



## WHITE PAPER

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### How to Survive Dawn Raids and Search Warrant Investigations in Antitrust and Competition Law Enforcement Actions

To secure evidence of antitrust violations, competition enforcement authorities throughout the world continue to stage unannounced raids on business sites. Searches have also targeted private residences, vessels, and cars and trucks. In the event of a “dawn raid,” contacting experienced outside counsel at the earliest opportunity should be an immediate priority for the business operator. Additional actions can minimize the chances of fines or other penalties for noncompliance, avoid raising further suspicions, and ensure that one’s rights are properly exercised. This Jones Day White Paper provides step-by-step checklists for managing the response to a dawn raid in several jurisdictions.

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Antitrust and competition enforcement authorities increasingly are undertaking unannounced searches of premises to obtain evidence of possible competition law violations. Most commonly, these searches are being conducted at business premises, and therefore business managers need to know how to respond. Private residences, vessels, and motor vehicles also may be searched.

Failure to comply with the law when a search is conducted can lead to fines and even jail sentences for obstructing justice. The authorities' investigation of the international automobile parts cartel began in early 2010 with a series of raids on the Detroit offices of several auto parts companies. In 2012, an executive of one of these companies was sentenced to a year in prison—not for price-fixing but for obstructing justice by destroying emails and other documents after learning of the raids. Even in jurisdictions where competition violations do not carry criminal liability, missteps during a dawn raid may increase the authorities' suspicions and lead them to suspect wrongdoing where they might otherwise have determined through their search that no infraction had occurred.

On the other hand, failure to exercise one's rights can lead to the loss of privilege and to a broader search and seizure than was authorized. In 2003, the European Commission carried out dawn raids on the United Kingdom premises of AkzoNobel Chemicals Ltd. and Akcros Chemicals Ltd. The Commission seized a number of documents that the companies claimed were privileged. The European Court of Justice eventually sided with the Commission. But the rules of privilege vary across the EU Member States, so the procedures for protecting potentially privileged documents must be carefully followed to avoid an unnecessary waiver.

To be better prepared, 10-point checklists for various jurisdictions are provided below. These may be helpful to prepare employees for the eventuality of a search. But when the authorities come knocking, it is time to call in experienced legal counsel.

## EUROPEAN UNION

Here's a 10-step checklist on how to respond when officials of a competition authority ("European Commission") arrive at a company's premises.

### Investigations at Business Premises

**Step 1. Contact the manager, in-house counsel, and outside counsel immediately and ask that the search be delayed** until at least one arrives on site—note that the officials are not required to do so, although they usually will. In the case of an inspection by the European Commission, the officials of the Commission may be assisted by officials of the relevant EU national competition authority. This does not mean, however, that national rules and procedures apply. Escort the officials to a private meeting room and offer them an organigram for the business.

**Step 2. Copy the documentation.** Make a copy of the officials' personal identification (staff cards) and check the documentation authorizing the investigation (authorization or search warrant). Make a copy of each of those documents and email or fax them to your in-house or outside counsel. Also hand a copy to the manager or in-house counsel (whoever arrives first).

**Step 3. Depending on national legislation, a search warrant delivered by a judge may be required to carry out an on-the-spot inspection,** in addition to a document from the competition authority itself describing the scope and purpose of the inspection. Review the authorization or warrant to: (i) check that it is valid; (ii) check that it covers the company and premises; (iii) understand the scope/subject matter of the investigation (alleged infringements, relevant products/services, departments, geographical scope); (iv) understand the powers of the officials; and (v) understand if the investigation is carried out by the European Commission or an EU national competition authority.

**Step 4. Provide instructions to employees.** Issue an internal announcement to inform staff that there is an official inspection and provide guidance on how to behave appropriately (in particular, instruct not to destroy documents, not to leak news of the investigation (even to family members), and remind of the duty to cooperate). Company personnel should not hinder the inspection in any way, except for the exercise of legitimate rights. The competition authority could fine the company for obstruction of the investigation. In case of doubt, any issue should be escalated to the Coordination Team (see Step 5).

**Step 5. Organize staffing.** A Coordination Team should be set up to coordinate the company's response to the inspection, composed of at least one member of senior management,

a member of the legal department (if any), and an outside competition lawyer (if the assistance of outside counsel was requested). Arrange for the Coordination Team to have access to a separate meeting room from the officials. Arrange for members of the IT team to be available as their input will be needed; if IT support is outsourced, contact a senior person at the provider who can bypass the usual time-consuming protocols and helpdesk processes. Organize “shadowers” to follow each official at all times and brief them on the scope of the investigation and limits to the power of the officials to ensure that officials do not exceed their powers. A “shadows” is either a company employee (ideally belonging to the company’s legal department or at least having received special training for this purpose) or an outside competition lawyer. This individual’s task is to “shadow” the officials and note everything (within reason) the officials do and say, making sure that duplicate copies are made of all the documents or electronic files copied by the officials, that the officials respect the scope and purpose as designated in the authorization of the inspection, and that they do not read any documents or electronic files protected by professional legal privilege.

**Step 6. Follow each inspector at all times to ensure that officials do not exceed their powers.** Officials have the power to require the production of documents related to the subject matter of the investigation as defined in the authorizing documents and to make copies or extracts from relevant documents. Officials are not allowed to physically remove documents or electronic media from the company’s premises and cannot make copies of documents that are outside the scope of the investigation and/or legally privileged—advice from outside counsel qualified at a bar within the EU and internal documents prepared for the specific purpose of requesting advice from such outside counsel.

**Step 7. Track and record all produced documents.** Make a written note of which rooms the officials visit; what desks, cupboards, files, and computers they inspect; and to whom they speak. Make a copy of all documents copied.

**Step 8. Answer questions to the best of your ability.** The officials may also request oral explanations on the spot about facts or documents related to the subject matter of the investigation. Refusal to answer such questions, or providing incorrect or incomplete answers, puts the company at risk of fines

for obstruction of the investigation. Company employees are therefore required to answer such questions to the best of their abilities. However, when asked such questions, company employees should keep their answers short and factual and not volunteer any information for which they have not been explicitly asked. They should not speculate or answer questions that are outside their area of competence.

The officials may also conduct interviews with employees to ask more wide-ranging questions about the subject matter of the investigation. Employees are not required to accept to be interviewed and have a right to assistance by counsel if they do. In such a situation, the Coordination Team should be consulted immediately, before the employee agrees to be interviewed. Where the answer to a question asked by an official is considered to be self-incriminating, the employee cannot be compelled to reply. If the officials make an audio or video recording of the interview, they should provide a copy of such recording to the company.

