraction and the results of the investigation and potential measures are eagerly awaited by the Greek public opinion.

✓ *The legal basis of a dawn raid*

A dawn raid is an unannounced inspection of premises, people and/or material by the HCC to investigate a potential violation of antitrust laws.

The inspection is based on a written authorisation by the President of the HCC (or the person authorised by him/her). The authorisation indicates:

- a brief analysis of the suspected infringement and subject matter of investigation;
- a summary of the offences that would be committed in case of failure to comply, destroying or falsifying documents, or providing misleading or false information.

The inspectors do not need a warrant issued by a judicial authority; however, in case of refusal or obstruction of the investigation, the inspectors may ask for the assistance of the Public Prosecutor or the Police.

The inspectors are empowered to¹:

- Enter premises, land and means of transport of the entity investigated/undertaking. Require production of any book and record relevant to the investigation/ask where such books and records can be found.
- Examine books and records related to the undertaking irrespective of the medium on which they are stored; examine files wherever they may be found; for that reason the inspectors must be taken to the offices/areas concerned and be assisted with the location of files etc.
- Take copies of, or extracts from, books and records produced.
- Ask any representative or member of the staff for an explanation, or clarification, of any document produced; the inspectors are in particular empowered to interview any person who is in possession of useful information and to record the answers. The inspectors only ask questions in relation to documents and incidents related to the subject matter of the investigation.
- Officials and other persons authorised by the HCC are empowered to enter any premises, including private homes; however, in the latter case the officials need an authorisation from the judicial authority.
- Take any necessary steps in order to preserve documents or prevent interference with them; this includes the power to seal premises, files, cupboards etc. for the period necessary for the investigation.

During the inspection, the inspectors may access servers, desktop computers, laptops, tablets and other mobile devices and in general the undertaking's IT system. They may download and print off copies of the documents and e-mails and confiscate books, records as well as laptops, USB's etc. In general, the inspectors are empowered to search the IT-environment and all storage media (CD-ROMs, DVDs, USB's etc) of the entity investigated. Moreover, the inspectors may investigate private devices and media which are used for professional reasons when found on the premises. For this purpose, the inspectors may make use of their own dedicated software and/or hardware ("Forensic IT tools").

The entities investigated must cooperate with the inspectors during the inspection. This means that they may be asked to provide representatives from the members of the staff to assist the inspectors for explanations on the structure of the undertaking, the IT-environment or specific tasks (e.g; temporary blocking of individual email accounts etc).

The undertakings have the right to consult an external legal counsel during the inspection. However, the inspection shall not be considered invalid in case of absence of a legal counsel.

¹ Please see: Article 39 of Greek Law 3959/2011, Explanatory note on Commission inspections pursuant to Article 20(4) of Council Regulation No 1/2003,

✓ ***What to do in case of a dawn raid.***

So, what must the undertakings do in case of a dawn raid?

- ▶ check the written authorisation (who signs it, the names of the inspectors and whether they are authorised by the HCC, the subject and purpose of the inspection etc)
- ▶ directly notify the Managing Director, the in-house lawyer and the outside legal counsels of the undertaking
- ▶ kindly request the inspectors to wait until the arrival of the outside legal counsel - however, the inspectors may refuse to wait and proceed with the inspection without the presence of a lawyer.
- ▶ inform the employees, members of the staff of the undertaking that:
 - they must not reveal the inspection to any other person outside the undertaking;
 - they must fully cooperate;
 - they must hand over any document and give any information requested;
 - they must not lie, nor conceal any information;
 - they must not obstruct the inspectors or create any problems (e.g; they must not try to stop the inspectors, argue with them, destroy any documents, files, e-mails etc);
 - they must not deny to testify;
 - if the inspectors have sealed the premises or a specific area (room, closet, office etc) or have blocked e-mail accounts, in no case the employees/staff must disturb the seal, or open the area/office or give access to the above mentioned e-mail accounts;
 - the inspectors may control phone and electronic communications; in no way should the employees/staff amend the communication system (e.g; conceal or destroy e-mails during the inspection);

After the end of the inspection the HCC's officials/inspectors proceed to the drafting of a report re. the inspection, a copy of which is notified to the relevant undertaking. The undertakings must check the documents that the HCC's officials have copied and ascertain the context of such documents.

The administrative fines for the undertakings and those who obstruct the HCC's inspection and/or refuse to provide information or copies from required books and records are ranging from 15.000 to 1% of the gross income of the undertaking. Also criminal sanctions can be imposed (i.e; up to 6 months imprisonment).

For further information please contact:

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