



LEGAL GUIDE

WEATHERING A DAWN RAID STORM

Enforcement Action by the Zambian Competition and Consumer Protection Commission (the “CCPC”)

The CCPC reported that in the year 2018, they investigated a total of 10 abuse of dominance cases and 64 restrictive business practices' cases with 19 cases carried over from 2017. This is in comparison to 2017¹ where the CCPC investigated 13 abuse of dominance cases were investigated with fines being levied for discriminatory pricing, unfair pricing and exclusionary conduct, 37 restrictive business practices' cases and 7 cartel cases.²

As at the date of this article, the CCPC confirmed that they had conducted two dawn raids for the year 2018 whilst none was conducted in the year 2017. It is clear that there is increased enforcement of the Competition and Consumer Protection Act No. 24 of 2010 (the “**Competition Act**”) and that the market is likely to see an increase in dawn raids on businesses in the future.

What is a Dawn Raid?

A dawn raid is an investigation carried out by an investigating authority without notice, usually in the early hours of the morning. A dawn raid is unannounced and is usually a surprise to the business being investigated. Investigators will enter and search the premises as

well as persons on the premises and examine documents having a bearing on the investigation.

Does the CCPC have the power to conduct Dawn Raids?

The CCPC is empowered to conduct dawn raids under the Competition Act where they are of the view that a business may be involved in restrictive business practices or could be abusing its dominance in a relevant market. The CCPC may, among others, review any document or article (both physical and electronic) considered relevant to the investigation, except for documents inadmissible before a court of law.

What liabilities is a business exposed to if it is in breach of the Competition Act?

A business found to be in breach of the Competition Act may be liable to a fine up to 10 per cent of the business' annual turnover. Additionally, employees in senior management positions may be liable, on conviction, to a fine not exceeding ZMW150,000 or to imprisonment for a period not exceeding 5 years or to both.

The following actions are considered criminal during a dawn raid and will cost a business a fine not exceeding ZMW60,000 or to imprisonment not exceeding two years or to both:

- (a) delaying or obstructing an investigator;
- (b) giving an investigator false information in answer to any inquiries made by an investigator; and
- (c) refusing to give an investigator assistance in order for the investigator to exercise the investigator's powers.

What can you do?

Because a dawn raid is without notice there is likely to be a great deal of disorganisation and confusion in the manner in which employees in the business respond, it is also likely to be stressful as it disrupts the normal operation of the business. In defence of the business, employees may innocently delay an investigator or restrict an investigators access to certain information in breach of the law thereby exposing the business to liability that could be avoided with sufficient preparation. On the other hand, an employee in fear of breaching the law may disclose privileged information to an investigator also exposing the business to unnecessary fines.

It is therefore imperative that employees are prepared for a dawn raid to ensure that the interests of the business are protected and the risks the business is exposed to are avoided or mitigated.



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¹Times of Zambia Friday February 1, 2019 page 7

²CCPC's End of Year Media Briefing <https://www.ccpc.org.zm/index.php/media-releases/news/89-2017-end-of-year-media-briefing-by-executive-director-of-ccpc-mr-chilufya-sampa>

INSPECTOR

Ensure your team is prepared for a dawn raid by contacting Bwalya Chilufya-Musonda at BChilufya@corpus.co.zm or Sydney Chisenga SChisenga@corpus.co.zm or your usual contact person at Corpus Legal Practitioners.



Bwalya Chilufya-Musonda

Partner

Banking & Finance Department
Corpus Legal Practitioners

Email: BChilufya@corpus.co.zm

Tel: +2602 11 372300 / 01 / 04



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