**Step 9. Before the officials leave, confirm the position.** Make sure you have a copy of the documents as well as the officials’ list of documents and records of any interviews or oral explanations. Ask officials for their contact details and organize a point of contact at the company for future communications. Ask officials if they intend to come back and, if so, at what time and whether they want cabinets/rooms to be sealed overnight if they are coming back the next day. Ensure no one reopens the room/cabinet, including cleaners or security; only the officials may break a seal. Ask if officials intend to issue a press release.

**Step 10. After the officials have left, record and review.** Conduct debriefings with employees, conduct post-investigation review, and determine next-step strategy, including potential leniency application and whether an internal investigation should be conducted. Organize internal and external communications strategy.

### Investigations at Domestic Premises

Officials, acting on behalf of the European Commission or another EU national competition authority, also have the power to enter and search domestic premises (e.g., homes of a company’s directors, managers, or employees, as well as motor vehicles) where they have a reasonable suspicion that evidence that would support their case is being kept.

The precautions and advice set out above for a search of the company's premises should also be observed where inspections are conducted at domestic premises, as evidence obtained there can be used in the same manner as any evidence obtained from the company's offices. In particular, it is essential to:

**Step 1. Contact outside counsel immediately and ask that the search be delayed until outside counsel arrives on site.**

**Step 2. Check the warrant.** Wherever the Authority wishes to enter domestic premises in relation to a competition investigation, a warrant from a national judge is required.

**Step 3. Cooperate but ensure that the officials do not exceed their powers.** Ensure that counsel is there at all times. The officials will have the same powers (enter and search, make copies and take possession of documents) and limitations (documents within scope of the investigation, legal privilege, and self-incrimination) as for a raid at business premises.

**Step 4. Track and record all produced documents.**

**Step 5 After the officials have left, record and review.**

## FRANCE

Here's a 10-step checklist on how to respond when officials from the French Competition Authority ("FCA"), the Directorate General for Competition Consumer Protection and Fraud Control ("DGCCRF"), and/or the police carry out a dawn raid at your premises under the civil and criminal regimes.

### Civil Investigations at Business Premises

**Step 1. The receptionist should ask each official to present professional identification and the order** (if any) of the judge (*juge des libertés et de la détention* ("JLD")) authorizing the inspection or the request of the *Rapporteur Général* of the FCA ordering the inspection. He/she should immediately contact the manager, in-house counsel, and outside counsel. Interrupt their meeting or conference call if necessary. Inform the officials that the manager, in-house counsel, and/or outside counsel are on their way and ask them to delay the inspection until their arrival. Officials of the FCA are generally

prepared—but under no obligation—to wait for about half an hour until either the in-house counsel or outside counsel arrives. Escort them to a meeting room that does not contain any company document, file, and/or computer.

If the officials reject any of these requests, make sure that it is clearly mentioned on the record.

**Step 2. While the officials are waiting, issue a visitor's badge** for each of them and make copies of their professional ID, then draft a list of the officials present (name, authority they represent (EU Commission, FCA, DGCCRF, police), position (lead investigator, IT specialist, etc.)). Make copies of the list and of the order of the JLD or request of the *Rapporteur Général* for each member of the Coordination Team and each shadower. Email or fax the list and order of the JLD to the in-house and outside counsel.

**Step 3. The manager and/or in-house counsel must understand whether the inspection is carried out as a "simple investigation" (*enquête simple*) or an "enhanced investigation" (*enquête lourde*).** If in doubt, ask the lead inspector.

- In case of simple investigation, the FCA officials are required to inform the representative of the company—at least orally—of the purpose of the inspection. If the officials have agreed to present it, review the request of the *Rapporteur Général* of the FCA ordering the inspection to check that it covers the company and premises and to understand the purpose and scope of the investigation (alleged infringements, relevant products/services or sector, companies and premises concerned, geographical scope, period concerned, etc.).
- In case of enhanced investigation, an order of the JLD is required. If the officials have not presented you with the order spontaneously, ask them to. *Before signing the acknowledgment of notification*, review the order to: (i) check that it covers the company and premises; (ii) understand the purpose and scope of the investigation (alleged infringements, relevant products/services or sector, companies and premises concerned, geographical scope, period concerned, etc.); and (iii) include the requisite reservations (pages missing, error in the name of the company, manager and or counsel not present).

If the officials reject any of these requests, make sure that it is clearly mentioned on the record.

**Step 4. Provide instructions to employees.** Issue an internal announcement to inform staff that an official inspection is currently in progress. Remind them of their duty to cooperate and instruct them not to destroy *any* hard copy document or delete electronic documents and not to discuss the investigation with anyone inside or outside the company (even family members), aside from the Coordination Team. Company personnel should not hinder the inspection in any way, as this could result in the employee concerned being fined and sentenced to prison for obstruction and the company also being fined. In case of doubt, any issue should be escalated to the Coordination Team.

**Step 5. Organize staffing.** Arrange for the internal team to have access to a separate meeting room from the officials. Arrange for members of the IT team to be available as their input will be needed; if IT support is outsourced, contact a senior person at the provider who can bypass the usual time-consuming protocols and helpdesk processes. Organize “shadowers” to follow each official at all times and brief them on the scope of the investigation and limits to the power of the officials to ensure that officials do not exceed their powers. A “shadower” is either a company employee (ideally belonging to the company’s legal department or at least having received special training for this purpose) or an outside competition lawyer, whose task is to “shadow” the officials at all times and note everything (within reason) the officials do and say, making sure that three copies are made of all documents or electronic files copied by the officials (one for official, one for the in-house counsel, and one for the outside counsel), that the officials respect the scope and purpose of the inspection as delineated in the order of the JLD or request of the *Rapporteur Général*, and that they do not read any documents or electronic files protected by legal professional privilege.

**Step 6. Determine if the investigation is “simple” or “enhanced.”** The procedure varies depending on which type of investigation is being conducted.

- In case of simple investigation, the officials are entitled to enter any part of the premises inspected. They are also entitled to ask to be presented with any professional document (hard copy or electronic) they have identified

as relevant to their investigation and to request copies or transcripts of such documents. Officials are *not entitled* to seize original documents (hard copy or electronic). Officials should not make copies of documents that are outside the scope of the investigation or legally privileged (advice from an outside counsel).

- In case of enhanced investigation, in addition to the powers assigned to them in the context of simple investigations, the officials also have the power to seize original documents and any storage means. Often, they will seize hard drives and mailboxes. Officials should not make copies or seize documents that are outside the scope of the investigation or legally privileged (advice from an outside counsel). If there are good reasons to suspect that a hard drive or mailbox seized contains documents that the FCA is not entitled to seize, this must be made clear to the officials during the inspection, so that the device is temporarily sealed to allow the company, after the inspection, to identify the documents that ought to be excluded.

Any disagreement should be escalated to the Coordination Team. If the officials disagree with the Coordination Team on the fact that a document or storage device cannot be seized and refuses to seal the document or storage device, you should make sure that it is clearly mentioned on the record.

**Step 7. Shadowers should track and record all seized or produced documents.** Make a written note of which rooms the officials visit; what desks, cupboards, files, and computers they inspect; and to whom they speak. Make a copy of all documents seized.

**Step 8. The officials are entitled to request oral explanations on the spot about facts or documents related to the purpose and scope of the investigation.** Refusal to answer such questions, or providing incorrect or incomplete answers, puts the company and the employee concerned at risk of fines for obstruction of the investigation. In addition, obstruction may also lead to a prison sentence being imposed on that employee. Employees are therefore required to answer such questions to the best of their abilities. However, when asked such questions, employees should make sure that a shadower, member of the legal department or outside counsel is present. They should keep their answers short and factual and not volunteer any information

that is not explicitly requested. They should not speculate or answer questions that are outside their area of competence. Where the answer to a question asked by an official is considered to be self-incriminating (for the company), the employee cannot be compelled to reply. Employees should not hesitate to ask the officials to be more specific if their question is vague. When in doubt or if the employee has any difficulty answering the question, the Coordination Team should be consulted immediately, *before* an answer is given. If the question is difficult to answer on the spot and requires verifications to be made, the Coordination Team can offer to revert to the FCA in writing within a reasonable timeframe.

**Step 9. Before the officials leave, make sure you have a copy of the documents seized** or copied by the officials, as well as the officials' list of documents, the record of the investigation, and copies of the officials' notes of any interviews and oral explanations. In the event of an incident or disagreement during the investigation, include a detailed reference to it in the record of the investigation. Ask officials for their contact details and organize a point of contact at the company for future communications. Ask if officials intend to issue a press release.

**Step 10. After the officials have left, record and review.** Conduct debriefings with employees, conduct post-investigation review, follow up on questions that you were not able to answer on the spot, identify information seized or copied that contains trade secrets that you will ask the FCA to treat as confidential, and rectify any errors in the information and answers provided to the FCA during the inspection. Determine next-step strategy, including potential leniency application, challenge of the order of the JLD or the investigation itself, and whether an internal investigation should be conducted. Organize internal and external communications strategy.

### Civil Investigations at Domestic Premises

Officials also have the power to enter and search domestic premises (e.g., homes of a company's directors, managers, or employees, as well as motor vehicles) where they have a reasonable suspicion that evidence that would support their case is being kept.

The precautions and advice set out above for a search of the company's premises should also be observed where inspections are conducted at domestic premises, as evidence obtained there

can be used in the same manner as any evidence obtained from the company's offices. In particular, it is essential to:

**Step 1. Immediately contact outside counsel and ask that the search be delayed until outside counsel arrives on site.**

**Step 2. Make sure you understand whether the inspection is carried out as a "simple investigation" (*enquête simple*) or an "enhanced investigation" (*enquête lourde*).** An order of the JLD is required to investigate domestic premises. If in doubt, ask the lead inspector.

**Step 3. Cooperate but ensure that the officials do not exceed their powers,** bearing in mind the different scope of powers depending on whether the investigation is a simple or enhanced investigation. Ensure that counsel is there at all times. The officials will have the same powers (enter and search, make copies and take possession of documents) and limitations (documents within scope of the investigation, legal privilege, and self incrimination) as for a raid at business premises.

**Step 4. Track and record all seized, copied, or produced documents.**

**Step 5. After the officials have left, record and review.**

### Criminal Investigations

The FCA is not a criminal court and therefore cannot impose criminal penalties. In those few cases in which the FCA considers that an antitrust infringement may also constitute a (separate) criminal offense, because an individual has intentionally played a personal and decisive role in the infringement, it may notify the public prosecutor. The public prosecutor may then bring criminal proceedings against that person. That person risks a fine and being sentenced to prison. In addition, the company may be held jointly and severally liable for the payment of fines imposed on its managers.

In theory, a criminal investigation may also be carried out independently of a case before the FCA, although this remains rare.

In the very rare cases where an investigation is carried out directly by the police on the basis of the Code of Criminal Procedure, the same precautions as above should be followed, although in general investigators will have broader powers.

## GERMANY

Here's a step-by-step checklist on how to respond when officials of the German Federal Competition Authority (*Bundeskartellamt*) or the European Commission ("Commission") arrive at a company's premises or domestic premises. Criminal investigations (e.g., for bid rigging) are conducted independently from antitrust investigations by the public prosecutor.

### Investigations at Business Premises

**Step 1. Contact the manager, in-house counsel, and outside counsel immediately and ask that the search be delayed until at least one of these individuals arrives on site.** Note that the officials are not required to do so, although they usually will. Verify whether the dawn raid is conducted based on a formal decision of the Commission or of the *Bundeskartellamt*.

The *Bundeskartellamt* will base its raid either on a *Durchsuchungsbeschluss* (search warrant) issued by a *Amtsgericht* (court of first instance) or, occasionally, on a *Nachprüfungsbeschluss* (inspection decision) issued by the *Bundeskartellamt*. The Commission will base its raid on a Commission authorization decision.

The difference between a raid conducted based on a national decision or based on a decision by the Commission is important with regard to the rights of the officials. Escort the officials to a private meeting room and offer them an organigram for the business.

**Step 2. Copy the documentation.** Make a copy of the officials' personal identification (staff cards) and check the documentation authorizing the investigation (authorization or search warrant). Make a copy of each of those documents and email or fax them to your in-house or outside counsel. Also hand a copy to the manager or in-house counsel (whoever arrives first).

**Step 3. In principle, in Germany an inspection at the company's premises by the *Bundeskartellamt* requires a prior search warrant** delivered by a judge, but it may also take place without such a prior search warrant if the authorities claim "danger ahead" ("*Gefahr im Verzug*"). If the *Bundeskartellamt* bases its inspection on *Gefahr im Verzug*, insist that the company's objection be documented, but do not hinder the authorities' ability to proceed. The decision may be challenged afterward and the findings declared invalid as a result later on.

The Commission does not need a prior German search warrant to inspect the company's premises.

Review the authorization or warrant to: (i) check that it is valid; (ii) check that it covers the company and premises; (iii) understand the scope/subject matter of the investigation (alleged infringements, relevant products or services, departments, geographical scope); (iv) understand the powers of the officials; and (v) understand if the investigation is carried out by the Commission or the *Bundeskartellamt* and based on which grounds.

**Step 4. Provide instructions to employees.** Issue an internal announcement to inform staff that there is an official inspection and provide guidance on how to behave appropriately (in particular, instruct not to destroy documents, not to leak news of the investigation (even to family members), and remind of the duty to cooperate). Company personnel should not hinder the inspection in any way, except for the exercise of legitimate rights. The competition authority could fine the company for obstruction of the investigation. In case of doubt, any issue should be escalated to the Coordination Team.

**Step 5. Organize staffing.** Arrange for the internal team to have access to a separate meeting room from the officials. Arrange for members of the IT team to be available as their input will be needed; if IT support is outsourced, contact a senior person at the provider who can bypass the usual time-consuming protocols and helpdesk processes. Organize "shadows" to follow each official at all times and brief them on the scope of the investigation and limits to the power of the officials to ensure that officials do not exceed their powers. A "shadow" is either a company employee (ideally belonging to the company's legal department or at least having received special training for this purpose) or an outside competition lawyer, whose task is to "shadow" the officials and note everything (within reason) the officials do and say, making sure that duplicate copies are made of all the documents or electronic files taken or copied by the officials, that the officials respect the scope and purpose as designated in the authorization of the inspection, and that they do not read any documents or electronic files protected by professional legal privilege.

**Step 6. Follow each inspector at all times to ensure that officials do not exceed their powers.** Officials have the power to require the production of documents related to the subject matter of the investigation as defined in the authorizing

documents and to make copies or extracts from relevant documents. The *Bundeskartellamt* further has the power to seize original documents, and while they are not required to wait for you to make copies, you should request it. Commission officials are not allowed to physically remove documents or electronic media from the company's premises.

Authorities cannot make copies of documents that are outside the scope of the investigation or legally privileged—advice from outside counsel qualified at a bar within the EU and internal documents prepared for the specific purpose of requesting advice from such outside counsel. If the investigation is led by the *Bundeskartellamt*, the privilege for documents applies only to such documents that have been made for the specific purpose of seeking advice from outside counsel for the defense in the pending proceedings after they have been initiated. It is important to note that the correspondence between internal legal counsel and other parts of the company is not privileged regardless of whether the inspection is carried out based on a Commission authorization or by the *Bundeskartellamt*. If a document's privileged nature is questionable, it should be handed over in a sealed envelope for later determination of privilege.

**Step 7. Track and record all produced documents.** Make a written note of which rooms the officials visit; what desks, cupboards, files, and computers they inspect; and to whom they speak. Make a copy of all documents copied and, in the case of the *Bundeskartellamt*, also of seized documents, to the extent the officials will permit, before seizure (they do not have to allow this and should not be obstructed).

**Step 8. The officials may also request oral explanations on the spot about facts or documents related to the subject matter of the investigation.** Refusal to answer such questions, or providing incorrect or incomplete answers, puts the company at risk of fines for obstruction of the investigation. Company employees are therefore required to answer such questions to the best of their abilities. However, when asked such questions, company employees should keep their answers short and factual and not volunteer any information that is not explicitly asked for. They should not speculate or answer questions that are outside their area of competence. Where the answer to a question asked by an official is considered to be self-incriminating, the employee cannot be compelled to reply.

**Step 9. Before the officials leave, confirm the position.** Make sure you have a copy of the documents as well as the officials' list of documents and records of any interviews or oral explanations. Ask officials for their contact details and organize a point of contact at the company for future communications. Ask officials if they intend to come back and, if so, at what time and whether they want cabinets or rooms to be sealed overnight if they are coming back the next day. Ensure no one reopens the room or cabinet, including cleaners and security; only the officials may break a seal. Ask if officials intend to issue a press release.

**Step 10. After the officials have left, record and review.** Conduct debriefings with employees, conduct post-investigation review, and determine next-step strategy, including potential leniency application and whether an internal investigation should be conducted. Organize internal and external communications strategy.

### Investigations at Domestic Premises

Officials, acting on behalf of the European Commission and the *Bundeskartellamt*, also have the power to enter and search domestic premises (e.g., homes of a company's directors, managers, or employees, as well as motor vehicles) where they have a reasonable suspicion that evidence that would support their case is being kept.

The precautions and advice set out above for a search of the company's premises should also be observed where inspections are conducted at domestic premises, as evidence obtained there can be used in the same manner as any evidence obtained from the company's offices. In particular, it is essential to:

**Step 1. Contact outside counsel immediately and ask that the search be delayed until outside counsel arrives on site.**

**Step 2. Check the warrant.** Wherever the Authority wishes to enter domestic premises in relation to a competition investigation, a warrant from a national judge is required. Also, with regard to domestic inspections, the *Bundeskartellamt* may follow through without a prior warrant in case of "danger ahead." If the latter occurs, the objection to the inspection should be duly documented for later challenge, but the officials should not be obstructed from carrying out the inspection.

**Step 3. Cooperate but ensure that the officials do not exceed their powers.** Ensure that counsel is there at all times. The officials will have the same powers (enter and search, make copies and take possession of documents (*Bundeskartellamt*)) and limitations (documents within scope of the investigation, legal privilege, and self incrimination) as for a raid at business premises.

**Step 4. Track and record all produced documents.**

**Step 5. After the officials have left, record and review.**

### Criminal Investigations

Neither the *Bundeskartellamt* nor the Commission have powers of a criminal investigation. Anticompetitive behavior is in principle a misdemeanor and does not constitute a criminal offense under German law except in certain specific cases, e.g., bid rigging. In those few cases, the public prosecutor will conduct a separate criminal investigation with no connection with the antitrust investigation. However, if evidence of a criminal offense is found by the *Bundeskartellamt* during an antitrust investigation, the *Bundeskartellamt* is obliged, acting in its role of law enforcement body, to report it to the public prosecutor.

## ITALY

Here's a 10-step checklist on how to respond when officials from the Italian Competition Authority ("ICA") carry out a dawn raid at your premises under the administrative regimes.

### Administrative Investigations at Business Premises

**Step 1. Contact the manager, in-house counsel, and outside counsel immediately and ask that the search be delayed until at least one of these individuals arrives on site.** Note that the officials are not required to do so, although they usually will. In the case of an inspection by the ICA, the officials of the Authority are assisted by officers of *Guarda di Finanza* (Italian Financial and Fiscal Police), which cooperates with ICA and has law enforcement powers. Escort the officials to a private meeting room and offer them an organigram for the business.

**Step 2. Make a copy of the officials' personal identification** (staff cards) and check and note the identity of the officials and officers carrying out the dawn raid. Check the documentation authorizing the investigation (the decision to open the investigation and search warrant). Make a copy of each of

those documents and email or fax them to your in-house or outside counsel. Also hand a copy to the manager or in-house counsel (whoever arrives first).

**Step 3. Under Italian law, dawn raids can be conducted only after the opening of an official investigation by the ICA.** Thus, the decision to open the investigation, which is notified alongside the search warrant, is an essential source to understand the scope of the investigation itself. Review the decision and the warrant to: (i) check that they are valid and if the warrant is consistent with the scope of investigation highlighted in the decision; (ii) check the scope or subject matter of the dawn raid; and (iii) understand if the investigation is carried out by the ICA on its own or acting on behalf of the European Commission or another EU national competition authority. In the two latter cases, the ICA officials will be accompanied by officials from the European Commission or the relevant EU national competition authority, and EU law will apply.

**Step 4. Provide instructions to employees.** Issue an internal announcement to inform staff that there is an official inspection and provide guidance on how to behave appropriately (in particular instruct not to destroy documents, not to leak news of the investigation (even to family members), and remind of the duty to cooperate). Company personnel should not hinder the inspection in any way, except for the exercise of legitimate rights. The competition authority could fine the company for obstruction of the investigation (refusal or failure to provide the information or exhibit the documents requested and in case of submission of untruthful information or documents).

**Step 5. Organize staffing.** Arrange for the internal team to have access to a separate meeting room from the ICA officials. Arrange for members of the IT team to be available as their input will be needed; if IT support is outsourced, contact a senior person at the provider who can bypass the usual time-consuming protocols and helpdesk processes. Organize "shadowers" to follow each official at all times and brief them on the scope of the investigation and limits to the power of the officials to ensure that officials do not exceed their powers. A "shadower" is either a company employee (ideally belonging to the company's legal department or at least having received special training for this purpose) or an outside competition lawyer, whose task is to "shadow" the officials and note everything (within reason) the officials do and say, making sure that duplicate copies are made of all the documents or electronic

files copied by the officials, that the officials respect the scope and purpose as designated in the authorization of the inspection, and that they do not read any documents or electronic files protected by professional legal privilege.

In Italy, the legal privilege is not part of the domestic legal system, although it is recognized by the case law and generally applied by the ICA. Note: Legal privilege not applicable to correspondence with in-house legal counsel, unless the content of the correspondence originates from outside lawyers.

**Step 6. Follow each inspector at all times to ensure that officials do not exceed their powers.** Officials have the power to: (i) access all the company's premises, including land and vehicles, with the exception of domestic premises that are extraneous to the business or the undertaking; (ii) check and make copies of all company documents (the definition of "documents" under Italian law is broad, comprising any information of any kind produced by anyone within the company); or (iii) request information and explanations to be given verbally by company employees.

**Step 7. Track and record all seized or produced documents.** Make a written note of which rooms the officials visit; what desks, cupboards, files, and computers they inspect; and to whom they speak. Make a list of all the copied documents and the people questioned.

**Step 8. Provide support to employees** questioned on documents or interviewed by officials on questions relevant to the investigation. Refusal to answer such questions, or providing incorrect or incomplete answers, puts the company at risk of fines for obstruction of the investigation. Company employees are therefore required to answer such questions to the best of their abilities.

However, when asked such questions, company employees should keep their answers short and factual and not volunteer any information that is not explicitly asked for. Presence of legal counsel is recommended to avoid self-incriminating answers given by company employees.

**Step 9. Before the officials leave, confirm the position.** Under Italian law, the ICA officials must draft minutes of all the investigation activity, with particular regard to the list of documents and statements recorded. Ask officials for their contact details

and organize a point of contact at the company for future communications. Ask officials if they intend to come back and, if so, at what time and whether they want cabinets or rooms to be sealed overnight if they are returning the next day. Ensure no one reopens the room or cabinet, including cleaners and security; only the officials may break a seal. Ask if officials intend to issue a press release.

**Step 10. After the officials have left, record and review.** Conduct debriefings with employees, conduct post-investigation review and determine next-step strategy, including potential leniency application and whether an internal investigation should be conducted. Organize internal and external communications strategy.

### Civil Investigations at Domestic Premises and Criminal Investigations

Under Italian law, ICA investigations cannot be carried out on domestic premises that are extraneous to the business of the undertaking

Moreover, the Italian Competition Authority does not have powers to investigate criminal investigations since anticompetitive behavior does not constitute a criminal offense under Italian law. In those few cases where an antitrust infringement may also constitute a (separate) criminal offense (bid rigging, insider trading, etc.), the public prosecutor will conduct a separate criminal investigation with no connection to the antitrust investigation. Note that if evidence of a criminal offense is found by the *Guardia di Finanza* during an antitrust investigation, the latter is obliged, acting in its role of law enforcement body, to report it to the public prosecutor.

## SPAIN

Here's a 10-step checklist on how to respond when officials from the Spanish Competition Authority (*Comisión Nacional de los Mercados y la Competencia* or "SCA") carry out a dawn raid at your premises under the administrative regime.

### Administrative Investigations at Business and Domestic Premises

**Step 1. Contact the manager, in-house counsel, and outside counsel (sometimes the SCA may request to be present**

**during the call to the outside counsel**—if this is the case, allege confidentiality of the communications) immediately and ask that the search be delayed until at least one individual arrives on site. Note that the officials are not required to do so, although they usually will. The officials of the SCA may be assisted by officials of regional competition authorities that cooperate with the SCA. The officials may also be assisted by specialists and/or experts, all of whom must be duly authorized by the Director of Competition of the SCA. Escort them to a private meeting room that does not contain any company documents or files and/or computer. Do not leave them alone at any time.

If the officials reject any of these requests, make sure that it is clearly mentioned in the inspection record. Note that under Spanish legislation, the inspection record, even when the company's representative refuses to sign the record, has evidential value if two authorized officials sign it.

**Step 2. Make a copy of the officials' personal identification** (staff cards) and check and note the identity of the officials and officers carrying out the dawn raid. Check the documentation authorizing the dawn raid (inspection order and warrant issued by a judge, if applicable). Note that under Spanish legislation, if the director of competition of the SCA considers that there is a risk of opposition by the company to the access to the premises, the judge may issue a warrant. Make a copy of each of those documents and email or fax them to your in-house and/or outside counsel. Also hand a copy to the manager or in-house counsel (whoever arrives first).

**Step 3. Before the dawn raid starts, carefully read the inspection order and the search warrant, if applicable,** in order to identify: (i) the targeted company (the inspection will cover only employees of the target company (e.g., employees of mother and/or sister companies are not to be inspected); (ii) the scope of the dawn raid; (iii) the premises subject to the dawn raid; (iv) specific dates for the dawn raid; and (v) any limitation for the dawn raid (i.e., the impossibility to inspect personal lockers, purses, etc.).

**Step 4. Provide instructions to employees.** Issue an internal announcement to inform staff that there is an official inspection and provide guidance on how to behave appropriately (in particular, instruct not to destroy documents, not to leak news of the investigation (even to family members), and remind of the

duty to cooperate). Company employees should not hinder the inspection in any way, except for the exercise of legitimate rights. The SCA could fine the company for obstruction of the investigation. Reasons for a determination of obstruction can include: (i) unjustified delay of the inspection; (ii) delay in production of requested documentation and/or incomplete exhibit of documentation and/or the submission of untruthful information or documentation; (iii) sudden disruption of electronic communications; (iv) the failure of a manager to attend to the inspection; and (v) breaking of the seal of premises and/or documents.

**Step 5. Organize employees.** Arrange for the internal team to have access to a separate meeting room from the officials, without leaving the officials alone. Arrange for members of the IT team to be available as their input will be needed; if IT support is outsourced, contact a senior person at the provider who can bypass the usual time-consuming protocols and helpdesk processes. Organize "shadowers" to follow each official at all times and brief them on the scope of the investigation and limits to the power of the officials to ensure that officials do not exceed their powers. A "shadower" is either a company employee (ideally belonging to the company's legal department or at least having received special training for this purpose) or an outside competition lawyer, whose task is to "shadow" the officials at all times and note everything (within reason) the officials do and say (especially the people questioned and rooms, desks, or cupboards that the officials visit), making sure that copies are made of all documents or electronic files copied by the officials, that the officials respect the scope and purpose of the inspection as delineated in the order of inspection, and that they do not read any documents or electronic files protected by legal professional privilege.

**Step 6. Follow each official at all times to ensure that they do not exceed their powers.** Officials have the power to: (i) access all the company's premises, including land and vehicles and domestic premises of the managers and other employees; (ii) check and make copies of all company documents related to the activity, including computer programs; (iii) retain for a maximum term of 10 days original documents; (iv) seal all of the premises and/or documents during the term necessary for the dawn raid; and (v) request information and explanations to be given verbally by company employees. For the powers indicated in (i) and (iv), the officials will require, in order to perform them, the express consent of the affected person or a judicial authorization.

Note that the “key words” used by the officials to perform the search cannot be confidential and, therefore, must be known by the company after the dawn raid.

**Step 7. Provide support to those employees that are questioned or interviewed by officials.** Refusal to answer such questions, or providing incorrect or incomplete answers, puts the company at risk of fines for obstruction of the investigation. Company employees are therefore required to answer such questions to the best of their abilities. However, when asked such questions, company employees should keep their answers short and factual and not volunteer any information that is not explicitly asked for. Presence of outside counsel is recommended to avoid self-incriminating answers given by company employees.

**Step 8. Before the officials leave, make sure you have a copy of the documents seized or copied by the officials,** as well as the officials’ list of documents, the inspection record, and copies of the notes of any interviews and oral explanations. In the event of an incident or disagreement during the investigation, include a detailed reference to it in the inspection record. Ask officials for their contact details and organize a point of contact at the company for future communications. If the dawn raid continues for more than one day, the officials have the power to seal the premises and/or the documents. Do not touch and/or break the seal.

**Step 9. After the officials have left:** (i) conduct debriefings with employees; (ii) conduct post-investigation review; (iii) follow up on questions that you were not able to answer on the spot; (iv) identify information seized or copied that contains trade secrets that you will ask the SCA to treat as confidential; and (v) rectify any errors in the information and answers provided to the SCA during the inspection. Determine next-step strategy, including potential leniency application, challenge of the order of investigation itself, and whether an internal investigation should be conducted. Organize internal and external communications strategy.

### Criminal Investigations

The SCA is not a criminal court and therefore cannot impose criminal penalties. Under limited and exceptional circumstances, a cartel may be caught under the Spanish Criminal Code. Currently, a practice in the petrol sector is being investigated under this provision, but no decision has been made

yet. Note that under the Spanish Criminal Code, legal representatives may be prosecuted and, therefore, may anticipate the possibility of imprisonment.

In cases where an investigation is carried out directly by the police on the basis of the Spanish Criminal Code, the same precautions as above should be followed, although in general investigators will have broader powers.

## UNITED KINGDOM

Here’s a 10-step checklist on how to respond when officials from the UK Competition Markets Authority (“CMA”) carry out a dawn raid at your premises under the civil regime and criminal regimes.

### Civil Investigations at Business Premises

**Step 1. Contact outside counsel immediately and ask that the search be delayed until outside counsel arrives** on site—note that they are not required to do so, although they usually will. Escort the officials to a private meeting room and offer them an organigram of the business.

**Step 2. Copy the documentation.** Make a copy of the officials’ personal identification (staff cards) and check the documentation authorizing the investigation (authorization or a warrant). Make a copy of each of those documents and email or fax them to your outside counsel.

**Step 3. Review the authorization or warrant** to: (i) check that it is valid; (ii) check that it covers the company and premises; (iii) understand the scope/subject matter of the investigation (alleged infringements, relevant products or services, departments, geographical scope); (iv) understand the powers of the officials (in a civil or criminal investigation, officials will need a warrant to enter domestic premises or to “seize and sift” documents); and (v) understand if the investigation is carried out by the CMA on its own or acting on behalf of the European Commission or another EU national competition authority. In the two latter cases, the CMA officials will be accompanied by officials from the European Commission or the relevant EU national competition authority.

**Step 4. Provide instructions to employees.** Issue an internal announcement to inform staff that there is an official inspection and provide guidance on how to behave appropriately (in

particular, instruct not to destroy documents, not to leak news of the investigation (even to family members), and remind of the duty to cooperate). There are a number of criminal offenses that may be committed through failure to cooperate, and civil sanctions (fines) may also be applied.

**Step 5. Organize staffing.** Arrange for the internal team to have access to a separate meeting room from the CMA officials. Arrange for members of the IT team to be available as their input will be needed; if IT support is outsourced, contact a senior person at the provider who can bypass the usual time-consuming protocols and helpdesk processes. Organize “shadowers” to follow each official at all times and brief them on the scope of the investigation and limits to the power of the officials to ensure that officials do not exceed their powers.

**Step 6. Follow each official at all times to ensure that officials do not exceed their powers.** Officials have the power to require the production of documents relevant to the investigation and to make copies or extracts from relevant documents. Where officials act under UK law and have a warrant, they can also, under certain conditions, take possession of the original documents (“seize and sift”). However, officials cannot make copies or take possession of documents that are outside the scope of the investigation and legally privileged—unlike in EU investigations, advice from in-house counsel or from outside counsel qualified at a bar outside the EU is privileged.

**Step 7. Track and record all seized or produced documents.** Make a written note of which rooms the officials visit; what desks, cupboards, files, and computers they inspect; and to whom they speak. Make a copy of all documents seized.

**Step 8. Provide support to employees questioned on documents or interviewed by officials on questions relevant to the investigation.** Officials may request oral explanations of documents that are within the scope of the investigation—make sure the information provided is complete and accurate but that the answers are kept concise and no additional information is volunteered. Upon giving written formal notice, CMA officials acting under UK law can also require any individual who has a connection with a business covered by the investigation to answer questions on any matter relevant to the investigation. Make sure that legal counsel is present for the interviews and that the interviews are recorded; if this is not possible,

ensure that a contemporaneous note be made so that the interviewee is given a chance to check and confirm the accuracy of the transcript. Presence of legal counsel is essential to ensure that the employee is not required to answer questions if the answers might be self-incriminating.

**Step 9. Before the officials leave, confirm the position.** Make sure you have a copy of the documents as well as the officials’ list of documents. Ask officials for their contact details and organize a point of contact at the company for future communications. Ask officials if they intend to come back and, if so, at what time and whether they want cabinets or rooms to be sealed overnight if they are returning the next day. Ensure no one reopens the room or cabinet, including cleaners and security; only the officials may break a seal. Ask if officials intend to issue a press release.

**Step 10. After the officials have left, record and review.** Conduct debriefings with employees, conduct post-investigation review, and determine next-step strategy, including potential leniency application and whether an internal investigation should be conducted. Organize internal and external communications strategy.

### Civil Investigations at Domestic Premises

CMA officials, acting on their own or on behalf of the European Commission or another EU national competition authority, also have the power to enter and search domestic premises (e.g., homes of a company’s directors, managers, or employees, as well as motor vehicles) where they have a reasonable suspicion that evidence that would support their case is being kept.

The precautions and advice set out above for a search of the company’s premises should also be observed where inspections are conducted at domestic premises, as evidence obtained there can be used in the same manner as any evidence obtained from the company’s offices. In particular, it is essential to:

**Step 1. Contact outside counsel immediately and ask that the search be delayed until outside counsel arrives on site.**

**Step 2. Check the warrant.** Wherever the CMA wishes to enter domestic premises in relation to a competition investigation, a warrant is required.

**Step 3. Cooperate but ensure that the officials do not exceed their powers.** Ensure that counsel is there at all times. The CMA officials will have the same powers (enter and search, make copies and take possession of documents) and limitations (documents within scope of the investigation, legal privilege, and self-incrimination) as for a raid at business premises, with some exceptions. Notably, they will not be able to seal the premises or books and records and cannot use their “seize and sift” powers (whereby the entire hard disk of the computer system, any mobile phone, or other electronic device can be seized if it is not practicable to search and separate out relevant items on the premises).

**Step 4. Track and record all seized or produced documents.**

**Step 5. After the officials have left, record and review.**

### Criminal Investigations

In the UK, the CMA also has the power to search any premises (business and non-businesses) when it is conducting an investigation into a criminal cartel. A criminal raid will be very different from a civil raid, and it is likely to be much more aggressive as there is a much greater risk of obstruction allegations. The main crucial difference is that individuals may be arrested and taken to the police station for questioning. In such case, the police will also be involved as only they have powers of arrest. On a practical note, this may mean that one or more key individuals with evidence cannot be accessed by the company during the criminal dawn raid, which will affect the company's ability to consider issues such as whether a leniency application is appropriate.

The CMA officials will need a warrant and will have similar powers as when acting with a warrant under the civil regime, and in particular to enter and search premises and to require persons to answer questions, provide information, or produce documents. As such, the precautions and advice set out above for civil investigations should also be observed for inspections carried out under the criminal regime. However, additional precautions should be borne in mind and, in particular, whether separate legal representation may be required for certain individuals interviewed.

## AUSTRALIA

Here's a 10-step checklist on how to respond when officials from the Australian Competition and Consumer Commission (“ACCC”) carry out a dawn raid at your premises under the civil regime and criminal regimes.

### Civil Investigations at Business Premises

**Step 1. Contact outside counsel immediately and ask that the search be delayed until outside counsel arrives on site**—note that the ACCC is not required to do so, although it usually will, particularly if you are able to give them a reasonable estimate of how long they will need to wait and assurances that there is no risk of evidence being destroyed, such as by asking staff to close their desks and computers and turn off any shredder. Escort the officials to a private meeting room and offer them an organizational chart and floor plan of the business. Identify locations where privileged material may be located, such as the legal department.

**Step 2. Copy the ACCC's documentation.** Make a copy of the officials' identification (identification cards are issued by the chairman of the ACCC) and check the documentation authorizing the investigation (authorization or a warrant). Make a copy of each of those documents and email them to your outside counsel.

**Step 3. Review the search warrant to:** (i) check that it is valid; (ii) check that it covers the company and premises; (iii) understand the scope and subject matter of the investigation (alleged infringements, relevant products/services, departments, geographical scope); (iv) understand the powers of the officials; (v) understand which ACCC inspector is responsible for exercising the search warrant; and (vii) identify the date, which is noted on the warrant, on which the warrant ceases to have effect.

**Step 4. Provide instructions to employees.** Issue an internal announcement to inform staff that there is an official inspection and provide guidance on how to behave appropriately (in particular, instruct not to destroy documents, not to leak news of the investigation (even to family members), and remind of the duty to cooperate). There are a number of criminal

offenses that may be committed through failure to cooperate, and fines also may be applied.

**Step 5. Organize staffing.** Arrange for the internal team to have access to a separate meeting room from the ACCC officials. Arrange for members of the IT team to be available as their input will be needed; if IT support is outsourced, contact a senior person at the provider who can bypass the usual time-consuming protocols and helpdesk processes. Organize “shadowers” to follow each official at all times and brief them on the scope of the investigation and limits to the power of the officials to ensure that officials do not exceed their powers.

**Step 6. Follow each official at all times.** Inspectors have the power to take possession of original documents. However, officials cannot make copies or take possession of documents that are legally privileged, including legal advice from in-house counsel or from outside counsel.

**Step 7. Track and record all seized or produced documents.** Make a written note of which rooms the officials visit; what desks, cupboards, files, computers they inspect; and whom they interview. Make a copy of all documents seized.

**Step 8. Provide support to employees questioned on documents or interviewed by officials on questions relevant to the investigation.** Officials may request oral explanations of documents that are within the scope of the investigation—make sure the information provided is complete and accurate but that the answers are concise and no additional information is volunteered. Make sure that legal counsel is present for questions and that the questions are recorded. If this is not possible, ensure that a contemporaneous note be made so that the interviewee is given a chance to check, and confirm the accuracy of the transcript. A person may *not* decline to answer a question on the basis that the answer may incriminate or expose that person to penalty.

**Step 9. Before the officials leave, confirm you have followed these procedures.** Make sure you have a copy of the documents as well as the officials’ list of documents. Ask officials for their contact details and organize a point of contact at the company for future communications. Ask officials if they intend to come back and if so, at what time and whether they want cabinets or rooms to be sealed overnight if they are returning the next day. Then ensure no one reopens the room or cabinet,

including cleaners and security; only the officials may break a seal. Ask if officials intend to issue a press release.

**Step 10. After the officials have left, record and review.** Conduct debriefings with employees, conduct a post-investigation review, and determine next steps, including any potential leniency application and whether an internal investigation should be conducted. Organize internal and external communications strategy.

### Civil Investigations at Domestic Premises

The ACCC officials may also enter and search domestic premises (e.g., homes of a company’s directors, managers, or employees, as well as vessels or motor vehicles) where they have reasonable grounds to believe that evidence of a contravention is at the premises.

The precautions and advice set out above for a search of the company’s premises should also be observed where inspections are conducted at domestic premises, as evidence obtained there can be used in the same manner as any evidence obtained from the company’s offices. In particular, it is essential to:

**Step 1. Contact outside counsel immediately and ask that the search be delayed until outside counsel arrives on site.**

**Step 2. Check the warrant.**

**Step 3. Be cooperative and do not obstruct the investigation.** Identify rooms, such as a home office where the evidence in the warrant is likely to be found. Ensure that counsel is there at all times. The officials will have the same powers (enter and search, make copies and take possession of documents) and limitations (legal privilege) as for a search warrant at business premises.

**Step 4. Track and record all seized or produced documents.**

**Step 5. After the officials have left, record and review.**

### Criminal Investigations

The ACCC also has the power to search any premises (business and non-businesses) when it is conducting an investigation into a criminal cartel. A criminal raid will be very different from a civil raid. It is likely to be much more aggressive as there is a much greater risk of obstruction allegations. The crucial difference is that individuals may be arrested and taken to a police station for questioning. In such case, the police will also be involved as

only they have powers of arrest. On a practical note, this may mean that one or more key individuals with evidence cannot be accessed by the company during the criminal dawn raid, which will affect the company's ability to consider issues such as whether a leniency application is appropriate.

The inspectors will need a warrant and will have similar powers as when acting with a warrant under the civil regime—in particular, to enter and search premises—to require persons to answer questions, provide information, or produce documents. As such, the precautions and advice set out above for civil investigations should also be observed for inspections carried out under the criminal regime. However, additional precautions should be borne in mind and in particular whether separate legal representation may be required for certain individuals interviewed.

### Search Warrants and the Right to Privacy

- ACCC officers are not permitted to search premises unless they are issued a search warrant that authorizes them to enter and search those particular premises.
- An ACCC officer who asks to search somewhere other than a business premises without a warrant must state that consent may be refused, and it is permissible to refuse such request to enter premises without a warrant.
- There are no privacy protections preventing the ACCC from searching private premises. If an ACCC officer does produce a search warrant that authorizes entry into a private vehicle, vessel, storage unit, house, or other non-business premises, he is entitled to search the premises and seize material specified in the warrant.

## UNITED STATES

Here's a 10-step checklist regarding how to respond when a company is presented with a U.S. government search warrant—either criminal or civil investigations.

**Step 1. Contact outside counsel immediately and request that the search be delayed until outside counsel arrives on site.** When the government has a valid warrant, it has no obligation to wait for counsel's arrival, but they may agree. All interactions with the government should proceed through, or with the advice of, outside counsel. Any statements that employees make to the government may be attributed to the company.

**Step 2. Gather basic information on:** (i) the purpose behind the search; (ii) the identity of the lead government agent; (iii) the names of other agents; (iv) the agency leading the investigation; and (v) the lead prosecutor.

**Step 3. Provide instructions to employees.** Instruct all non-essential employees to leave the premises, but admonish departing employees not to take any materials out of the office or destroy or delete any paper or electronic files while the search is being executed. Instruct all employees regarding their rights, including the right not to speak with government agents and the right to consult with company counsel prior to or during any interview.

**Step 4. Connect outside counsel with the lead agent.** Your outside criminal counsel should be conducting, or advising on, all communications with the government.

**Step 5. Obtain and analyze the search warrant and any supplemental subpoena.** Analyze any materials you are given to: (i) determine the terms and scope of the government's investigation; (ii) raise any defects in the warrant; and (iii) negotiate, if possible, an alternative method of production that will ensure no evidence will be lost or destroyed.

**Step 6. Communicate key information about the government's investigation to all relevant internal players.** Then, organize a unified, company-wide effort to address the investigation and prepare a coordinated public response. Work with outside counsel and/or a public relations firm to formulate a crisis management plan.

**Step 7. Identify and protect any privileged, confidential, or trade secret materials that the agents have reviewed and seized.** Inform agents of such materials and request that such documents be segregated and kept under seal until privilege disputes are resolved. Request the establishment of a separate "taint team" to review the protected materials.

**Step 8. Track and inventory all seized or produced records.** If possible, make copies of any materials that are necessary for ongoing business operations before the agents take them. If agents insist on taking documents critical for business operations, outside counsel should try to negotiate a speedy return of such materials.

**Step 9. Conduct debriefings with employees and memorialize the government's search activities.** Document these interactions under the attorney–client privilege and work-product doctrine, as well as actions and statements made by agents during the search. Determine whether an internal investigation should be conducted and whether it should be by outside counsel.

**Step 10. Notify employees of document preservation obligations.** Determine your company's status in the government's investigation. If your company appears to be the subject or target of the investigation, draft and distribute a document preservation notice internally.

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For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at [www.jonesday.com/contactus/](http://www.jonesday.com/contactus/).

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